

City of Fontana

8353 Sierra Avenue
Fontana, CA 92335



Regular Agenda

Ord. No. 1906 Reso. No. 2022-126

Tuesday, October 11, 2022

7:00 PM

Grover W. Taylor Council Chambers

City Council Meeting

Acquanetta Warren - Mayor
Peter A. Garcia - Mayor Pro Tem
John B. Roberts - Council Member
Jesus "Jesse" Sandoval - Council Member
Phillip Cothran - Council Member
Germaine McClellan Key - City Clerk
Janet Koehler-Brooks, City Treasurer

Welcome to a meeting of the Fontana City Council.

Welcome to a meeting of the Fontana City Council. A complete agenda packet is located in the binder on the table in the lobby of the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335. To address the Council, please fill out a card located at the entrance to the right indicating your desire to speak on either a specific agenda item or under Public Communications and give it to the City Clerk. Your name will be called when it is your turn to speak. In compliance with Americans with Disabilities Act of 1990 (42 USC § 12132), the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335 is wheelchair accessible, and a portable microphone is available. Upon request, this agenda will be made available in appropriate alternative forms to persons with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such a request to the City Clerk's Office at (909) 350-7602 at least 48 hours before the meeting, if possible. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection in the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335.

Traduccion en Español disponible a peticion. Favor de notificar al Departamento "City Clerk". Para mayor informacion, favor de marcar el numero (909) 350-7602.

CLOSED SESSION:**PUBLIC COMMUNICATION - CLOSED SESSION:**

This is an opportunity for citizens to speak to the City Council for up to 3 minutes on the following Closed Session. The Mayor and City Council reserve the right to adjust this time limit based on the number of speakers who wish to address the Mayor and City Council.

A. Public Communications - Closed Session**6:00 P.M. CLOSED SESSION**

- A. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION** [21-1744](#)
(Government Code section 54956.9(d)(1))
Frank Copetillo v. City of Fontana, USDC Case No. 5:19-cv-01959 MEMF (SHKx)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Gov. Code section 54956.8)
Property: APN # 0232-091-18 and 0232-091-19
City Negotiator: Ray Ebert, Deputy City Manager
Negotiating Party: Gerardo Herrera
Under Negotiating: Price and Terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Gov. Code section 54956.8)
Property: APN # 0232-201-12 and 0232-201-13
City Negotiator: Ray Ebert, Deputy City Manager
Negotiating Party: Mark Nuaimi
Under Negotiating: Price and Terms of payment

CALL TO ORDER/ROLL CALL:

- A. 7:00 P.M. Call To Order/Roll Call:

INVOCATION/PLEDGE OF ALLEGIANCE:

- A. Invocation/Pledge of Allegiance:

PROCLAMATION:

- A. Proclamation

- A. Mayor Warren and City Council proclaim the 2nd Week of October 2022 as Code Compliance Officer Appreciation Week (Sandra Pelayo, Community Improvement Program Manager, to accept). [21-1746](#)

SPECIAL PRESENTATIONS:

- A. Special Presentations

- A. 2022 Mayor's Youth Advisory Council Board Introduction (Community Services Coordinator Andrew Solares to present). [21-1767](#)

PUBLIC COMMUNICATIONS:

This is an opportunity for members of the public to address the City Council for up to three (3) minutes total on items either on the Agenda or items not on the Agenda, but within the City Council's jurisdiction. Note that Public Hearing items have individual and specific public input opportunities during the public hearing and testimony on those items will only be taken during the public hearing. The Council is prohibited by law from discussing or taking immediate action on non-agendized items. The Mayor and City Council reserve the right to adjust this time limit based on the number of speakers who wish to address the Mayor and City Council .

A. Public Communications**CONSENT CALENDAR:**

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for discussion.

A. Approval of Minutes [21-1745](#)

Approval of Minutes

Approve the minutes of the September 27, 2022, Regular City Council Meeting.

Attachments: [City Council Meeting - September 27.pdf](#)

B. Award a Bid for BMW Motorcycle Purchase, Parts and Repair Services SB-93-PW-22. [21-1689](#)

Award a Bid for BMW Motorcycle Purchase, Parts and Repair Services SB-93-PW-22.

1. Award a bid with Ride-On Powersports for the purchase of BMW Police Motorcycles, parts and repair services on an as-needed basis.
2. Authorize the Purchasing Office to issue a purchase order to Ride on Powersports for a period of two (2) Years, renewable with three (3) additional one-year increments at the City's sole discretion for an approximate amount of \$60,000 per year for an aggregate amount not to exceed \$300,000 for the term of the purchase order.
3. Authorize the Purchasing Office to issue purchase orders to Ride on Powersports for the purchase of new and replacement motorcycles for five (5) years.

Attachments: [Notified Vendors SB-93-PW-22.pdf](#)

C. Authorize the purchase of an ADA compliant restroom trailer from Comforts of Home Services, Inc. [21-1695](#)

Authorize the purchase of an ADA compliant restroom trailer from Comforts of Home Services, Inc.

Authorize the Purchasing Office to "Piggy-Back" on the General Services Administration (GSA) Purchasing Program (Contract No. GS-07F-0236V) for the purchase of one (1) new ADA compliant restroom trailer from Comforts of Home Services, Inc. in the amount of \$117,671.88 plus sales tax (7.75%) for a total of \$126,266.58.

Attachments: [Quote 8-30-22.pdf](#)

D. Authorize to purchase Fuel for City Vehicles and Equipment. [21-1701](#)

Authorize to purchase Fuel for City Vehicles and Equipment.

Approve and authorize the Purchasing Office to "Piggy-Back" from San Bernardino County's gasoline and diesel fuel contract (Agency 22-PURC-4372) for the purchase of fuel for the City vehicles and equipment through June 14, 2027.

Attachments: [County of San Bernardino Fuel 2022.pdf](#)
[City of Fontana Fuel Bid \(Fuel Pricing\).pdf](#)

E. Approve a Development Impact Fees Credit Agreement Related to Parcel Map No. 20183 (TPM No. 19-021) and Parcel Map No. 20184 (TPM No. 19-022) [21-1735](#)

Approve a Development Impact Fees Credit Agreement Related to Parcel Map No. 20183 (TPM No. 19-021) and Parcel Map No. 20184 (TPM No. 19-022)

Approve and authorize the City Manager to execute a Development Impact Fees Credit Agreement with TDC Boyle Partners, LLC, related to Parcel Map No. 20183 (TPM No. 19-021) and Parcel Map No. 20184 (TPM No. 19-022).

Attachments: [Fee Credit Agreement.pdf](#)
[Vicinity Map.pdf](#)

F. Naming Rights Agreement - Center Stage Theater [21-1758](#)

Naming Rights Agreement - Center Stage Theater

1. Approve Naming Rights Agreement for the Center Stage Theater
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said agreement and/or associated approvals.

Attachments: [Attachment 1 - Fontana - Naming Rights Agreement- Red Head Inc.](#)

**G. Purchase and Sale Agreement for 16766 Arrow Blvd. - [21-1760](#)
Downtown Fontana Property**

Purchase and Sale Agreement for 16766 Arrow Blvd. - Downtown Fontana Property

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the north side of Arrow Blvd, east of Juniper in Downtown Fontana, more specifically described as APN #0191-162-09.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

Attachments: [Attachment No. 1 - 16766 Arrow Blvd P and S Agreement](#)
[Attachment No. 2 - 16766 Arrow Blvd Counter](#)

**H. Purchase and Sale Agreement for 8443 Nuevo Avenue - [21-1761](#)
Downtown Fontana Property**

Purchase and Sale Agreement for 8443 Nuevo Avenue - Downtown Fontana Property

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the southeast corner of Nuevo Avenue and Spring Street in Downtown Fontana, more specifically described as APN #0191-163-27.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

Attachments: [Attachment No. 1 - 8443 Nuevo Ave P and S Agreement](#)
[Attachment No. 2 - 8443 Nuevo Ave Counter](#)

**I. Purchase and Sale Agreement for 16762 Spring St. - [21-1762](#)
Downtown Fontana Property**

Purchase and Sale Agreement for 16762 Spring St. - Downtown Fontana Property

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the north side of Spring Street, east of Juniper in Downtown Fontana, more specifically described as APN #0191-161-29.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

Attachments: [Attachment 1 16762 Springs St P&SA.pdf](#)
[16762 Spring St Addendum 2.pdf](#)

**J. Purchase and Sale Agreement for 16717 Spring St. - [21-1763](#)
Downtown Fontana Property**

Purchase and Sale Agreement for 16717 Spring St. - Downtown Fontana Property

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the south side of Spring Street, just east of Juniper in Downtown Fontana, more specifically described as APN #0191-162-18.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

Attachments: [Attachment No. 1 - 16717 Springs Street](#)

Approve Consent Calendar Items as recommended by staff.

PUBLIC HEARINGS:

To speak on Public Hearing Items, submit comments via e-mail at publiccomments@fontana.org. In the subject of your e-mail please indicate whether you are in favor or opposition of the item. Comments must be received no later than 5:00 P.M. on the day of the meeting. Comments of no more than three (3) minutes will be read into the record at the appropriate time during the meeting. If you challenge in court any action taken concerning a Public Hearing item, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City at, or prior to, the Public Hearing.

All Public Hearings will be conducted following this format:

- | | |
|---|-----------------------|
| (a) hearing opened | (e) oral - favor |
| (b) written communication | (f) oral - opposition |
| (c) council/staff comments | (g) hearing closed |
| (d) applicant comments (applicant not limited to 5 minutes) | |

- A. **Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities)).** [21-1743](#)

Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).

(a) Determine that the project is Categorically Exempt pursuant to Sections 15060(c), Section No. 15061 (B)(3) (the “common sense” exemption), Section 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for implementing the CEQA, and direct staff to file a Notice of Exemption; and

(b) Read by title only and waive further reading of and introduce **Ordinance No. 1906**, an Ordinance of the City Council of the City of Fontana approving Master Case No. 22-110 and Municipal Code Amendment No. 22-007 amending Sections of Chapter 2, Chapter 25, Chapter 26, and Chapter 30 to remove the Development Advisory Board (DAB); amending Chapter 9 to revise the definition of “sensitive receptors”; amending Chapter 30 to exempt the City from certain zoning regulations for City owned, controlled, or leased properties or facilities; amending Chapter 30 to allow development projects over two acres to develop common open space; adding Article XV to Chapter 30 creating a No Net Loss density bonus/replacement program; and amending Section 30-489 and Table Nos. 30-489 and 30-453 to rename commercial cannabis to cannabis retail stores and reference special regulations for same; and making minor modifications to Chapter 33 related to phasing and authorization letters for permit applications; and the reading of the title constitutes the first thereof.

Attachments: [Attachment No. 1 - Ordinance 1906](#)
[Attachment No. 2 - Planning Commission Report](#)
[Attachment No. 3 - Planning Commission Minutes](#)
[Attachment No. 4 - Notice of Exemption](#)
[Attachment No. 5 - Public Hearing Notice](#)

NEW BUSINESS:

A. New Business

A. First Reading and Set Public Hearing for the Adoption of the 2022 Edition of the California Building Standards Code and Corresponding Base Model Codes [21-1753](#)

First Reading and Set Public Hearing for the Adoption of the 2022 Edition of the California Building Standards Code and Corresponding Base Model Codes

- (1) Determine that the adoption of the ordinance of the City of Fontana adding, amending and deleting certain articles, sections and subsections of Chapter 5 of the Code of the City of Fontana, California pertaining to the construction and maintenance of buildings, and adopting the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code is exempt from further environmental review under Section 15061(b)(3) of the State CEQA guidelines, projects with no possibility of significant effects upon the environment, and direct staff to file a notice of exemption.
- (2) Waive further reading of and introduce **Ordinance No. 1907**, an ordinance of the City of Fontana adding, amending and deleting certain articles, sections and subsections of Chapter 5 of the Code of the City of Fontana, California pertaining to the construction and maintenance of buildings, and the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code; and that the reading of the title constitute the first reading thereof.
- (3) Set Public Hearing for October 25, 2022 and deem the Notice of Hearing sufficient to give interested persons notice of the purpose of the ordinance and subject matter thereof.

Attachments: [Fontana - Ordinance No. 1907 Code Adoption](#)

CITY MANAGER COMMUNICATIONS:

- A. City Manager Communications

ELECTED OFFICIALS COMMUNICATIONS/REPORTS:

- A. Elected Officials Communications/Reports

ADJOURNMENT:

- A. Adjournment

Adjourn to the next Regular City Council Meeting on October 25, 2022, at 7:00 p.m. in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1744

Agenda #: A.

Agenda Date: 10/11/2022

Category: Closed Session

Closed Session

Tuesday, October 11, 2022

6:00 P.M.

City Hall - Executive Conference Room



City Council

Acquanetta Warren, Mayor

Peter Garcia, Mayor Pro Tem

John Roberts, Council Member

Jesus "Jesse" Sandoval, Council Member

Phillip W. Cothran., Council Member



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1746

Agenda #: A.

Agenda Date: 10/11/2022

Category: Proclamation

Proclamations

Tuesday, October 11, 2022

7:00 P.M.

Grover W. Taylor Council Chambers



City Council

Acquanetta Warren, Mayor

Peter Garcia, Mayor Pro Tem

John Roberts, Council Member

Jesus "Jesse" Sandoval, Council Member

Phillip W. Cothran., Council Member



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1767

Agenda #: A.

Agenda Date: 10/11/2022

Category: Special Presentation

Special Presentations

Tuesday, October 11, 2022

7:00 P.M.

Grover W. Taylor Council Chambers



City Council

Acquanetta Warren, Mayor

Peter Garcia, Mayor Pro Tem

John Roberts, Council Member

Jesus "Jesse" Sandoval, Council Member

Phillip W. Cothran., Council Member



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1745

Agenda #: A.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

City Clerk

SUBJECT:

Approval of Minutes

RECOMMENDATION:

Approve the minutes of the September 27, 2022, Regular City Council Meeting.

COUNCIL GOALS:

- Create and maintain a dynamic team by promoting stability and predictability by providing consistent policy direction.
- Create and maintain a dynamic team by communicating Goals and Objectives to all commissions and employees.

DISCUSSION:

The City Council will consider approval of the minutes of the September 27, 2022, Regular City Council meeting. Draft minutes are attached to this report for Council review and approval.

FISCAL IMPACT:

None.

MOTION:

Approve staff recommendation.

City of Fontana

8353 Sierra Avenue
Fontana, CA 92335



Minutes

Tuesday, September 27, 2022

7:00 PM

Grover W. Taylor Council Chambers

City Council Meeting

Acquanetta Warren - Mayor
Peter A. Garcia - Mayor Pro Tem
John B. Roberts - Council Member
Jesus "Jesse" Sandoval - Council Member
Phillip Cothran - Council Member
Germaine McClellan Key - City Clerk
Janet Koehler-Brooks, City Treasurer

CALL TO ORDER/ROLL CALL:

A. 7:00 P.M. Call To Order/Roll Call:

The Regular Meeting of the Fontana City Council was held on Tuesday, September 27, 2022, in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California, 92335. Mayor Warren called the meeting to order at 7:03 p.m.

ROLL CALL:

PRESENT: Mayor Warren, Mayor Pro Tem Garcia, Council Members Cothran, Roberts and Sandoval

ABSENT: None

City Clerk McClellan Key and City Treasurer Koehler-Brooks were also in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE:

A. Invocation/Pledge of Allegiance:

Fontana Police Department Chaplain Valerie Torres led the invocation, followed by Council Member Roberts who led the pledge of allegiance.

SPECIAL PRESENTATIONS:

A. Special Presentations

A.

[21-1712](#)

A. Mayor Warren and City Council to recognize Corporal Buddy Porch, Officer Christine Tomicic, Probation Officer Jazmyne White and Records Supervisor Vanessa Hernandez as the Fontana Police Department July 2022 Employees of the Month.

Mayor Warren and City Council recognized the July 2022 Employees of the Month.

B. Mayor Warren and City Council to recognize Corporal Thomas Moore, Corporal Luis Valenzuela, Officer Paul Contreras, Officer Shawn Cory, Officer Joshua MacMillian, Officer Kirsten Ryn, Officer Matthew Sherwood, Officer Christine Tomicic, and Secretary Michelle Jared as the Fontana Police Department August 2022 Employees of the Month.

Mayor Warren and City Council recognized the August 2022 Employees of the Month.

PUBLIC COMMUNICATIONS:

A. Public Communications

No public communications were received.

CONSENT CALENDAR:

ACTION: Motion was made by Council Member Cothran, seconded by Mayor Pro Tem Garcia, to adopt and approve Consent Calendar Items "A-P" by an unanimous roll call vote. The motion carried as follows: AYES: Warren, Garcia, Cothran, Roberts, and Sandoval; NOES: None; ABSTAIN: None

- A.** Approval of Minutes [21-1723](#)
Approve the minutes of the September 13, 2022, Regular City Council Meeting.
- B.** Adoption of Ordinance No. 1904 (Second Reading) [21-1724](#)
Second Reading/Adoption of **Ordinance No. 1904**, levying special taxes within the City of Fontana Community Facilities District No. 111 (Monterado).
- C.** Adoption of Ordinance No. 1905 (Second Reading) [21-1725](#)
Second Reading / Adoption of **Ordinance No. 1905**, authorizing the levy of a Special Tax within Community Facilities District No. 110M.
- D.** Police Department Monthly Information Update [21-1630](#)
Accept the Police Department monthly information update for August 2022.
- E.** Approve Donations of Dog "Arrow" and Present and Future Accompanying K-9 Dog Equipment from Fontana Police K-9 Pals, a California Nonprofit Corporation. [21-1631](#)
 - 1. Approve the donation of the dog "Arrow" from Fontana Police K-9 Pals, a California nonprofit corporation, to the City of Fontana in order for "Arrow" to become part of the Fontana Police Department's K-9 Unit.
 - 2. Approve present and future accompanying K-9 dog equipment from Fontana Police K-9 Pals to support the Fontana Police Department's K-9 Unit operations.
- F.** Approve Donations of Dog "Leo" and Present and Future Accompanying K-9 Dog Equipment from Fontana Police K-9 Pals, a California Nonprofit Corporation. [21-1632](#)
 - 1. Approve the donation of the dog "Leo" from Fontana Police K-9 Pals, a California nonprofit corporation, to the City of Fontana in order for "Leo" to become part of the Fontana Police Department's K-9 Unit.
 - 2. Approve present and future accompanying K-9 dog equipment from Fontana Police K-9 Pals to support the Fontana Police Department's K-9 Unit operations.
- G.** Award a Construction Contract for the Police Facility Fence Installation Project [21-1649](#)
 - 1. Award and authorized the City Manager to execute a construction contract with J & A Engineering Corp. for the construction of the Police Facility Fence Installation Project in the amount of \$358,275.44 and authorize a 10% contingency in the amount of \$35,827.54 (Bid No. SB-03-DE-23).
 - 2. Appropriate \$75,000.00 from PD Capital Facilities Fund 636 to the Police Facility Fence Installation Project No. 36000021.
 - 3. Approve and authorize the City Manager to execute any and all utility

- agreements, utility easements, and subsequent agreements on behalf of the City of Fontana for the Police Facility Fence Installation Project.
- H.** Approve Release of K-9 Unit Dog “Wyatt” and Accompanying K-9 Equipment to his Handler Casey Mutter [21-1691](#)
Approve contract No. MS-69-PD-23 between the City of Fontana and Casey Mutter to release K-9 dog “Wyatt” and accompanying K-9 dog equipment, including a kennel, transportation kennel, custom fit muzzle, dogloo, and two leashes, to him.
- I.** Approve Release of K-9 Unit Dog “Axl” and Accompanying K-9 Equipment to his Handler Bradley Terwilliger [21-1697](#)
Approve contract No. MS-70-PD-23 between the City of Fontana and Bradley Terwilliger to release K-9 dog “Axl” and accompanying K-9 dog equipment, including a kennel, transportation kennel, custom fit muzzle, dogloo, and two leashes, to him.
- J.** 2021 Homeland Security Grant (HSGP) [21-1708](#)
 1. Accept the 2021 Homeland Security Grant Program subrecipient award in the amount \$40,451 from the Office of Homeland Security.
 2. Authorize the Chief of Police or his designee to sign all related grant documents including extensions or modifications for the grant; and expend funds as outlined in the grant agreement.
 3. Approve allocation of funds in the amount of \$40,451 in the Grant Fund #301, Project 40200003 - 2021 Homeland Security Grant
- K.** Fontana Police Department to Accept 2002 Pierce Heavy Rescue Vehicle [21-1710](#)
 1. Accept 2002 Pierce Heavy Rescue Vehicle (VIN #1K9AF4283YN058185) donation from the San Bernardino County Fire Protection District.
 2. Approve a recurring appropriation from the General Fund in the amount of \$12,670 to cover the Operating & Maintenance costs associated with this vehicle.
- L.** Pre-annexation Agreement No. 22-001, between the City of Fontana and Inland Senior Development, LLC Investments, for the provision of sewer service to a 112-Unit Multi-Family Condominium Project located South of Foothill Boulevard, on the West side of Banana Avenue. [21-1716](#)
 1. Find that the project is Exempt pursuant to Section No. 15268(b)(4) (Ministerial Project, Utility Connection) of the California Environmental Quality Act (CEQA) and, direct staff to file a Notice of Exemption; and,
 2. Approve and authorize the City Manager to execute a Pre-annexation Agreement (No. 22-001) with Inland Senior Development, LLC investments, for the provision of sewer service to a 112-unit multi-family condominium project located south of Foothill Boulevard, on the west side of Banana Avenue.
- M.** Fontana Police Helicopter Service Contract Implementing AS350B2 [21-1721](#)

1. Approve a Service Agreement between HeliSafe, LLC, a Limited Liability Corporation, and the Fontana Police Department
 2. Authorize the City Manager (or his designee) to sign the Service Agreement, all related documentation, and any amendments to continue this cooperative agreement as long as it is in the best interest of the City of Fontana.
- N.** Purchase & Sale Agreement - Downtown Fontana Property [21-1738](#)
1. Approve a Purchase & Sale Agreement for the purchase of two parcels of land located on the Spring Street, east of Juniper Avenue in Downtown Fontana, more specifically described as APN #0191-161-17 and #0191-161-28.
 2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.
- O.** Final Acceptance of the Village of Heritage Pool Deck Repair Project (MS-106-PW-22). [21-1686](#)
1. Accept as complete the work performed by Masterseal Corporation for the Village of Heritage Pool Deck Repair project and approve the final construction cost of \$223,200.
 2. Authorize the City Engineer/Director of Public Works to file a notice of completion and release the 5% retention.
- P.** Estoppel Certificate and Assignment Agreement for Ventana at Duncan Canyon. [21-1751](#)
- Approve Estoppel Certificate and Assignment Agreement for Ventana at Duncan Canyon and authorized the City Manager to enter into said agreement.

PUBLIC HEARINGS:

- A.** Quarterly Lien Action for Delinquent Sewer, Rubbish and Weed Abatement Accounts [21-1715](#)

Mayor Warren opened the public hearing.

City Clerk McClellan Key noted for the record that no written correspondence were received on this item.

Accountant II Lisa Conlon provided the staff report.

Mayor Warren closed the public hearing as there were no members of the public present who wished to speak in favor or opposition of the item.

ACTION: Motion was made by Council Member Sandoval, seconded by Council Member Roberts, to approve and adopt Public Hearing Item 'A' by a unanimous roll call vote as follows:

- 1. Authorize staff to complete and record lien notices against real property**

for those sewer accounts sixty days or more delinquent as described in Certified Lien List and direct staff to forward recorded liens to the County for collection.

2. Authorize staff to complete and record liens against real property for those rubbish accounts more than ninety days delinquent as described in the Certified Lien List and direct staff to forward recorded liens to the County for collection.

3. Adopt Resolution No. 2022-125, of the City Council of the City of Fontana adopting the statement of unpaid expenses for weed abatement and imposing a lien against real property for payment thereof.

The motion carried as follows: AYES: Warren, Garcia, Cothran, Roberts, and Sandoval; NOES: None; ABSTAIN: None

CITY MANAGER COMMUNICATIONS:

A. City Manager Communications

City Manager Ballantyne thanked the Community Services Department for recent community events and thanked the volunteers for their contributions to the community.

ELECTED OFFICIALS COMMUNICATIONS/REPORTS:

A. Elected Officials Communications/Reports

City Treasurer Koehler Brooks congratulated the employees of the month; recognized the hardwork that the handlers and k-9's do for the community; and closed with wishing City Clerk McClellan Key a Happy belated birthday.

City Clerk Key commented on recently attended community events and congratulated the employees of the month.

Council Member Cothran thanked and recognized the volunteers and commented on recently attended community events.

Mayor Pro Tem Garcia thanked and recognized the volunteers and commented on recently attended community events.

Council Member Sandoval commented on the K-9's recognized and commented on recently participation for senior baseball.

Council Member Roberts thanked and recognized the volunteers; commented on recently attended community events; and commented on recent fire in Jurupa Valley that may have affected some community members.

Mayor Warren commented on recently attended events; Mayor's Leadership Conference in Miami, FL; National Nonpartisan Voter Education in Houston, TX; attendance at the Leven Gala; made a shout out to the Mayor's Youth Advisory Council for attending the recent Hispanic Heritage Event; highlighted Fontana Walk's - Let's Move on the Trail event; and closed with asking the audience and community to stand in silence and in prayer for family.

ADJOURNMENT:

A. Adjournment

Mayor Warren adjourned the meeting in a moment of silence for those to pray upon their families and communities.

The meeting was adjourned by Mayor Warren at 7:50 p.m. to the next Regular City Council Meeting on October 11, 2022, at 7:00 p.m. in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.

Ashton R. Arocho, MMC
Deputy City Clerk

THE FOREGOING MINUTES WERE ADOPTED AND APPROVED BY THE FONTANA CITY COUNCIL ON OCTOBER 11, 2022.

Germaine McClellan Key
City Clerk



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1689

Agenda #: B.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Public Works

SUBJECT:

Award a Bid for BMW Motorcycle Purchase, Parts and Repair Services SB-93-PW-22.

RECOMMENDATION:

1. Award a bid with Ride-On Powersports for the purchase of BMW Police Motorcycles, parts and repair services on an as-needed basis.
2. Authorize the Purchasing Office to issue a purchase order to Ride on Powersports for a period of two (2) Years, renewable with three (3) additional one-year increments at the City's sole discretion for an approximate amount of \$60,000 per year for an aggregate amount not to exceed \$300,000 for the term of the purchase order.
3. Authorize the Purchasing Office to issue purchase orders to Ride on Powersports for the purchase of new and replacement motorcycles for five (5) years.

COUNCIL GOALS:

- Improve public safety by increasing operational efficiency, visibility and availability.
- Practice sound fiscal management by living within our means while investing in the future.

DISCUSSION:

The Public Works Department is responsible for the maintenance and repair of over four hundred and eighty-one (481) vehicles and pieces of equipment. The Department also coordinates the purchase of new or replacement vehicles with the Finance Department. The City's Fleet inventory includes 13 BMW Motorcycles, which are assigned to the Police Department, Traffic Operations. The proposed award will enable the City to purchase BMW Police Motorcycles as replacements or additional units, along with maintenance and repair services.

The bid for the above-named project was opened electronically at 2:00 P.M. on June 16, 2022. Eighty-five (85) vendors were notified of the bid. Bid packets were downloaded/received by seven (7) Vendors and we received one (1) Response. Eight (8) Fontana vendors were notified of the bid. No Fontana vendor responses were received. After evaluating the bid response, the Purchasing Office is recommending Ride-On Powersports for award of bid as they are the lowest, most responsive, and responsible bidder. The Department completed the formal bid purchasing process.

FISCAL IMPACT:

The Public Works Department's Fiscal Year 2022-2023 budget includes funds for the services specified above, specifically in the Fleet Operations Fund No. 751, Fleet Replacement 75138306.8319, Fleet Maintenance 75138305.8130 and 75138305.8023. The Department spends

approximately \$60,000 annually for motorcycle maintenance and repair.

MOTION:

Approve staff recommendation.

Bid Detail

Project Title	BMW Police Motorcyle Purchases, Parts and Repair Services Contract
Invitation #	SB-93-PW-22
Bid Posting Date	06/04/2022 11:27 AM (PDT)
Project Stage	Closed
Bid Due Date	06/16/2022 2:00 PM (PDT)
Response Format	Electronic only
Link to Project	https://pbsystem.planetbids.com/portal/14391/bo/bo-detail/94982
Reference ID	
Project Type	Bid
Response Types	Line Items General Attachment (required) General Attachment General Attachment General Attachment General Attachment
Type of Award	Lump Sum
Categories	07000 - Automotive Vehicles And Related Transportation Equipment (Including Trailers) (Effective 1-1-06 This Class Inactivated, Refer To Classes 071, 072 And 073) 07012 - Motorcycles, Accessories, And Parts (Effective 1-1-06 This Item Has Been Inactivated, Refer To Class 071, 072 And 073)
License Requirements	
Restriction	None
Restricted To	
Department	Purchasing
Address	8353 Sierra Ave Fontana, California
County	San Bernardino
Bid Valid	90 Days
Liquidated Damages	
Target Bid Amount	
Estimated Bid Value	
Start/Delivery Date	
Project Duration	2 year contract w/ possible 3 one-year extensions at the City's sole discretion
Prevailing Wage	No
Cooperative Bid	No
Piggy-backable	No
eBid Notes	

Pre-Bid Meeting Information

Pre-Bid Meeting	No
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Online Q&A

Online Q&A	Yes
Q&A Deadline	06/11/2022 2:00 PM (PDT)

Contact Information

Contact Info

Bids to
Owner's Agent

Ticha Loera 909-350-6696
tloera@fontana.org

Description

Scope of Services

The City of Fontana Public Works Department is inviting Vendors to submit bid proposals for BMW R1250 RT-P Police Motorcycle Purchases, Parts and Repair Services. The Department manages a mixed fleet comprised of over 486 vehicles and pieces of equipment. This total is made up of heavy, medium, light duty vehicles and heavy off-road earth moving equipment including an array of specialty vehicles, service body units, Class C cut-a-way busses, RV, trailers, armored vehicles and Police Motorcycles. These vehicles and equipment are used by all departments including Police, Public Works, Community Services, Community Development, Engineering, Building and Safety, Information Technology, Planning, Human Resources, City Clerk, Management Services and Administration. These departments depend on the use of these vehicles and equipment to provide a variety of services to the public of Fontana.

The City of Fontana’s Vehicle Maintenance Facility is located at the Public Works Corporate Yard, 16489 Orange Way, Fontana 92335. The City of Fontana is seeking a vendor within 35 miles of above Corporate Yard address to provide the most reliable, responsive level of service, with the highest standards of performance quality while providing the best value to the City. Awarded vendor must be a full-service facility with the capability to provide all the following services for BMW Black and White R1250 RT-P Police Motorcycles in a timely manner during day time hours and at least 5 days a week. These services include but are not limited to performing all levels of mechanical repair, warranty repairs, manufacture recommended services, complete repair and/or replacement of Police Safety and Communication Equipment as well as both OEM and Aftermarket Parts. Vendor must have the ability to sell the above completed mentioned motorcycle built to the City of Fontana’s specifications. Vendor must be able to provide pickup and delivery services from and to the City of Fontana for said motorcycles when requested.

The City of Fontana reserves the right to not necessarily award contract only on lowest bid, but will also be evaluating references, capability, reputation and distance (25 miles from Corporate Yard address). Vendor must disclose how many BMW certified factory technicians are currently employed and how many years of service for each technician, and provide three references of current agencies you are providing services for. Awarded vendor will enter into contract with the City of Fontana for the purchase of Fontana spec BMW R1250 RT-P authority motorcycles, parts and service for a period of two (2) years, renewable for three (3) one (1) year increments at the City’s sole discretion.

Other Details

Notes
Special Notices
Local Programs &
Policies

Questions and comments regarding this solicitation must be submitted in writing, no later than five (5) days before the Submittal Deadline. Such submission, if any, must be sent using the bids online system at www.fontanapurchasing.org. “Questions and Answer” tab NO LATER THAN FIVE (5) days prior to the due date of the bids. Answers, if any, made by the City will be answered using the bids online system.

Documents

File Title	File Name	Status
Bid Specifications - SB-93-PW-22 BMW Motorcycle	Bid Specifications - SB-93-PW-22 BMW Motorcycle.pdf	On Server
Download Cost	\$0.00	

Vendor Notification

Agency Notifications 85 City of Fontana vendors notified

06/04/2022 11:27 AM (PDT) 85 vendors notified

using Criteria Category:
07000 - Automotive Vehicles And Related Transportation Equipment (Including Trailers) (Effective 1-1-06 This Class Inactivated, Refer To Classes 071, 072 And 073)
07012 - Motorcycles, Accessories, And Parts (Effective 1-1-06 This Item Has Been Inactivated, Refer To Class 071, 072 And 073)

ACDelco (265584)
21155 Via Santiago
Yorba Linda, California 92887
United States

Contact: Kirk Harvey
Phone: 949-350-8668
Fax:
Email: kirk.harvey@gm.com

ACT Compliance (513620)
725 Lugo St.
San Bernardino, California 92408
United States

Contact: Michael Schwartz
Phone: 951-226-3457
Fax: 8883153228
Email: info@fleetserv.com

AT Battery Company Inc. (101715)
28918 Hancock Parkway
Valencia, California 91355
United States

Contact: ToddMcNaughton
Phone: 661-775-2020
Fax: 661-775-2025
Email: todd@atbatt.com

Acton Inc (275832)
2400 Lincoln Ave
Altadena, California 91001
United States

Contact: Janelle
Phone: 323-250-0685
Fax:
Email: info@actonglobal.com

Advanced Battery Systems (746824)
5649 Mesmer Ave
Culver City, California 90230
United States

Contact: D. Jones
Phone: 310-482-3799
Fax:
Email: mail@absbattery.com

Advanced Systems Services, Inc. (198184)
1082 Airport Dr.
Upland, California 91786
United States

Contact: ReedWigington
Phone: 909-949-9944
Fax: 909-949-2244
Email: Mike@advancedsystemsservices.com

Alberto's Towing (988643)
593 N Batavia st
orange, California 92868
United States

Contact: Alberto Castellanos
Phone: 714-616-0290
Fax:
Email: dispatch@albertostowing.com

MBE

Azure Dynamics (21822)
9 Forbes Rd
Woburn, Massachusetts 01801
United States

Contact: Beth Silverman
Phone: 781-932-9009 ext.
Fax: --
Email: bsilverman@azuredynamics.com

BC Motorsports (236692)
10002 6th Street SuiteA
Rancho Cucamonga, California 91730
United States

Contact: William Cramer
Phone: 909-948-7975
Fax: 909-543-1903
Email: bcmotorsports1@gmail.com

Big Tex Trailers West (232367)
725 South Beach Blvd
Anaheim, California 92804
United States

Contact: Dennis VonLossberg
Phone: 714-828-9900
Fax:
Email: bigtexwest@gmail.com

Brick Automotive (1047617)
16155 Sierra Lakes Pkwy 160-620
Fontana, California 92336
United States

Contact: Lonnie Thompson
Phone: 909-342-7595
Fax:
Email: brickautoservice@gmail.com

MBE

COLTON RADIATOR & A/C (241977)
455 E. VALLEY BLVD
COLTON, California 92324
United States

Contact: ROBERT ROY
Phone: 909-825-1232
Fax: 909-825-1456
Email: coltonradiator@verizon.net

Courtesy Chevrolet Center (529921)
750 Camino Del Rio N.
San Diego, California 92108
United States

Contact: Charles Cozic
Phone: 619-297-4321 **ext.** 8121
Fax: 619-688-9327
Email: william.duron@courtesysd.com

David Wilson's Ford of Orange (397493)
1350 W Katella Ave
Orange, California 92867
United States

Contact: Andrew Warye
Phone: 714-516-6305
Fax:
Email: fleetfordsales@gmail.com

Diana Industries (230818)
PO Box 4499
Huntington Beach, California 92605
United States

Contact: Diana Nelson
Phone: 714-362-8626
Fax: 714-362-8630
Email: diana@dianaIndustries.com

Direct Truck and Auto Repair, aka. Direct Towing, Inc. (854950)
375 South G Street
San Bernardino, California 92410
United States

Contact: Tom Garner
Phone: 760-422-6900
Fax:
Email: tom_garner@frontier.com

DoubleMap, Inc. (692481)
429 N. Pennsylvania Street, Suite 401
Indianapolis, Indiana 46204
United States

Contact: Mary Maness
Phone: 855-463-6655
Fax:
Email: rfpnotices@doublemap.com

ELITE LOGISTICS SOLUTIONS. LLC (1036150)
548 SOUTH WILLOW AVE
RIALTO, California 92376
United States

Contact: JOHNNIE SMITH
Phone: 909-553-8424
Fax:
Email: JOHNNIESMITH@ELITELOGISTICS.SOLUTIONS

MBE, DBE, WBE

Elevate Enterprises Group (485684)
21650 Oxnard St
Woodland Hills, California 91367
United States

Contact: Christian Aragon
Phone: 8183841212
Fax:
Email: chris@elevategroup.us

Elk Grove Auto (1059231) 8575 Laguna Grove Drive Elk Grove, California 95757 United States	Contact: Jerry powers Phone: 916-426-5752 Fax: Email: dodge@lasherauto.com	
Everest USA Inc. (22442) 3100 E. Cedar St. Suit #5 Ontario, California 91761-7694 United States	Contact: PETER HO Phone: 909-923-1818 Fax: -- Email: peter@everestgroupusa.com	MBE
Fladeboe Automotive Group, Inc. (22495) 16 Auto Center Drive Irvine, California 92618 United States	Contact: Michael Jessick Phone: 949-830-7000 ext. Fax: 949-231-1059 Email: mstief@fladeboe.com	
Fladeboe Motorcars, Inc. (22496) 16 Auto Center Drive Irvine, California 92618 United States	Contact: Michael Jessick Phone: 949-830-7000 ext. Fax: 949-231-1059 Email: gogreencars@fladeboe.com	WBE
Fladeboe Volkswagen, Inc. (22497) 16 Auto Center Drive Irvine, California 92618 United States	Contact: Michael Jessick Phone: 949-830-7000 ext. Fax: 949-231-1059 Email: gogreencarsvw@fladeboe.com	
Ford (978818) 3 glen bell way irvine, California 92618 United States	Contact: david langley Phone: 313-549-1480 Fax: Email: dlangle9@ford.com	
Full Circle Design and Engineering (314423) 8059 Cherrystone Ave. Panorama City , California 91402 United States	Contact: Karen Pogosian Phone: 818-817-1391 Fax: Email: garypogosian@att.net	
Fuller Truck Accessories (385712) 7925 Indiana Ave Riverside, California 92504 United States	Contact: Vickie Mihelich Phone: 951-689-4267 Fax: 951-689-7350 Email: vickie@fullertruck.com	OSB
Future Nissan (159960) 600 AutoMall Drive Roseville, California 95661 United States	Contact: Laura O'Donnell Phone: 916-677-5289 Fax: 916-786-9385 Email: laura.odonnell@comcast.net	
Gatormoto Utility Vehicles & more LLC (209468) 2426 Mayport Rd Atlantic Beach, Florida 32233 United States	Contact: Brett Jackrel Phone: 904-247-1818 Fax: 904-247-2229 Email: bjackrel@motoelectricvehicles.com	
Genuine Parts Company (161030) 9361 Sierra Ave Fontana, California 92335 United States	Contact: Roger Iliff Phone: 760-285-7853 Fax: Email: roger_iliff@yahoo.com	

Genuine Parts Company (240557)
9361 sierra ave
fontana, California 92335
United States

Contact: Armando Apodaca
Phone: 909-822-8300
Fax:
Email: armando_apodaca@genpt.com

H&H Auto Parts Wholesale (241576)
12860 Muscatine Street
Arleta, California 91331
United States

Contact: Jim Holmquist
Phone: 818-771-0926
Fax: 818-771-0464
Email: jim@hhparts.com

OSB

HC Automotive inc. (312524)
970 W Manchester Blvd
Inglewood, California 90301
United States

Contact: Michael Phelps
Phone: 424-331-7000 **ext.** 152
Fax: 424-331-7081
Email: mike.phelps@hoomanautomotive.com

Hadley Tow (374530)
11819 E. Hadley St.
Whittier, California 90601
United States

Contact: David Johnston
Phone: 562-692-3793
Fax:
Email: dj9593@gmail.com

FON

Hansel Ford Inc (22649)
3075 Corby Ave
Santa Rosa, California 95407
United States

Contact: darron kendall
Phone: 707-543-7346 **ext.**
Fax: 707-573-9218
Email: dkendall@hanselauto.com

Hoblit Motors (22704)
P. O. Box 910
Woodland, California 95776
United States

Contact: Dwane Galatti
Phone: 530-666-7931 **ext.**
Fax: 530-666-7992
Email: dwanefleet@hotmail.com

Huntington Beach Motorsports, Inc. (501350)
17555 Beavch Blvd
Huntington Beach, California 92647
United States

Contact: Roger Smith
Phone: 714-842-5533
Fax: 714-842-5181
Email: roger@hbhonda.com

Interstate Batteries of Southern California
(199383)
1730 S E St
San Bernadino, California 92408
United States

Contact: Jason Martel
Phone: 909-806-0392
Fax: 909-381-9486
Email: jmartel82@gmail.com

Interstate Battery Systems of So Cal , Inc.
(22812)
1730 South E Street
San Bernardino, California 92408
United States

Contact: Heather Katsikaris
Phone: 909-381-2082 **ext.**
Fax: 909-381-9486
Email: ib4102@dslextreme.com

Jack Gosch Ford Inc (22839)
150 Carriage Circle
Hemet, California 92545
United States

Contact: Cliff Rice
Phone: 949-200-7782 **ext.**
Fax: 949-209-8947
Email: cliff@govmotorsales.com

Jeep Chrysler Dodge Ram of Ontario (335847)
1202 Auto Center Dr
Ontario, California 92336
United States

Contact: Freddy Arvayo
Phone: 909-843-6715
Fax:
Email: freddy@jcdofontario.com

MaxGen Energy Services (506340)
1690 Scenic Ave
Costa Mesa, California 92626
United States

Contact: JamesTillman
Phone: 7138947994
Fax:
Email: jtillman@maxgenservices.com

McCoy Mills Ford (241649)
700 W Commonwealth ave
Fullerton, California 92832
United States

Contact: Derek Hall
Phone: 714-526-5501
Fax: 714-992-5547
Email: dhall@mccoymills.com

McCray Enterprises (23083)
24268 5th Street
San Bernardino, California 92410
United States

Contact: Rick McCray
Phone: 909-381-1964 **ext.**
Fax: 909-381-3574
Email: chris@mccrayent.com

McPeek's Dodge of Anaheim (23091)
1221 S. Auto Center Drive
Anaheim, California 92806
United States

Contact: Roger Boyle
Phone: 714-254-2615 **ext.**
Fax: 714-254-2614
Email: rogerb@mcpeekdodge.com

Mobile Medical Technologies (649723)
15345 Manila St
Fontana, California 92337
United States

Contact: Dawn Lacy
Phone: 909-637-0232
Fax:
Email: dlacy@mobmedtech.com

Moss Bros. CJD of Riverside (23165)
8151 Auto Drive
Riverside, California 92504
United States

Contact: GARY WANG
Phone: 951-688-6200 **ext.**
Fax: 951-688-8314
Email: GWANG@mossSavings.com

NavarrosTowing (231638)
16657 Orange Way
Fontana, California 92335
United States

Contact: Rob Navarro
Phone: 909-829-4911
Fax: 909-829-3911
Email: Navarrostow@yahoo.com

FON

Nissan North America (641991)
One Nissan Way
Franklin, Tennessee 37067
United States

Contact: Valerie Kornahrens
Phone: 615-210-9340
Fax:
Email: Valerie.Kornahrens@nissan-usa.com

North County Ford (23239)
450 West Vista Way
Vista, California 92083
United States

Contact: JOHN MORSHEAD
Phone: 760-945-9900
Fax: 760-945-4581
Email: jwmford@aol.com

OC Fleet and RV Service, Inc. (470385)
8270 Monroe Avenue
Stanton, California 90680
United States

Contact: Mark Shatraw
Phone: 714-715-0330 **ext.** 223
Fax:
Email: mark@ocfleetandrvice.com

Only 1z Garage (659204)
17855 Foothill Blvd
Fontana, California 92336
United States

Contact: Jose Valencia
Phone: 909-933-0935
Fax:
Email: o1gonly1zgarage@gmail.com

P & S Truck Center (23302)
161 E Valley Blvd
Rialto, California 92376
United States

Contact: Wayne MdKenzie
Phone: 909-874-2000 **ext.**
Fax: 909-877-8788
Email: pstruckcenter@hotmail.com

PENSKE MERCEDES BENZ OF WEST COVINA (303222)
2010 E. GARVEY AVE., SOUTH
WEST COVINA, California 91791
United States

Contact: GEOFF PRICE
Phone: 626-732-1441
Fax:
Email: GPRICE@SOCALPENSKE.COM

Penske chevrolet of cerritos (288382)
18605 studebaker rd
cerritos, California 90703
United States

Contact: Kyle Slavin
Phone: 5629241676
Fax: 5629248987
Email: kyle.slavin@gmail.com

Qualified Mobile, Inc. (23465)
1720 Industrial Ave
Norco, California 92860-8007
United States

Contact: Don Cremer
Phone: 951-549-8383 **ext.**
Fax: 951-549-8380
Email: doncremer@myqmi.com

Quick'n'Easy Mobile Wash (74324)
11926 Citadel Ave
Fontana, California 92337
United States

Contact: Nathaniel A. Allen
Phone: 909-237-9312
Fax:
Email: quickneasy2011@yahoo.com

OSB

RP AUTOMOTIVE (23603)
1020 E. GARVEY AVE S.
WEST COVINA, California 91791
United States

Contact: ROY DURHAM
Phone: 626-926-8314 **ext.**
Fax: 626-384-3472
Email: rdurham@rpautomotive.com

Redlands Ford (23531)
1121 W Colton Ave 1121 W Colton Ave
Redlands, California 92374
United States

Contact: Willie Marshall
Phone: 909-793-3211
Fax: 909-307-3675
Email: williem@redlandsford.com

OSB

Reynolds Buick, Inc. (23549)
675 South Citrus Avenue
Covina, California 91723
United States

Contact: John F. Slavin
Phone: 805-963-1448 **ext.**
Fax: 805-963-0448
Email: johnfslavin@aol.com

Ride On Powersports (499600)
7740 Indiana Avenue
Riverside, California 92504
United States

Contact: Dan Schoo
Phone: 951-353-0607
Fax:
Email: dan@bmwmotorcyclesofriverside.com

S Browne Supply (296858)
6285 E Spring Street # 468
Long Beach, California 90808
United States

Contact: PaulajeanEagleman
Phone: 562-846-7901
Fax:
Email: SBrowneSupply@gmail.com

Sharpline Solutions Inc (479900) 545 Rimsdale Ave #1546 Covina, California 91722 United States	Contact: John Gomez Phone: 626-257-8328 Fax: Email: sales@sharpline-solutions.com	OSB, MBE
Snap-on Incorporated (422925) 2801 80th st kenosha, Wisconsin 53143 United States	Contact: wayne stone Phone: 909-440-4186 Fax: Email: wayne.stone@snapon.com	
Star Ford Lincoln (354821) 1101 South Brand Blvd Glendale, California 91204 United States	Contact: Chris Sweetnam Phone: 8185024692 Fax: 8185480724 Email: csweetnam@starfordlincoln.com	
Sustainable Reliable Professionals, Inc. (181540) 3870 La Sierra Ave. #135 Riverside, California 92505 United States	Contact: Linda De Santos Phone: 949-939-3439 Fax: 951-346-3185 Email: Ldesantos@srprof.com	DBE, MBE, WBE
THE RADIATOR MAN (389712) 17052 FOOTHILL BLVD FONTANA, California 92335 United States	Contact: RODNEY JOHNSON Phone: 909-822-4499 Fax: 909-822-1618 Email: rad8torman@aol.com	FON
The Pep Boys- Manny, Moe & Jack (384100) 3111 West Allegheny Avenue Philadelphia, Pennsylvania 19132 United States	Contact: Tony Sprague Phone: 215-430-9190 Fax: 215-430-4662 Email: GovernmentSales@Pepboys.com	
Theodore Robins Ford (23926) 2060 Harbor Blvd Costa Mesa, California 90267 United States	Contact: Scott Pearson Phone: 949-488-0338 Fax: 949-488-0357 Email: scott@fordgov.com	
Top Gun Paint and Body (23956) 450 S. Wineville Ave Ontario, California 91761 United States	Contact: LISA BENGOCHEA Phone: 909-390-7683 Fax: -- Email: topgunpaintandbody@yahoo.com	WBE
Urgent Upfits (389455) 2141 S Parco Avenue Ontario, California 91761 United States	Contact: Tony Cash Phone: 760-847-4054 Fax: Email: tonyc@urgentupfits.com	
Vet National Inc (1043229) 3621 State Street Santa Barbara, California 93105 United States	Contact: Kevin Teel Phone: 805-705-8853 Fax: Email: kevin@vetnational.com	OSB, DBE, MIC
Via Mobility LLC (919820) 160 Varick St. Floor 4 New York, New York 10013 United States	Contact: Taylor Riddick Phone: 301-233-3987 Fax: Email: taylor@ridewithvia.com	

WEST COAST LIGHTS & SIRENS, INC. (544796) 601 COLUMBIA AVENUE UNIT B RIVERSIDE, California 92507 United States	Contact: PATRICIA REEVES Phone: 951-779-9257 Fax: 951-779-9256 Email: TRISH@WCLS.US	OSB
WESTPAC HEAVY DUTY (180048) 4401 ETIWANDA AVE MIRA LOMA, California 91752 United States	Contact: GEORGE BOULDEN Phone: 951-727-8988 Fax: 951-727-8300 Email: GBOULDEN@WESTPAC-HD.COM	
West Coast Collision Center, Inc. (212275) 179 West Mill Street San Bernardino, California 92408 United States	Contact: Dan Lemay Phone: 909-885-3200 Fax: 909-885-3300 Email: westcoastcollisionctr@yahoo.com	OSB
West Coast Equipment, INc (101145) 5310 W missouri Ave Glendale, Arizona 85301 United States	Contact: CrystalGreer Phone: 623-842-0978 Fax: 623-842-2008 Email: bids@westcoastbrooms.com	Not Applicable
Western Truck Exchange (345551) 159 E. Manchester Ave Los Angeles, California 90003 United States	Contact: Dan Holtzman Phone: 323-750-1277 Fax: 323-789-9929 Email: dan@westtruck.com	OSB
Whiteside Chev., Olds., Inc. (24169) 50714 National Road St. Clairsville, Ohio 43950 United States	Contact: Brian McCulley Phone: 740-695-0211 ext. Fax: 740-699-2473 Email: fleet@whitesides.com	
Xtreme Green Products Inc (280721) 3010 East Alexander Road Suite 1002 North Las Vegas, Nevada 89030 United States	Contact: Dan Leavitt Phone: 702-870-0700 Fax: Email: dan@xgpinc.com	
Zenith Sales of Indiana (350557) 181 East US 50 Unit 205 Greendale, Indiana 47025 United States	Contact: James Cooper Phone: 812-655-6091 Fax: Email: james.cooper@zenith-motors.com	
eluminocity (474559) 80 Pine Street 24th Floor New York, New York 10005 United States	Contact: RobertRockwood Phone: 3233037410 Fax: 6515281165 Email: Robert.rockwood@eluminocity.com	
fairview ford sales, inc. (22466) 292 n. g st. san bernardino, California 92410 United States	Contact: todd eff Phone: 909-386-0281 ext. Fax: 909-386-0292 Email: teff@fairviewford.com	
fleetpride (404190) 3031 red hat ln city of industry, California 90601 United States	Contact: bryangarcia Phone: 9092394317 Fax: na Email: bryan.garcia@fleetpride.com	

wc performance ford (937423)

2000 e garvey ave s

west covina, California 91791

United States

Contact: manny hernandez

Phone: 562-755-8794

Fax:

Email: fordman528@aol.com

OSB, MBE, CADIR



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1695

Agenda #: C.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Public Works

SUBJECT:

Authorize the purchase of an ADA compliant restroom trailer from Comforts of Home Services, Inc.

RECOMMENDATION:

Authorize the Purchasing Office to "Piggy-Back" on the General Services Administration (GSA) Purchasing Program (Contract No. GS-07F-0236V) for the purchase of one (1) new ADA compliant restroom trailer from Comforts of Home Services, Inc. in the amount of \$117,671.88 plus sales tax (7.75%) for a total of \$126,266.58.

COUNCIL GOALS:

- Operate in a businesslike manner by creating a memorable customer experience with every interaction.
- Practice sound fiscal management by living within our means while investing in the future.

DISCUSSION:

The Public Works (Parks and Landscape Division) is responsible for providing setup and equipment for events hosted by the City of Fontana, which include but are not limited to events like Fontana Days. This restroom trailer is an essential piece of equipment used for public access during these events. The Parks Department is requesting to purchase a new trailer to replace the City's existing restroom trailer that has been removed from service by Support Services (Fleet Maintenance) for being unrepairable. The trailer being replaced has met the criteria based upon the City's Fleet charge back system.

The selected ADA restroom trailer is being recommended for purchase after a comprehensive review process by Department Staff, Field Staff and Fleet. Staff reviewed the specifications from several manufacturers and found an 11 Station ADA compliant restroom trailer with a 10,000-Watt Generator mounted on the front that will meet the needs of the Parks and Landscape Division.

FISCAL IMPACT:

The cost of the purchase is approximately \$127,000. Funds have been approved in the 2022/2023 fiscal year budget for this purchase in Account No. 75138306-8319.

MOTION:

Approve Staff Recommendation.



410 Rathbone Ave
Aurora, IL 60506
Office: 630-906-8002
Fax: 847-574-7600
Email: Dan@cohsi.com
www.cohsi.com

QUOTATION

D02878

Date: 8/30/2022
Quote is good for 30 days

RESTROOM, SHOWER, COMBINATION AND SPECIALTY TRAILER SALES

CUSTOMER (BUYER)

Name: City of Fontana Public Works
Address: 16489 Orange Way
City, State: Fontana, CA
Zip: 92335
Email(s): adyke@fontana.org

Phone: 909-350-6760

SHIP TO:

Name: City of Fontana Public Works
Address: 16489 Orange Way
City, State: Fontana, CA 92335
Contact: Anthony Dyke
Phone: 909-350-6768

11 Station 32' Handicap Accessible Restroom Trailer with 900 gallon waste tank

Interior Color

Grey Pebble FRP

Exterior Color

White

Quantity 1
Base Price Each \$79,875.00

*All Interior Color Choices include White Trim Package

TOTAL BASE PRICE
\$79,875.00

- STANDARD ITEMS - ALL TRAILERS -

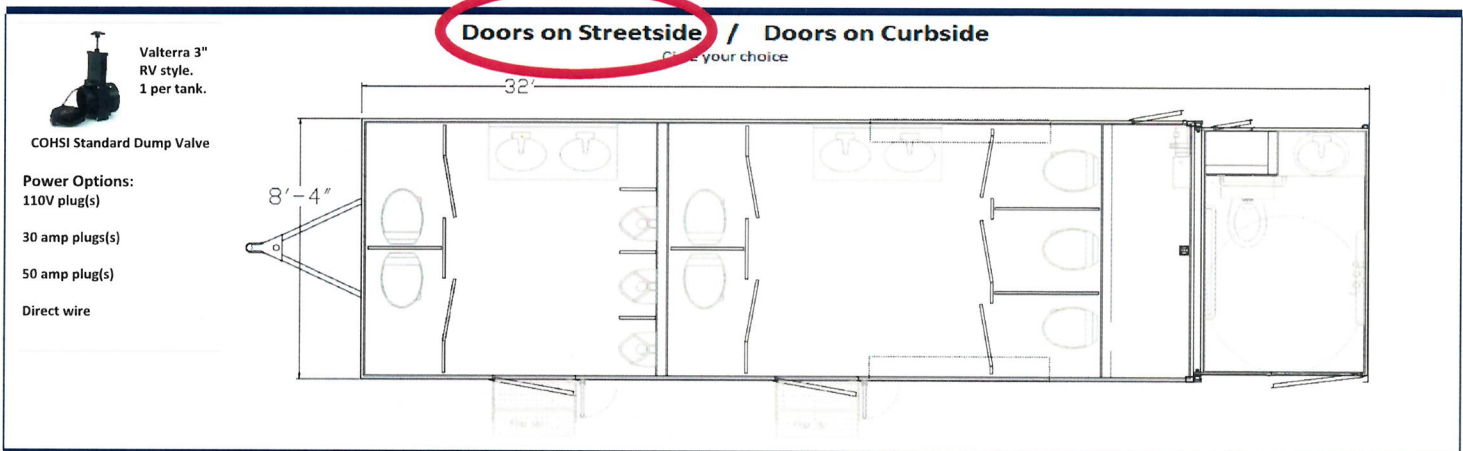
- Oversized Structural Steel Beams
- All Steel Cage Construction
- E-Z Lube Hubs
- Poly Insulation
- Smooth Aluminum Exterior Siding
- One Piece Aluminum Seamless Roof
- Electric Brakes

- Keyed alike Locks
- Independent Torsion Axles
- Commercial PEX Water Lines
- Chip Resistant Undercoating
- Marine Grade Sub Floor
- 2- 5/16" Trailer Receiver

- STANDARD ITEMS - PER TRAILER DESIGN -

- A/C (13,500 BTU)
- Heavy Duty Fold-up Alum. Steps & Handle
- Timed Faucets
- LED Interior-Exterior Trailer Lighting

- Scissor Jack Stabilizers
- FRP (fiberglass wall panels)
- Vinyl sheet flooring
- Waste Water Tank
- Waste Tank Sight Gauge



See the next page for Optional Items

Pictures and Layouts are for reference only and may not reflect the final product - subject to COHSI Engineer Review

OPTIONAL ITEMS, DELIVERY, AND TOTAL COSTS

1	Options listed on page 2			\$33,820.00	\$	33,820.00
Applied discount to Base Price		Special	3.50%		\$	(2,795.63)
				Trailer Sub-Total:		\$110,899.38
Sales Tax (when applicable)		State:		Tax Rate:	\$	-
1935	Delivery Charge per Mile	Standard	Bumper Pull	\$ 3.50	\$	6,772.50

No specific certifications, stamps or seals are provided or implied with this trailer....

Such items may be made available from a third party, at an additional cost (must request prior to build)

Signed Quote and 50% Deposit are required to place order on Production Schedule*

Final payment of unit will be due upon completion, and before delivery - Storage Fees may apply after 7 days*

*50% Deposit and Final Payment are due as noted unless other arrangements are approved by management.

FINAL PRICE

Financing Available (WAC) - \$117,671.88

PO Due upon order	\$	-
Net 30	\$	117,671.88

Trailer must be Pumped Out before Transport

Notes: Pricing is comparable to GSA Contract GS-07F-0236V Hot Water to Sinks Trailer Tongue will be extended to accommodate a larger generator and Exterior Plug will be placed at front of trailer for ease of connection. Our recommendation for size generator would be 10,000 watt unit.

OPTIONAL ITEMS (some items may increase lead time)

Qty	Option	\$/ea.	Total \$
	Interior upgrade to Smooth White , Grey or Taupe FRP Panels with White Chair Rail (per Trailer foot)	\$80	\$0
	Interior upgrade to Stainless Steel Subway Tile or Shiplap Accent Wall behind sink(s) - (per square foot)	\$35	\$0
	Upgrade to High Privacy Metal Partitions from Standard Partitions - Increased Height w/ Privacy Door (per Stall)	\$60	\$0
	Upgrade to Panel Doors from Standard Partitions (per Door)	\$300	\$0
1	Generator Mount on Tongue of Trailer with Cover	\$1,000	\$1,000
	Upgrade to Non Stock Aluminum (Stock Aluminum : White, Pewter, Charcoal) (Per Trailer Foot)	\$45	\$0
	Upgrade to Non Stock Partition Color (Stock Partition : Latte, Slate, Charcoal)	\$250	\$0
	Remote Monitoring Application (includes Deep Cycle Battery)	\$1,200	\$0
	Solar Panel Charging (per Solar Panel)	\$700	\$0
	Deep Cycle Battery (per Battery)	\$250	\$0
	Aluminum Diamond Plate Fold up Ramp and Railing - Drop Box Units (Wheelchair access)	\$3,500	\$0
	Aluminum Sectional Ramp with 5' Platform & Railing - Quick Easy Setup (Wheelchair access) - (per Trailer Design)	\$12,500	\$0
	Lowering Trailer with Fold up Ramp and Railing - (Wheelchair access, Grinder Pump Toilet required)	\$8,500	\$0
1	Lowering ADA Module with Fold up Ramp and Railing - Hydraulic Lowering (Wheelchair access, Grinder Pump Toilet required)	\$11,100	\$11,100
	Outreach Lift System Handicap lift ramp, with additional step. (Attendant is required)	\$7,400	\$0
1	Department Insignia of Approval Issued to Special Purpose Commercial Modular Units - One time fee - (Covers all identical Trailers)	\$7,900	\$7,900
			\$0

Qty	Option	\$/ea.	Total \$
	Coin Rubber Floor (per Trailer foot)	\$80	\$0
4	Aluminum Wheels	\$160	\$640
	Dual 40# Propane Tanks mounted on Tongue	\$600	\$0
	Powered Vent/ Skylight with Vent Cover	\$240	\$0
	Diamond Plate Rock Guard	\$450	\$0
1	Spare Tire (mounted)	\$350	\$350
1	Utility Room w/ Door	\$550	\$550
	Vacant/ Occupied LED Indicator - Operated by Light switch	\$125	\$0
	Water tank/ pump, 105 gallons	\$850	\$0
	Water tank/ pump, 140 gallons	\$900	\$0
1	Water tank/ pump, 225 gallons (215 gallons useable)	\$1,050	\$1,050
	Water tank/ pump, 300 gallons (275 gallons useable)	\$1,450	\$0
	Water tank/ pump, 400 gallons (380 gallons useable)	\$1,600	\$0
1	Hot Water Heater (Utility - Handwash)	\$300	\$300
3	Upgrade A/C with 5600 BTU Heat Strip	\$200	\$600
3	Wall Heater (1 per room)	\$245	\$735
	Cold Weather Package (per Trailer foot) - Helps trailer operate more comfortably in conditions around the freezing temp of 32 degrees. Power MUST always be on	\$100	\$0
32	*Fiberglass Subfloor* (per Trailer foot)	\$110	\$3,520
3	Outlets - GFI protected	\$120	\$360
	Replace LPG Tankless w/ Electric (Increases Power Requirement)	\$300	\$0
1	Safety Wheel Chock	\$70	\$70
	Music Amp w/ 2 speakers and USB Card Player	\$550	\$0
1	Electric Hand Dryer (No Heat)	\$650	\$650
1	Electric Tongue Jack	\$350	\$350
1	13,000 watt Starting / 10,500 watt running Generator (Gas)	\$2,100	\$2,100

Qty	Option	\$/ea.	Total \$
	Standard Residential Toilet (upgrade)	\$250	\$0
	Add Toilet	\$450	\$0
	Add Urinal	\$450	\$0
	Add Sink (Wall-Mount/ Pedestal)	\$475	\$0
	Upgrade from Single Pedestal Sink to Single Cabinet Vanity	\$400	\$0
	Upgrade from Single Pedestal Sink to Double Skirted Sink (existing layout permitting)	\$650	\$0
	Solid Surface Countertop (per Sink)	\$150	\$0
	Single Framed Mirror	\$190	\$0
	Double Framed Mirror	\$280	\$0
	Fold Down Seat (18")	\$350	\$0
1	Baby Changing Station	\$400	\$400
	12"x4" Stainless Steel Shelf	\$65	\$0
			\$0
	CUSTOMER INSTALLED ACCESSORIES	\$/ea.	
8	Double Roll Toilet Paper Dispenser	\$40	\$320
3	Stainless Steel C-Fold Towel Dispenser	\$175	\$525
	Enmotion Hands Free Towel Dispenser	\$250	\$0
3	Stainless Steel Garbage Can	\$350	\$1,050
5	Foaming or Liquid Soap Dispenser	\$50	\$250
	Sanitary Napkin Disposal SS	\$70	\$0
			\$0
			\$0
			\$0
			\$0

Options selected are highlighted in blue.

OPTIONS PRICE
\$33,820.00

AGREEMENTS:

*It is the purchasers responsibility to research and provide us with any codes or build standards unique to your area that affect the trailer construction or use.

*Comforts of Home Services, Inc is not responsible for State, Local, or any "other" requirements related to Building Codes and/ or Compliance.

*Deposit must be received within 72 hours to secure production space. Once the deposit is received, your order may not be cancelled or refunded.

*By Signing Below, Buyer Agrees to Comforts of Home Terms and Conditions sheet.

*Items are the sole property of Comforts of Home Services Inc until full payment is made and must be turned over if payment isn't made within 90 days of delivery.

*Quoted lead times are estimated. Production times may vary due to circumstances beyond our control.

*Any specific requests must be noted on this quote form, or we will build to our standards. This includes but is not limited to materials, fixture locations, and overall design.

*Items discussed, but not listed on this quotation, will not be added to your final trailer build. This is a custom trailer being built for you.

*Your signature below will serve as acceptance and approval of all trailer pricing, specifications, accessories, and designs listed on this quote.

* COVID-19 - In no event shall seller be liable for any non-performance, delay in performance, or any other variation from Seller's performance obligations, nor for any loss or damage to any goods supplied to Buyer, when occasioned directly or indirectly by any cause beyond the reasonable control of Seller or its suppliers, vendors, subcontractors, or other representatives or agents, including, but not limited to, communication line failures; power failures; natural disasters; disease/ Pandemic; or acts of God; acts of criminals or a public enemy; war; riot; official or unofficial acts; contracts, regulations or restrictions of any domestic or foreign governmental agency; acts of Buyer or its employees, representatives or agents; strikes or labor difficulties; or failures, shortages, or delays in Seller's usual sources of labor or materials. Seller shall automatically be entitled to a reasonable extension of all periods of performance when delayed by any such cause.

***I acknowledge that I have received and accept the Comforts of Home Services, Inc Terms and Conditions**

(Initials)

Signature: _____

Date: _____

Print Name: _____



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1701

Agenda #: D.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Public Works

SUBJECT:

Authorize to purchase Fuel for City Vehicles and Equipment.

RECOMMENDATION:

Approve and authorize the Purchasing Office to "Piggy-Back" from San Bernardino County's gasoline and diesel fuel contract (Agency 22-PURC-4372) for the purchase of fuel for the City vehicles and equipment through June 14, 2027.

COUNCIL GOALS:

- Concentrate on Inter-governmental relations by working cooperatively with neighboring jurisdictions.
- Practice sound fiscal management by living within our means while investing in the future.

DISCUSSION:

The Public Works Department is responsible for monitoring fuel inventories for the City's two (2) fueling sites located at the Public Works Yard and the Police Station. Fuel is essential for the operation of approximately 486 vehicles and pieces of equipment used throughout various City departments. The City of Fontana has "Piggy-Backed" from the County of San Bernadino fueling contract in the past. Fontana has been able to receive better pricing based upon the economies of scale due to San Bernardino County's higher volume of fuel consumption.

Staff is requesting a purchase order be initiated with Nuckles Oil based on a "Piggy-Back" with San Bernardino County's gasoline and diesel fuel contract 22-PURC-4372. The Purchasing office has reviewed this process and concurs with recommendation.

FISCAL IMPACT:

The Public Works Department has budgeted \$1,500,000.00 in Fiscal Year 2022/2023 budget for fuel and oil in the Fleet Operations Fund, Account No. 75138305-8024.

MOTION:

Approve staff recommendation.



Contract Number

SAP Number

Purchasing Department

Department Contract Representative
Telephone Number

Peter Geriguis
909-387-7854

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Merit Oil Co.
Ron Nuckles
909-885-5342
June 15, 2022, to June 14, 2027

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County desires to designate a contractor of choice to purchase Gasoline and Diesel Fuel Delivery as further described in a statement of work (the "Services"); and

WHEREAS, the County conducted a competitive process to find *Merit Oil* (Contractor) to provide these services, and

WHEREAS, based upon and in reliance on the representations of Contractor in its response to the County's Request for Proposals, the County finds Contractor qualified to provide Gasoline and Diesel Fuel Delivery; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

A.1 Board: The San Bernardino County Board of Supervisors.

A.2 Contract: The Contract between the County and the Proposer resulting from the award issued pursuant to the RFP.

A.3 Contractor: The individual, company, firm, corporation, partnership or other organization to whom this contract award is made by the County.

A.4 Differential: The differential per gallon on the Attachment A Price Sheet. This differential will be constant for the entire year of the contract.

A.5 Fuel Quality: Meets all applicable quality requirements, industry standard requirements, and is not contaminated with any foreign matter, cloudy, discolored, or malodorous.

A.6 Gallon: U.S. Gallon.

A.7 OPIS: The fuel price should base on Oil Price Information Service (OPIS) daily Unbranded with Cap-at-the-Rack (CAR) rack average (10:00 A.M.) Colton, CA.

A.8 Proposal: The offer to provide specific goods or services at specified prices and/or other conditions specified in the RFP.

A.9 Purchasing Agent: The Director of the County Purchasing Department.

A.10 Request for Proposal (RFP): The request for an offer from Proposers interested in providing the identified services sought to be procured by the County. The RFP specifies the evaluation factors to be used and contains or incorporates by reference contractual terms and conditions applicable to the procurement.

A.11 Services: The requested services described in this Contract including all labor, materials, tools, and equipment necessary to provide the fuel delivery.

A.12 Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

B. CONTRACTOR RESPONSIBILITIES

B.1 Gas & Diesel Fuel Specifications:

- a. Fuel provided must meet Air Resources Board (ARB), "The California Reformulated Gasoline Regulations" Title 13, California Code of Regulations Sections 2250-2273.5 latest version / sub articles, and all inclusive amendments.
- b. Fuel provided must meet Reid Vapor Pressure (RVP) Requirements as required under California's Phase 2 Reformulated Gasoline (CaRFG2) & Phase 3 Reformulated Gasoline (CaRFG2).
- c. Fuel provided must comply with the requirements of American Society of Testing and Materials (ASTM) D4815 standard or latest version as verified by an independent lab of the COSB's choosing.
- d. Regular Unleaded Gasoline shall have Minimum Octane Rating of 87 which shall be determined by using the R+M/2 method.
- e. CARB #2 Diesel -Clear: All diesel fuel sold for vehicular use in California must meet a 15 ppm maximum sulfur limit (Ultra Low), in addition to meeting all of the current low aromatics CARB diesel specifications. The definition of "vehicular use" in California includes on-highway vehicles and non-road vehicles such as agriculture and construction equipment.
- f. CARB #2 Diesel -Clear may contain up to 5% bio.
- g. Only products of new manufacture or distillation will be accepted. No refined or reclaimed products will be accepted. All fuel/gasoline shall have a minimum shelf life of one (1) year.
- h. All products furnished shall conform to all Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT) and Air Resources Board (ARB) regulations for the handling and supply of unleaded fuel/gasoline.

- i. All fuel delivered under this bid will be of high quality and will not contain any foreign substance or water, which may damage County 's vehicle or contaminate the fuel storage tanks.

B.2 Deliverables/Requirements:

- a. Delivery shall be made to point as specified to each County address and department as ordered.
- b. Delivery shall be inside delivery to the specified inside point as directed by the receiving department.
- c. Contractor shall provide a 24-hour, toll free customer support telephone number and services for responding to all requests/orders for fuel, including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.
- d. Contractor shall perform full delivery of fuel within 24 hours after receipt of fuel order.
- e. Delivery will be made to the listed locations during the stated delivery hours (see Attachment K).
- f. The County reserves the right to add or remove fueling locations. On addition of new fueling site, County will request of contracted vendor fuel and freight margins for the additional site.
- g. Order may be placed by phone, fax, or other method selected by County. Order will include the specific delivery dates and sites as designated by County.
- h. For urgent delivery, Contractor shall make urgent deliveries during regular working hours within six (6) hours at NO ADDITIONAL COST. Urgent deliveries are not anticipated to occur often and would be kept to a minimum by the County.
- i. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated and provided to County at delivery.
- j. Delivery truck driver shall stick each tank with a fuel tank gauge stick prior to offloading to ensure that adequate fuel storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each Delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery.
- k. Prompt delivery and efficient service are essential; failure to furnish such delivery and service will constitute a breach of this contract.
- l. One Delivery-One Invoice.
- m. Provide separate invoices by fuel type for each delivery. Invoices that are not accompanied by the reports will not be paid and the payment cycle will not begin until satisfactory receipt of matching reports has been provided. Ensure that the delivery date and location, fuel type, quantity, prices, all related pricing detail listed below, and price totals are on each invoice
- n. Provide the Oil Price Information Service (OPIS) daily Unbranded with Cap-at-the-Rack (CAR) rack average (A.M.) Colton, Ca. OPIS prices as requested and with every invoice
- o. All freight charges must be itemized separately on all responses to this RFP. If shipping cost is included in the product unit cost, deduct the amount added for shipping and show it as a separate line item. Freight terms to be FOB destination.
- p. The County requires "zero leakage" standard for fuel transfer operations. The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. The Contractor will likewise ensure that all equipment, tools

and procedures used are in compliance with all applicable specification and regulations governing such operations.

- q. In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Bidder.
- r. Provide all necessary delivery devices to make delivery to each site as required.
- s. Note that some tanks are above-ground and some underground storage tanks.
- t. Ensure that the transport units can accommodate the delivery logistics at every location prior to dispatching those units.
- u. The County reserves the right to specify in said orders whether the deliveries are required in tank wagon or truck/trailer loads. Additionally, orders must be accepted for truck/trailer split product loads (unleaded/diesel). Split ordered delivery gallons will be considered total gallons ordered.
- v. Deliveries shall be made by owned or contract motor carriers. Carriage vehicles shall be fully equipped, in good mechanical condition and appearance, always bearing the correct placard identification of fuel being delivered. Hoses and all coupler fittings shall be tight when in use. Product that leaks from hoses or coupler connections shall be cleaned up and removed by Contractor, including product in spill containers.
- w. Contractor will be required to maintain data and provide documentation and/ or reports of all petroleum products and gallons purchased by the County. Contractor must be able to supply reports by delivery date, fuel type, amount delivered, costs, locations and invoice number for the County upon request.

B.3 Project Approach

- a. The Contractor will be able to charge the County a differential per gallon. Price quoted for fuels products will increase or decrease in a like amount with increase or decrease in the average rack prices listed in the daily publication, the "Oil Price Information Service" daily Unbranded with Cap-at-the-Rack (CAR) rack average (A.M.) Colton, CA.
- b. Fuel delivery charges are to be determined separately and apart from the market differential. The differential must not include cost estimated for delivery. Proposal must quote delivery charge directly to the County and freight shall be a direct cost pass-through to the County. no mark-up or profit shall be added to actual freight cost.
- c. Payment structure:
 - OPIS: The fuel price should base on Oil Price Information Service (OPIS) daily Unbranded with Cap-at-the-Rack (CAR) rack average (A.M.) Colton, CA.
 - Differential: The Contractor proposed the differential per gallon on the Attachment A-Price Sheet. This differential will be constant for the entire year of the contract.
 - Freight: the freight rate should calculate from Colton Fuel terminal to the requested location and should be direct cost pass through to County.
 - Subtotal: OPIS \$ + differential+ Freight
 - Total: Subtotal*Gallons

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or

Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10 Confidentiality

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

C.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the ***County's Vision for a skilled workforce and jobs that create countywide prosperity***, and its ***goal to Create, Maintain and Grow Jobs and Economic Value in the County***. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

C.13 County Representative

The Purchasing agent or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.14 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C. 15 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.16 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.17 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.18 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.19 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a

result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.20 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.21 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.22 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.23 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.24 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.25 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.26 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.27 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.28 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.29 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.30 Participation Clause

The County desires that County Agencies and Departments, Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

C.30.1 Such governmental body does not have and will not have in force any other contract for like purchases.

C.30.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

C.31 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.32 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

C.33 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.34 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.35 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

C.36 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.37 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 37.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

- 37.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 37.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities, C. General Contract Requirements and G. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C. 38 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.39 Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.40 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.41 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

C.42 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have

family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.43 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.44 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.45 Reserved

C.46 Reserved

C.47 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section

2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.48 Reserved

C. 49 Reserved

C. 50 Reserved

D. TERM OF CONTRACT

This Contract is effective as of June 15, 2022, and expires June 14, 2027, but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

E.1 The County will place orders in the format required by the Contractor, and will supply contractor with the keys, gate codes and any special access instruction for all delivery locations.

E.2 County shall reimburse Contractor in accordance with the Fiscal Provisions below.

F. FISCAL PROVISIONS

F.1 The maximum amount of payment under this Contract shall not exceed \$31,000,000.00 be federally funded and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

F.2 Invoices shall be issued with a net sixty (60) day payment term with corresponding Purchase Order number stated on the invoice.

In consideration for the performance of services provided, County shall pay Contractor as per Attachment A – price sheet, attached hereto and incorporated by reference

The County will audit invoices for accuracy and may require additional information or corrections from Contractor prior to issuing payment. The County shall make payment to Contractor within sixty (60) working days after receipt of invoice or the resolution of any billing dispute. "Working days" for purposes of this Section are days the County is open for business (Monday through Friday, excluding Holidays). The County reserves the right to refuse payment for any unsatisfactory work or services provided by personnel not appropriately licensed or certified as required and will deduct the charges for those services from Contractor's invoices. Invoices should be sent to Fleet Management Department at:

Fleet Management Department
Attn: Fiscal Specialist
210 North Lena Rd.
San Bernardino, Ca 92415

- F.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- F.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- F.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and

Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

G.11 Insurance Specifications

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

G.11.2 Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

G.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.11.4 **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.11.5 **Reserved**

G.11.6 **Environmental Contracts -**

- a. **Environmental Liability Insurance** with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.
- b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

G.11.7 **Reserved**

H. RIGHT TO MONITOR AND AUDIT

H.1 The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

H.2 All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

I.1 Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

I.2 In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item “b” of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any

sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County
Purchasing Department
777 East Rialto Avenue
San Bernardino, CA 92415*

*Merit Oil Co
1020 Bloomington Ave
Bloomington, CA 92316*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

L. ELECTRONIC SIGNATURES

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Leo Gomez, Purchasing Manager

Dated: _____

MERIT OIL Company
(Print or type name of corporation, company, contractor, etc.)

By ► [Signature]
(Authorized signature - sign in blue ink)

Name PERRY BITNEY
(Print or type name of person signing contract)

Title SALES REP.
(Print or Type)

Dated: 5/16/22

Address 1020 W. Bloomington Ave
Bloomington CA 92316

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ County Counsel	► _____ Date _____	► _____ Date _____

ATTACHMENT A

Price Sheet

Site	Location	Product	Differential	Freight
111	WEST VALLEY	UNLEADED	\$(0.0697)	\$0.0065
	12672 4th Street Rancho Cucamonga, CA 91730	UNLEADED	\$(0.0697)	\$0.0065
		DIESEL	\$(0.0347)	\$0.0075
112/113	MAIN YARD West side	UNLEADED	\$(0.03900)	\$0.0100
	210 N. Lena Road San Bernardino, CA 92415	DIESEL	\$(0.0463)	\$0.0116
116	TWIN PEAKS	UNLEADED	\$0.01150	\$0.0545
	26010 HWY 189 Twin Peaks, CA 92391	UNLEADED	\$0.01150	\$0.0545
		DIESEL	\$(0.0301)	\$0.0631
117	CHINO RD. YD.	UNLEADED	\$0.01500	\$0.0573
	7000 Merrill Avenue Chino, CA 91710	DIESEL	\$0.01500	\$0.0611
118	BALDY MESA RD.	UNLEADED	\$0.00950	\$0.0175
	12397 Sycamore Road Baldy Mesa, CA 92345	DIESEL	\$(0.0076)	\$0.0175
119	APPLE VALLEY RD.	UNLEADED	\$(0.0388)	\$0.0175
	11923 Joshua Road Apple Valley, CA 92307	DIESEL	\$0.01230	\$0.0175
120	NEEDLES SVC.	UNLEADED	\$0.02750	\$0.0900
	5 Airport Road Needles, CA 92363	DIESEL	\$0.03250	\$0.0900
121	MORONGO SHERIFF	UNLEADED	\$(0.1353)	\$0.0275
	6527 Whitefeather Road Joshua Tree, CA 92252	DIESEL	\$0.00250	\$0.0330
122	BIG BEAR SHERIFF	UNLEADED	\$(0.0544)	\$0.0305
	477 Summit Blvd Big Bear Lake, CA 92315	DIESEL	\$0.00730	\$0.0345
123	FONTANA SHERIFF	UNLEADED	\$(0.0636)	\$0.0125
	17780 Arrow Blvd Fontana, CA 92335	DIESEL	\$(0.0403)	\$0.0131
124	CRESTLINE RD. YD.	UNLEADED	\$0.00730	\$0.0213
	23188 Crest Forest Road Crestline, CA 92325	DIESEL	\$0.00790	\$0.0281
125	GLEN HELEN EVOC	UNLEADED	\$0.00640	\$0.0141

	18958 W. Institution Road San Bernardino, CA 92407	DIESEL	\$0.00790	\$0.0156
302	RUNNING SPRING RD.	DIESEL	\$0.07410	\$0.1325
	1920 Widerness Road Running Springs, CA 92382			
303	BIG BEAR RD. YD.	DIESEL	\$0.01150	\$0.0689
	42090 N. Shore drive Big Bear Lake, CA 92315			
304	Blue Jay Road Yard 26830 Daley Canyon Road Blue Jay, CA 92378	DIESEL	\$0.04550	\$0.1275
306	Joshua Tree Road Yard 62499 Twentynine Palms Highway Joshua Tree, CA 92252	DIESEL	\$0.01750	\$0.2505
307	BARSTOW SVC.	UNLEADED	\$(0.0453)	\$0.0550
	29802 HWY 58 Barstow, CA 92311	DIESEL	\$0.01750	\$0.0550
308	TRONA RD. YD. 80311 Trona Road Trona, CA 93562	DIESEL	\$0.01950	\$0.4305
311	PRADO PARK	UNLEADED	\$0.01750	\$0.0915
	16700 S. Euclid Avenue Chino, CA 91710	DIESEL	\$0.02270	\$0.0995
312	YUCAIPA PARK	UNLEADED	\$0.01150	\$0.1205
	33900 Oak Glen Road Yucaipa, CA. 92399	DIESEL	\$0.01530	\$0.1314
313	GLEN HELEN PARK	UNLEADED	\$0.01050	\$0.1175
	2555 Glen Helen Parkway San Bernardino, CA 92407	DIESEL	\$0.01150	\$0.1315
314	CALICO PARK Interstate 15 @ Ghost Town Rd Yermo, CA 92396	UNLEADED	\$(0.0936)	\$1.2771
701	Station 2	UNLEADED	\$0.01310	\$0.1525
	1511 Devore road Devore, CA 92407	DIESEL	\$0.01760	\$0.1717
702	Station 4	DIESEL	\$0.08790	\$0.1914
	27089 Helendale Road Helendale, CA 92342			
703	Station 9	UNLEADED	\$0.01190	\$0.1203
	1300 Crafton Ave. Mentone, CA 92359	DIESEL	\$0.01310	\$0.1324
704	Station 10 9625 Beekly Ave. Phelan, CA 92371	DIESEL	\$0.03190	\$0.2295
705	Station 14 5980 Elm St. Wrightwood, CA 92397	DIESEL	\$0.03190	\$0.2295
707	Havasu Landing	UNLEADED	\$0.01550	\$0.4209
	1 Tidwell Lane Havasu Lake, CA 92363	DIESEL	\$0.01690	\$0.4431

709	Station 22 12398 Tamarisk Road Victorville, CA 92395	DIESEL	\$0.03150	\$0.2397
710	Station 23 22582 City Center Ct. Grand Terrace, CA 92313	DIESEL	\$0.03120	\$0.1576
713	Station 42	UNLEADED	\$0.04120	\$0.2843
	58612 Alberdeen Ave. Yucca Valley, CA 92284	DIESEL	\$0.04640	\$0.2843
715	Station 52 39059 Kathy Lane Newberry Springs, CA	DIESEL	\$0.03950	\$0.2755
716	Station 53	UNLEADED	\$0.01200	\$0.0325
	73734 Baker Blvd. Baker, CA 92309	DIESEL	\$0.01650	\$0.0345
717	Station 56	UNLEADED	\$0.05750	\$0.2855
	37284 Flower Ave. Hinkley, CA 92347	DIESEL	\$0.06250	\$0.2905
718	Station 57	UNLEADED	\$0.05750	\$0.2855
	83732 Trona Rd, Trona, Ca 93562	DIESEL	\$0.06250	\$0.2905
719	Station 72 15380 San Bernardino Ave. Fontana, CA 92334	DIESEL	\$0.01250	\$0.0475
720	Station 75 2156 Darby Ave. Muscoy, CA 92316	DIESEL	\$0.01550	\$0.1574
721	Station 77	UNLEADED	\$0.01250	\$0.0475
	17459 Slover Ave. Bloomington, CA 92316	DIESEL	\$0.02150	\$0.0535
722	Station 78	UNLEADED	\$0.01750	\$0.0545
	7110 Citrus Ave. Fontana, CA 92333	DIESEL	\$0.02450	\$0.0605
724	Station 91 301 So. State Hwy 173 Lake Arrowhead, CA 92352	DIESEL	\$0.03550	\$0.1475
725	Station 92	UNLEADED	\$0.03550	\$0.1475
	981 No. State Hwy 173 Lake Arrowhead, CA 92352	DIESEL	\$0.03550	\$0.1475
726	Station 95	DIESEL	\$0.04250	\$0.1525
	33596 Green Valley Lake Green Valley, CA 92341			
727	Station 98	UNLEADED	\$0.04950	\$0.2175
	5766 Frontage Rd. Angelus Oaks, CA 92305	DIESEL	\$0.04950	\$0.2175
728	Station 99	UNLEADED	\$0.04950	\$0.2175
	40847 Valley of the Falls Forest Falls, CA 92339	DIESEL	\$0.04950	\$0.2175
734	Station 322 10370 Rancho Rd. Adelanto, CA 92301	DIESEL	\$0.04250	\$0.1945

736	Station 305		UNLEADED	\$0.04250	\$0.1945
	8331 Caliente Road Hesperia, CA 92345		DIESEL	\$0.04250	\$0.1945
737	Station 71		DIESEL	\$0.02450	\$0.0605
	16980 Arrow Blvd. Fontana, CA				
714	CSA 29		DIESEL	\$0.04750	\$0.2725
	80526 Amboy Rd. 29 Palms, CA 92277				
740	CSA 18 21775 Linden Way. Cedarripes Park, CA 92322		DIESEL	\$0.05450	\$0.1735
741	CSA 64		UNLEADED	\$0.03150	\$0.1631
	17470 Alder St. Hesperia, CA 92345		DIESEL	\$0.04050	\$0.1703
742	CSA 70 D-1 29419 S. Torrey Rd. Lake Arrowhead, CA 92352		DIESEL	\$0.05050	\$0.2793
744	WVDC Etiwanda Ave Rancho Cucamonga, CA 91730	9500	DIESEL GEN	\$0.01550	\$0.0200
745	ISD 670 East Gilbert St. San Bernardino		DIESEL GEN	\$0.01950	\$0.0714
746	Station 226 North Del Rosa Avenue San Bernardino, CA 92404		DIESEL	\$0.01950	\$0.1133
748	Station 232 Palm Avenue San Bernardino, CA 92407	6065	DIESEL	\$0.01950	\$0.1133
749	Station 32 Safari Drive Needles, CA 92363	100	DIESEL	\$0.12550	\$0.4703
750	Station 164 North Campus Upland, CA	1825	DIESEL	\$0.03250	\$0.1078

**MERIT OIL COMPANY
P.O.BOX 341
BLOOMINGTON CA 92316**

April 20, 2022

Attn: Eric Ninemire
City of Fontana
16489 Orange Way
Fontana Ca 92335
(909) 350-6763
Eric Ninemire <ENinemire@fontana.org>

Thank you for the opportunity to be of service City of Fontana. Per our conversation, Merit Oil is proposing service and pricing to your locations

Corporate Yard

**Diesel : Opis Avg is \$ 4.3546 + .0155 = \$ 4.3701 plus all taxes is \$ 5.6378 per gal
(Diesel Price is based on full load 7500gals)**

**87oct: Opis Avg is \$ 3.8919 + .0135 = \$ 3.9054 plus all taxes is \$ 4.7347 per gal
(87oct Price is based on full load 8,000-8,500 gals)**

**Fontana Police Dept: 3.8919 + .0355= \$ 3.9274 plus all taxes is \$ 4.7573 per gal
(Price is based on 3500-4000gals)**

We appreciate the opportunity to be of service to you and look forward to a long and mutually beneficial relationship. If you have any questions, please feel free to contact me.
Piggy backing County of San Bernardino Contract (RFP) NO AGENCY22-PURC-4372

Perry Bitney
Marketing Representative Merit Oil Company
(909) 877-4126 cell# (909)633-1014



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1735

Agenda #: E.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Engineering

SUBJECT:

Approve a Development Impact Fees Credit Agreement Related to Parcel Map No. 20183 (TPM No. 19-021) and Parcel Map No. 20184 (TPM No. 19-022)

RECOMMENDATION:

Approve and authorize the City Manager to execute a Development Impact Fees Credit Agreement with TDC Boyle Partners, LLC, related to Parcel Map No. 20183 (TPM No. 19-021) and Parcel Map No. 20184 (TPM No. 19-022).

COUNCIL GOALS:

- Invest in the City's infrastructure (streets, sewers, parks, etc.) by maintaining and improving the city's existing infrastructure.
- Invest in the City's infrastructure (streets, sewers, parks, etc.) by providing for the development of new infrastructure.

DISCUSSION:

TDC Boyle Partners, LLC ("Developer") is developing two logistics and distribution centers on two properties within the City. Tentative Parcel Map No. 20183 (TPM No. 19-021) was conditionally approved by the Planning Commission on August 18, 2020 for an approximately 176,219 square foot logistics and distribution facility on 8.68 acres of land located north of Boyle Avenue and west of Sierra Avenue. Tentative Parcel Map No. 20184 (TPM No. 19-022) was conditionally approved by the Planning Commission on August 4, 2020 for an approximately 75,428 square foot logistics and distribution facility on approximately 3.62 acres of land located north of Boyle Avenue and east of Juniper Avenue.

Chapter 21, Article VI - Construction and/or Dedication In-Lieu of Development Impact Fees (Section 21-151 through 21-154) of the Fontana Municipal Code establishes a policy allowing in-lieu fee credit agreements between the City and developers. This provides an alternative method for satisfying a developer's obligation to mitigate impacts from the development other than through payment of development impact fees.

This Development Impact Fees Credit Agreement will provide fee credits toward the Developer's development impact fee obligations for the construction of infrastructure (circulation, sewer, and storm drain) along Juniper Avenue and Slover Avenue as shown on Exhibit B and as follows:

	Subject Development Fee Obligation	Construction In-Lieu Amount	Net Development Fee Obligation
Circulation	\$837,412.32	\$596,018.28	\$241,394.04
Storm Drain	\$287,498.61	\$546,351.84	\$0
Sewer	\$4,203.52	\$154,836.00	\$0
Total	\$1,129,114.45	\$1,297,206.12	\$241,394.04

FISCAL IMPACT:

The approval of the Development Impact Fees Credit Agreement results in a reduction of the developer's Circulation, Sewer, and Storm Drain fees for the project. This is possible since the developer will be constructing improvements valued at \$1,297,206.12. The developer is still obligated to pay the remaining Circulation fee of \$241,394.04.

MOTION:

Approve staff recommendation.

PARCEL MAPS 20183 & 20184

**PARTIAL SATISFACTION OF
DEVELOPMENT IMPACT FEES CREDIT AGREEMENT**

between

THE CITY OF FONTANA
a California municipal corporation

and

TDC Boyle Partners, L.L.C., a Delaware limited liability company

**PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT**

1. PARTIES AND DATE

This Partial Satisfaction of Development Impact Fees Credit Agreement (“Agreement”) is made this _____ day of _____, 2022 for reference purposes only, between: (i) The City of Fontana (“City”), a California municipal corporation and (ii) TDC Boyle Partners, L.L.C., a Delaware limited liability company (“Developer”). The term “Developer” includes Developer and its successors to all or any portion of the Property. This Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

- (i) This Agreement has been approved and executed by the appropriate authorities of the Developer, as defined in this Section 1, and this Agreement has been delivered to the City;
- (ii) Following all legally required notices and hearings, this Agreement has been approved by the City’s City Council; and
- (iii) This Agreement has been executed by the appropriate authorities of the City and delivered to Developer.

2. RECITALS

2.1 Developer owns certain real property located in the City of Fontana, San Bernardino County, State of California, and shall be referred to herein as the “Property”. The Property is more particularly shown in Exhibit “A-1 and Exhibit A-2” attached hereto and incorporated by reference herein and consists of approximately 8.68 net acres and 3.65 net acres.

2.2 The Developer is developing an approximately 167,219 and 71,428 square foot warehouse buildings on the property more particularly described as Parcel Map No. 20183/ Design Review No. 19-043 and Parcel Map No. 20184/Design Review No. 19-044 (“Project”).

2.3 The City has imposed certain conditions of approval on the Project in connection with the City’s issuance of a building permit for the Project, which conditions, among other things, require the payment of, among others, certain Circulation (“Subject Development Fees”) as follows:

	Subject Development Fee Obligation	Construction In-Lieu Amount	Net Development Fee Obligation
Circulation	\$837,412.32	\$596,018.28	\$241,394.04
Storm Drain	\$287,498.61	\$546,351.84	\$0
Sewer	\$4,203.52	\$154,836.00	\$0
Total	\$1,129,114.45	\$1,297,206.12	\$241,394.04

Such fees are set based upon the City's determination as to the square footage of the warehouse attributable to the Project as more particularly set forth in Exhibit "B" attached hereto and incorporated by reference herein.

2.4 In satisfaction of the Subject Development Fee Obligation as identified in Recital 2.3 above, Developer shall, at its sole cost, expense and liability, construct and dedicate to the City certain public improvements as more particularly set forth in this Agreement.

3. TERMS

3.1 Payment of Subject Development Fees

3.1.1 Payment of Subject Development Fees. Developer would, in the absence of this Agreement, be obligated to pay the Subject Development Fees described in Recital 2.3 in accordance with the City's normal fee payment schedule, as a condition to the issuance of a building permit for the Project. Such amount would total One million one hundred twenty-nine thousand one hundred fourteen dollars and forty-five cents (\$1,129,114.45) ("Subject Development Fee Obligation"). However, Developer shall construct and dedicate the Subject Improvements as set forth in Section 3.2 below, at a cost to Developer of approximately One million two hundred ninety-seven thousand two hundred six dollars and twelve cents (\$1,297,206.12). Therefore, upon Developer's dedication to City and City's acceptance of the Subject Improvements, as defined and set forth in Section 3.2.1, below, Developer shall be deemed to have satisfied its Subject Development Fee Obligation. Developer shall thereafter be entitled to no further payment, reimbursement or refund arising out of or related to the Subject Development Impact Fee Obligation.

3.1.2 Full Satisfaction of Subject Development Fees. The Subject Development Fee Obligation shall be satisfied for the Project in consideration of Developer's construction and dedication, and the City's acceptance, of those Subject Improvements, as defined and set forth in Section 3.2.1, below, in accordance with this Agreement.

3.2 Construction and Dedication of Subject Improvements.

3.2.1 Construction and Dedication of Subject Improvements. In satisfaction of the Subject Development Fees for the Project as set forth in Recital 2.3, Developer shall, at its sole cost, expense and liability, develop and dedicate to the City those certain public Circulation improvements ("Subject Improvements") described in Exhibit "C-1", Exhibit "C-2" and Exhibit "C-3" attached hereto and incorporated by reference herein. Developer shall develop the Subject Improvements in accordance with plans and specifications to be approved by the City, in accordance with then-current City public works standards and policies. The Subject Improvements shall be dedicated to the City as provided in Section 3.2.6. Developer hereby warrants and guarantees all Subject Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Subject Improvements, in accordance with the current ordinances, resolutions, regulations,

codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Subject Improvements that have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Subject Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Subject Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

3.2.2 Subdivision Improvement Agreements. Developer and City have heretofore entered into one or more subdivision improvement agreements for the Project, pursuant to Government Code section 66462 ("Improvement Agreement"). All work required to be completed by Developer under this Agreement shall be subject to the provisions of the Improvement Agreement, including, without limitation, the security, insurance, prevailing wage, and indemnification provisions thereof.

3.2.3 Meaning of "Dedicate." The term "dedicate," as used in this Agreement, means to acquire all necessary land or rights-of-way and to construct thereon the Subject Improvements required by this Agreement, and thereafter to offer to convey such land/rights-of-way and improvements to the City at no cost to the City. Developer shall offer the land/rights-of-way and Subject Improvements at the time required by the City Engineer in the exercise of his or her reasonable discretion. The satisfaction of Developer's obligations with respect to the dedication of the Subject Improvements described in this Section 3.2 shall be contingent upon the City Council's acceptance of said improvements, which acceptance shall occur in a manner consistent with the City's standard policies and standards for the acceptance of dedicated improvements.

3.3 Not a Statutory Development Agreement. This Agreement is not a statutory development agreement as described by Government Code section 65864, et seq. This Agreement confers no vested entitlements with respect to the development of the Project. This Agreement does not limit, in any way whatsoever, any authority the City may have to lawfully increase Impact Fees, change land use regulations, or otherwise lawfully exercise all powers available to the City pursuant to its police power, statutes, and judicial decision. Likewise, nothing in this Agreement shall limit, in any way, any right or remedy Developer may have to protest or challenge any unlawful increase in the Impact Fees. Except where subject to partial or total satisfaction as provided in this Agreement, Developer shall pay all Impact Fees, as they may be adjusted by the City during construction of the Project. Without limiting the generality of the foregoing paragraph, if the City at any time increases its Impact Fees, and such increases can otherwise be lawfully imposed against the Project, then Developer (or its successors, as applicable) shall pay the increased Impact Fees for only those portions of the Project (units or acreage, as applicable) for which the prior, lower Impact Fees have not yet been paid in full at the time provided for in this Agreement. If the City increases any Subject Development Fee, and such increase results in the value (as established by the applicable fee program) of the Subject Improvements being less than Developer's increased Subject Development Fees for only those portions of the Project for which the prior, lower Impact Fees have not yet been paid in full, then Developer shall pay the amount of the difference between the Subject Improvement's value and the increased amount of the Subject Development Fees.

3.4 City's Remedies Upon Default. Subject to Section 3.2, if the Developer fails to complete and offer for dedication a particular public improvement described in Section 3.2 in the manner required by this Agreement then the City may, upon fifteen (15) days' prior written notice to the Developer, exercise any one or more of the following remedies, independently or conjunctively:

- (i) The City may terminate this Agreement in its entirety and shall have no obligation to reduce the Developer the Subject Fee Obligation as set forth in Section 3.1; provided, however, that the City shall either (1) reimburse the Developer for the Developer's actual third-party costs (without interest) incurred with respect to any public improvements satisfactorily completed and dedicated to the City prior to termination, or (2) reimburse the Developer's Impact Fee obligation in a particular category in an amount equal to the Developer's actual third-party costs (without interest) incurred with respect to the public improvements related to that category that are satisfactorily completed and dedicated to the City prior to termination; provided, however, that the maximum amount of the reimbursement paid or credit given pursuant to (1) or (2) above shall not exceed the cost for the public improvements satisfactorily completed and dedicated prior to termination as set forth in the applicable fee program or study upon which the applicable Impact Fee is based; or
- (ii) The City may terminate this Agreement in its entirety and shall have no obligation to credit to Developer the Subject Impact Fee reduction as set forth in Section 3.1; provided, however, that the City shall either (1) reimburse the Developer for the value ("Incomplete Value"), as determined in the City Engineer's reasonable discretion, of any public improvements that are not satisfactorily completed and dedicated to the City prior to termination; or
- (iii) The City may exercise any other right or remedy available to it at law or in equity.

3.5 No Waiver. Developer's or the City's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right, remedy or privilege, or Developer's or the City's waiver of any breach hereunder, shall not thereafter be deemed a subsequent waiver of any other terms, conditions, or rights, remedies or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party's duly authorized representative. All rights and remedies provided for under this Agreement are cumulative.

3.6 Cooperation. The parties agree to cooperate with each other in furthering the purposes of this Agreement. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

3.7 Entire Agreement. This Agreement contains the final and complete agreement between the parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such communications and agreements are inconsistent with this Agreement.

3.8 No Agency. Each party acknowledges that it is not the agent or fiduciary of the other.

3.9 No Assignment. This Agreement, including, without limitation, the parties' obligations under Section 3.2, is not assignable, in whole or in part, by Developer, without the prior written consent of the City, and any attempt to make such assignment shall be void and shall constitute an incurable material default under this Agreement.

3.10 Attorneys' Fees. In the event that any action or proceeding is commenced to regarding any term of this Agreement, the prevailing party in such action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the other party the prevailing party's costs of suit and reasonable attorneys' fees. The prevailing party shall be as determined by the court in accordance with Code of Civil Procedure section 1032. The attorneys' costs and expert fees recoverable pursuant to this Section 3.10 include, without limitation, attorneys' costs and expert fees incurred on appeal and those incurred in enforcing any judgment rendered. Attorneys' costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

3.11 Notices. All notices, demands or other communications (collectively, "Notices") required or allowed by this Agreement shall be in writing and shall be considered given: (i) when delivered in person to the recipient named below; or (ii) three (3) business days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the date of delivery by facsimile transmission to the recipient named below. All Notices shall be addressed as follows:

If to the City:	City Manager City of Fontana 8353 Sierra Avenue Fontana, CA 92334-0518
With copies to:	Best Best & Krieger LLP 2855 E. Guasti Rd., Suite 400 Ontario, CA 91767 Attn: Jeff Ballinger, Esq.
If to Developer:	TDC Boyle Partners, LLC 3501 Jamboree, Suite 4400 Newport Beach, CA 92660 Attn: Stephen Batcheller

Any 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.

3.12 Governing Law. This Agreement and its provisions shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of California, without regard to its conflict of laws principles.

3.13 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.

3.14 Modification. This Agreement may be modified only by another written instrument duly authorized and executed by the parties. The foregoing notwithstanding, the City Manager is hereby authorized to make such minor amendments to this Agreement on behalf of the City as the City Manager may deem prudent and necessary in its administration, with the concurrence of the City Attorney.

3.15 Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein.

3.16 Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either the City or Developer. Section headings in this Agreement are for convenience only and are not to be considered as a part of this Agreement or in any way limiting or amplifying the provisions hereof. All provisions and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification of the person or persons, firm or firms, corporation or corporations may require. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not directly in conflict with the express terms hereof to ascertain and give effect to the intent of the parties to this Agreement.

3.17 Execution/Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement of the parties hereto.

3.18 Authorization. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.

[Signatures on Following Pages]

SIGNATURE PAGE TO
PARTIAL SATISFACTION OF
DEVELOPMENT IMPACT FEES CREDIT AGREEMENT

CITY OF FONTANA

TDC Boyle Partners, LLC

By: _____
Matthew C. Ballantyne
City Manager

By: _____
Stephen Batcheller
Partner

Attest:

Attest: ¹

By: _____
Germaine McClellan Key, City Clerk

By: _____
INSERT NAME
INSERT TITLE

Approved as to form:

Best Best & Krieger LLP
City Attorney

By: _____
Phillip Burum, Deputy City Manager
Development Services Organization

By: _____
Gia Kim
Director of Engineering/City Engineer

IN COMPLIANCE WITH INSURANCE ADMINISTRATION POLICIES/PROCEDURES

By: _____
Rakesha Thomas, Director of
Human Resources and Risk Management

IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION POLICIES/PROCEDURES

Daniel Schneider
Community Services Director

Purchasing

1 Attestation of Consultant's signature must be obtained when required by the by-laws, articles of incorporation or other laws, rules or regulations applicable to Consultant's business entity.
16498.00001\9162190.1

EXHIBIT A
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Depiction of Property

[Attached]

Exhibit A

EXHIBIT A-1
SITE PLAN - BUILDING 1
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184

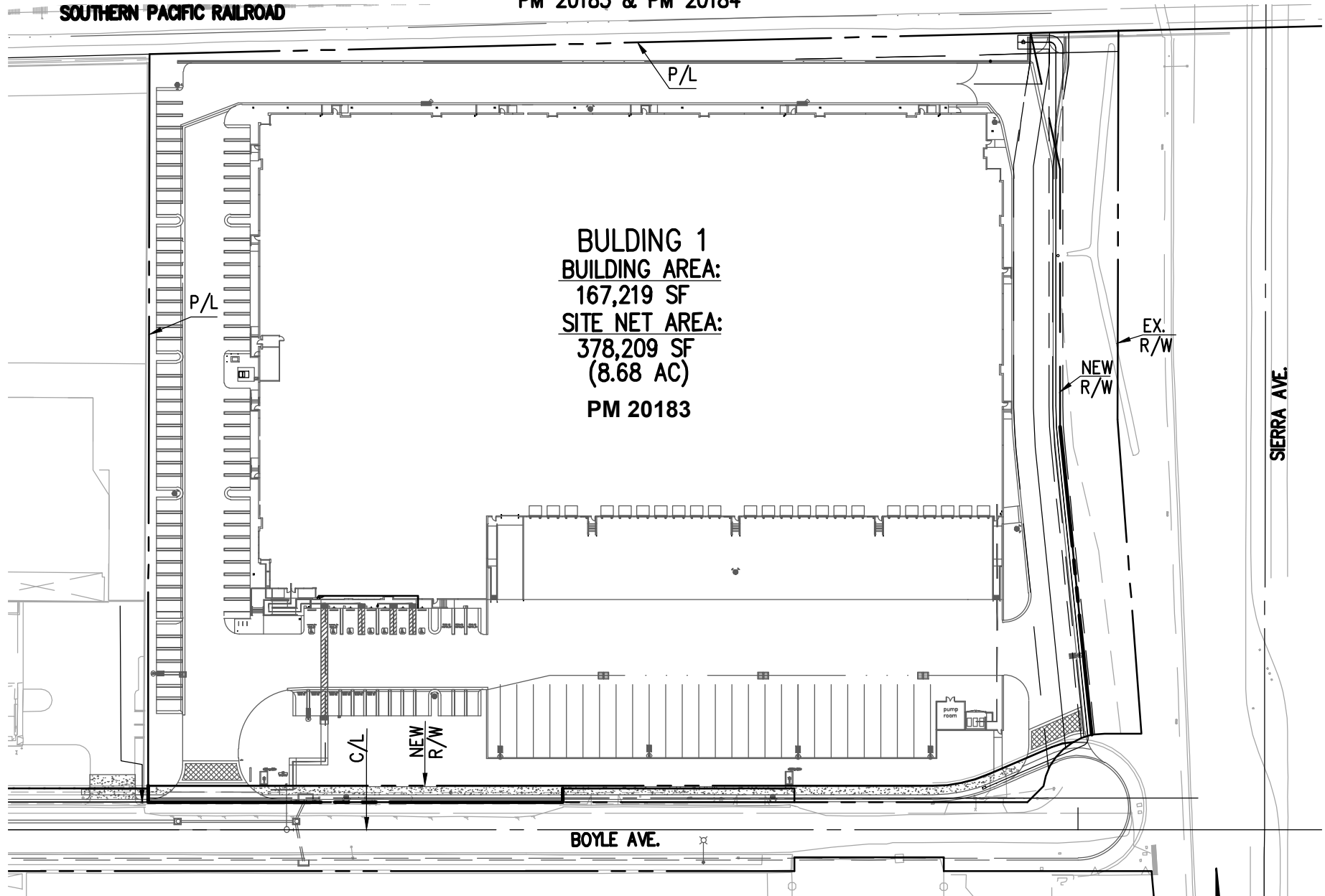


EXHIBIT A-2
 SITE PLAN – BUILDING 2
 TRANSWESTERN DEVELOPMENT COMPANY
 PM 20183 & PM 20184

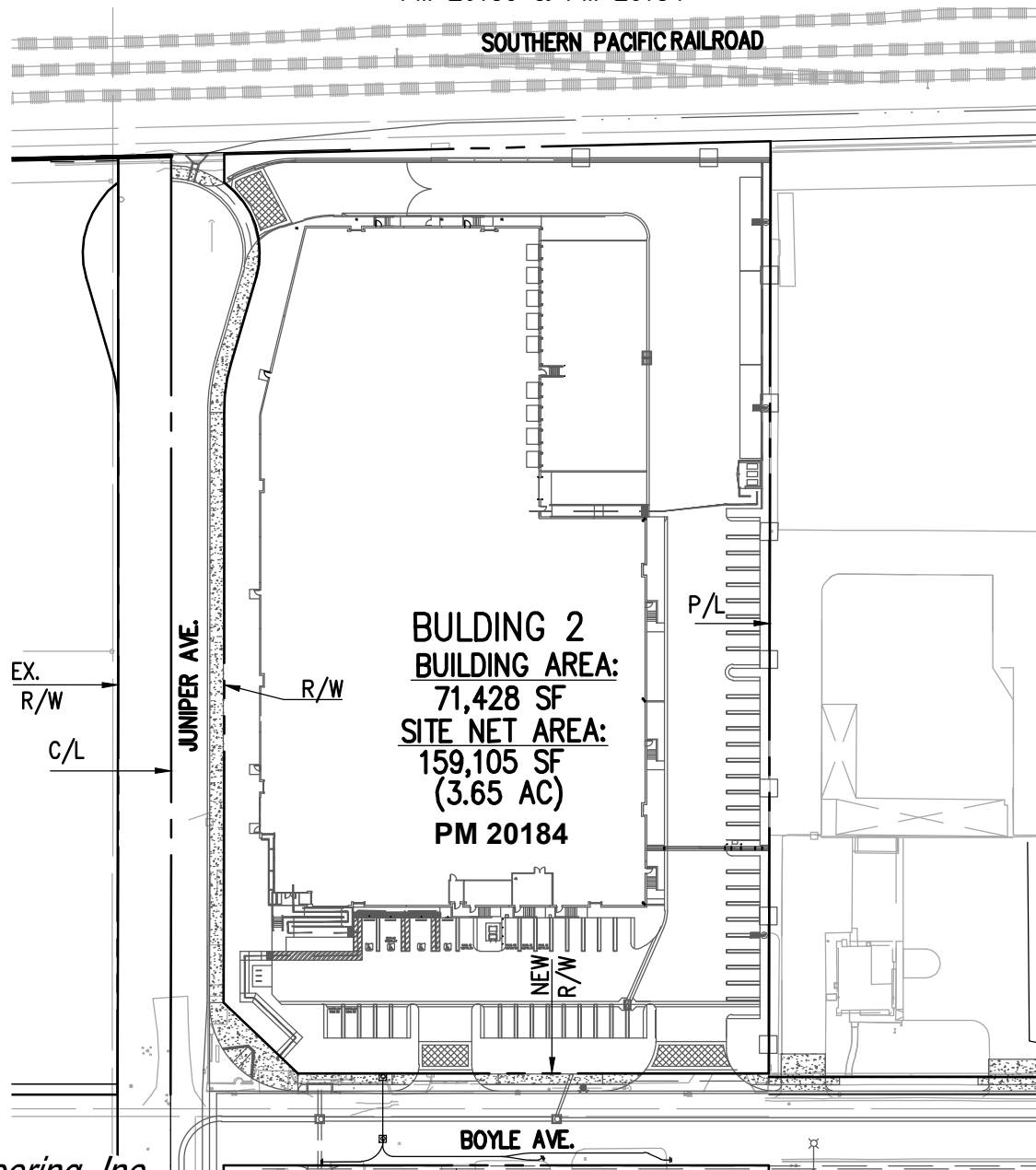


EXHIBIT B
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Subject Development Fees

[Attached]

9/15/2022

16498.00001\9162190.1

Exhibit B

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Industrial Center

Transwestern

PM 20183 & PM 20184

DATE: 08-08-2022

CIRCULATION IMPACT FEE

CIRCULATION IMPACT FEE	QUANTITY	UNIT	FEE	TOTAL
INDUSTRIAL				
Building 1 - Boyle	167219	S.F.	3.509	\$586,771.47
Building 2 - Juniper	71428	S.F.	3.509	\$250,640.85
Subtotal	238647			\$837,412.32
Total Circulation Construction Cost				\$596,018.28
Total Obligation - Remaining Fees Due (Interchange)				\$241,394.04

SLOVER/JUNIPER INTERSECTION IMPROVMENTS				
Construct 8" curb and gutter	158	LF	\$21.50	\$3397.00
Construct 4" sidewalk				0
Construct (7.5") AC pavement	4,167	TON	\$90	\$375,030.00
Construct access ramps	2	EA	\$9,900.00	\$19,800.00
Traffic Control/Demolition/Grading/Signing & Striping	1	LS	\$53,302.00	\$53,302.00
SUB-TOTAL				\$451,529.00
10% Contingency				\$45,152.90
SUB-TOTAL				\$496,681.90
Soft Costs 20% (10% design, 10% Construction Management)				\$99,336.38
Total Intersection Improvement Cost				\$596,018.28

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Warehouse
Transwestern
PM 20183 & PM 20184

DATE: 08-08-2022

STORM DRAIN IMPACT FEE

STORM DRAIN FEE -DECLEZ NORTH BENEFIT AREA	QUANTITY	UNIT	FEE	TOTAL
INDUSTRIAL				
Building 1 - Boyle	8.68	Net AC	\$23,317.00	\$202,391.56
Building 2 - Juniper	3.65	Net AC	\$23,317.00	\$85,107.05
Subtotal - Square Footage				\$287,498.61
Total Storm Drain Construction Cost				\$546,351.84
Construction Cost in Excess of Fees				\$276,853.23
Total Obligation - Remaining Fees Due				\$0.00

Juniper Ave & Intersection

STORM DRAINAGE CONSTRUCTION COST				
14" DIP	233	LF	\$120	\$27,960.00
36" RCP	651	L.F.	\$238.00	\$154,938.00
42" RCP	25	L.F.	\$269.00	\$6,725.00
TRAFFIC CONTROL	1	LS	\$44,000.00	\$44,000.00
CATCH BASIN W=28'	1	EA	\$16,850.00	\$16,850.00
CATCH BASIN W=10'	1	EA	\$9,875.00	\$9,875.00
VIDEO INSPECTION	1	EA	\$4,500.00	\$4,500.00
JUNCTION STRUCTURE	1	EA	\$3,200	\$3,200.00
MANHOLES	3	EA	\$8,300.00	\$24,900.00
LOCAL DEPRESSION	2	EA	\$3,500.00	\$7,000.00
CONCRETE COLLAR	1	EA	\$2,200.00	\$2,200.00
DEMO AND REPLACE ASPHALT	1	LS	\$62,789.91	\$62,789.91
REMOVE EXISTING RCP AND CATCH BASINS	1	LS	\$48,965.00	\$48,965.00
SUB-TOTAL				\$413,902.91
10% Contingency				\$41,390.29
SUB-TOTAL				\$455,293.20
Soft Costs 20% (10% design, 10% Construction Management)				\$91,058.64
Total Storm Drainage Construction Cost				\$546,351.84

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Industrial Center
Transwestern
PM 20183 & PM 20184

DATE: 08-08-2022

SEWER CONNECTION IMPACT FEE

SEWER CONNECTION IMPACT FEE	QUANTITY	UNIT	FEE	TOTAL
Commercial/Industrial				
Building 1 - Boyle	2.3976	EDU's	876.61	\$2,101.76
Building 2 - Juniper	2.3976	EDU's	876.61	\$2,101.76
Subtotal				\$4,203.52
Total Eligible Sewer Connection Fees				\$4,203.52
Total Sewer Construction Cost				\$154,836.00
Difference (Construction cost in excess of fees)				\$150,632.48

SEWER CONSTRUCTION COST				
8" SDR 26 Sewer	600	LF	\$168.00	\$100,800.00
48" Sewer Manhole	3	EA	\$5,500.00	\$16,500.00
SUB-TOTAL				\$117,300.00
10% Contingency				\$11,730.00
SUB-TOTAL				\$129,030.00
Soft Costs 20% (10% design, 10% Construction Management)				\$25,806.00
TOTAL SEWER CONSTRUCTION COST				\$154,836.00

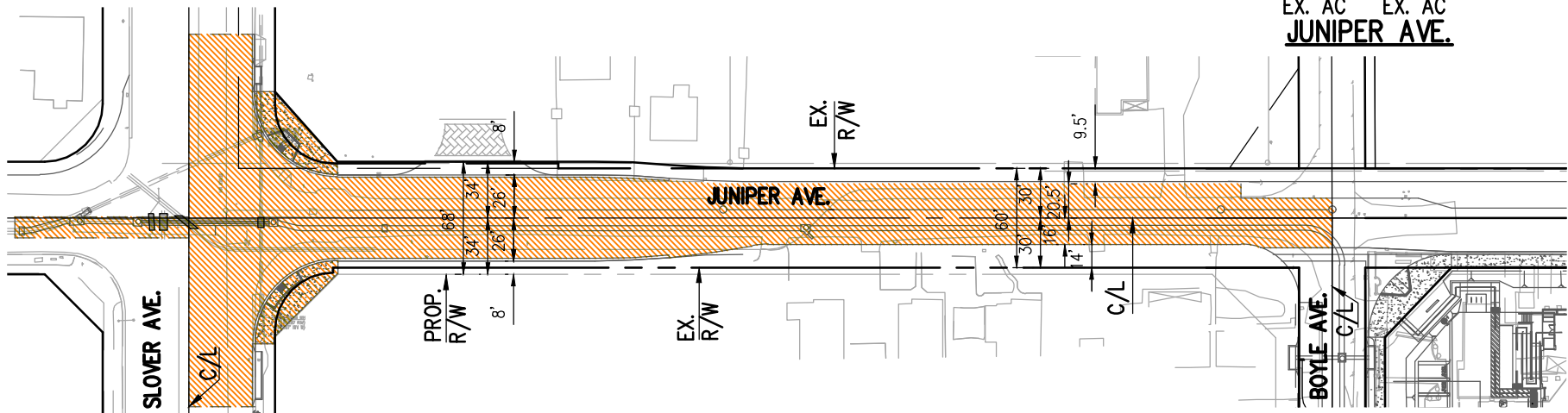
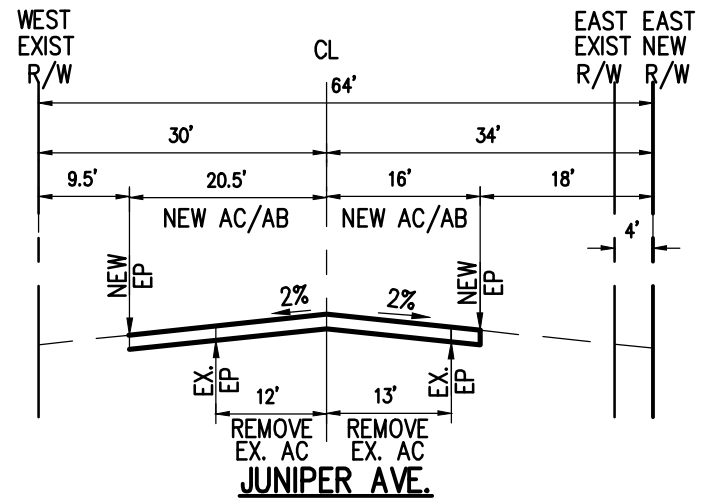
EXHIBIT C
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Subject Improvements

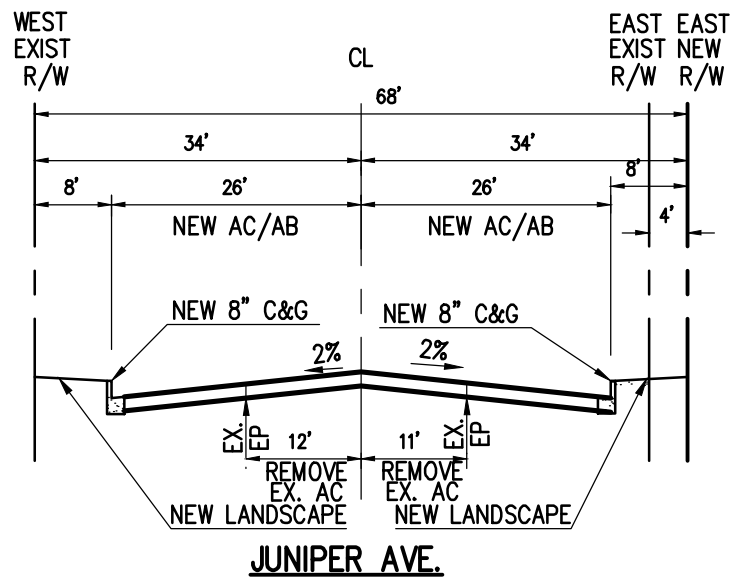
[Attached]

Exhibit C

EXHIBIT C-1
CIRCULATION IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184

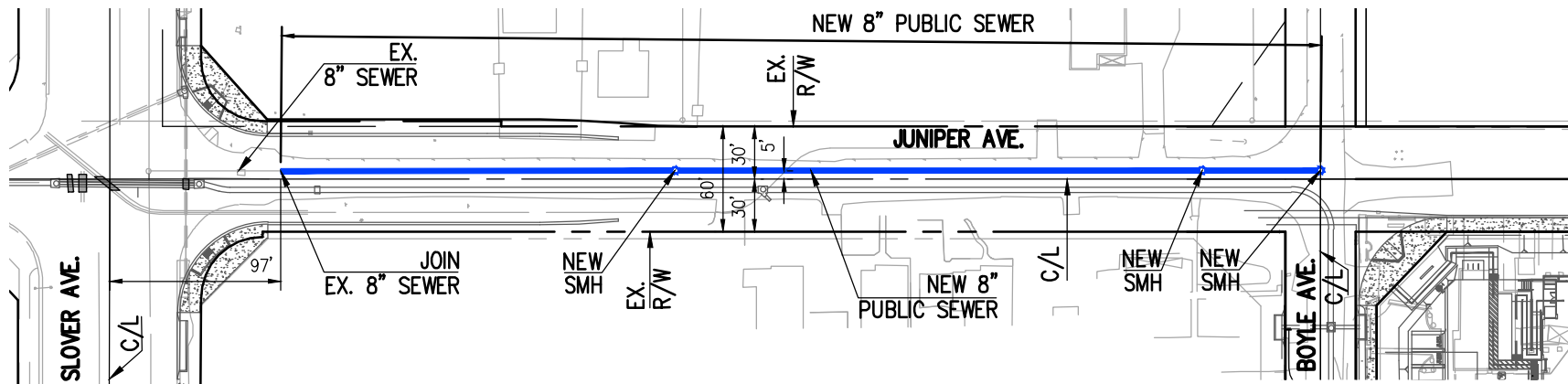


LEGEND

 NEW IMPROVEMENT ON JUNIPER AVE.

SCALE: 1"=100'

EXHIBIT C-2
SEWER IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184

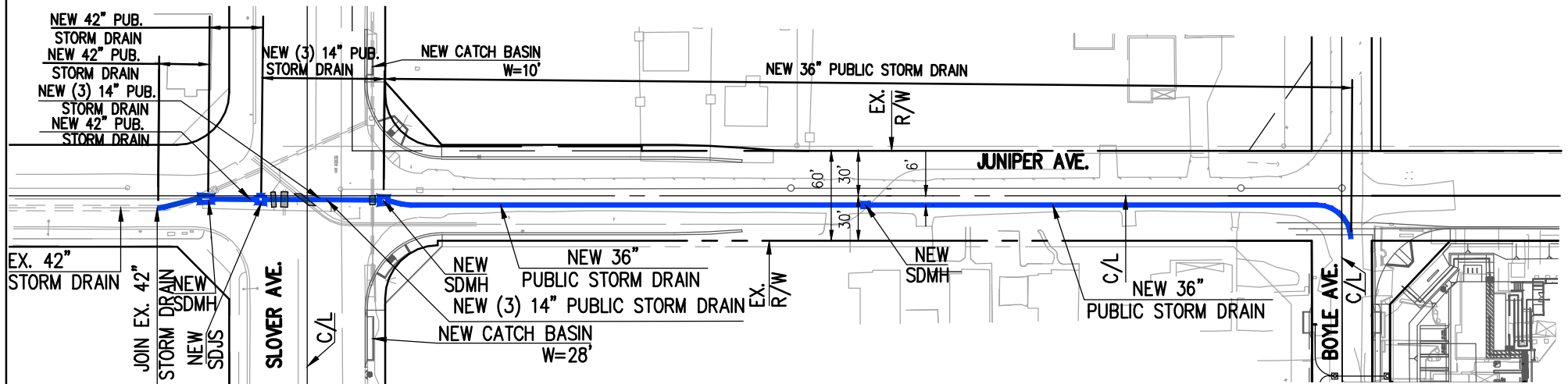


LEGEND

— NEW SEWER



EXHIBIT C-3
STORM DRAIN IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184



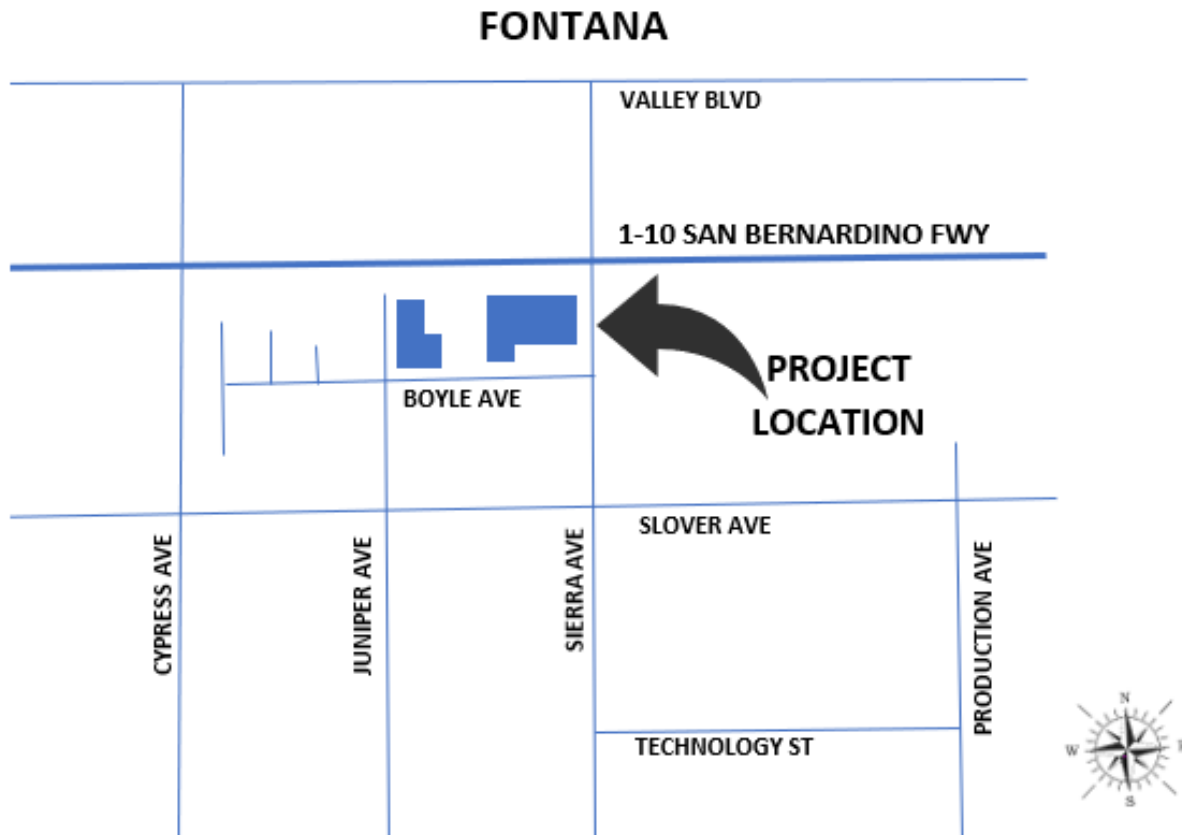
LEGEND

— NEW STORM DRAIN



PARCEL MAP NO. 20183, 20184

CITY OF FONTANA



THIENES ENGINEERING

CIVIL ENGINEERING, LAND SURVEYING, DUE DILIGENCE

14349 FIRESTONE BLVD. LA MIRADA, CA. 90638
PH. 714.521.4811
FAX. 714.521.4172

OWNER / DEVELOPER

TDC BOYLE PARTNERS, LLC
3501 JAMBOREE RD., STE 4400
NEWPORT BEACH, CA. 92660



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1758

Agenda #: F.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Planning Department

SUBJECT:

Naming Rights Agreement - Center Stage Theater

RECOMMENDATION:

1. Approve Naming Rights Agreement for the Center Stage Theater
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said agreement and/or associated approvals.

COUNCIL GOALS:

- Promote economic development by concentrating on job creation.
- Promote economic development by pursuing business attraction, retention, and expansion.
- Promote economic development by being business friendly at all levels and striving to constantly improve the city's competitiveness.
- Practice sound fiscal management by emphasizing capital formation.

DISCUSSION:

The City of Fontana will be undertaking an expansive and comprehensive revitalization of Downtown Fontana. The specific geographic area to be targeted includes Upland Ave to the North, Orange Avenue to the South, Mango Ave to the East and Juniper Ave to the West. A significant part of this revitalization effort will be the creation of a sense of space in the area, a reason for people to visit the area and patronize the local businesses. To facilitate the implementation of this revitalization, staff has negotiated an agreement with Red Head Inc. whereby, in conjunction with the company's professional branding team, the theater will be renovated and remarketed as the region's premier intimate venue for live music and entertainment. In exchange for use of a trademarked name, which the city will have limited license for use of, and not less than five annual performances at no cost to the city, the agreement proposes to rename Center Stage Theater in honor of Sammy Hagar.

Mr. Hagar grew up in Fontana and attended Fontana High School. In his 50-year career in the music industry, from his first commercial success performing with the band Montrose in the 1970's, a solo career throughout the early 1980's and stint as the front man for Van Halen through the mid 1990's, to performing with the Rock Supergroup the Circle, which is currently touring in the U.S., Mr. Hagar

has amassed 25 platinum records, whose sales have surpassed 50 million worldwide.

The agreement proposes to honor Mr. Hagar, his connection to the City of Fontana, and his career in the music industry.

Following are key deal points of the agreement:

- In order to re-create the image of the theater, the city will retain Mr. Hagar's branding agent, whose resume includes rebranding and marketing campaigns for the Wynn hotel in Las Vegas, restaurants by Guy Fieri and Wolfgang Puck, album artwork and touring materials for Howie Mandel, Natalie Cole, Katie Perry, and Joe Satriani, as well as promotional materials for movie and television productions such as Sons of Anarchy, Bones, and Wes Craven's Nightmare on Elm Street.
- The term of the agreement shall be 20 years, or until the theater is renovated again, but not less than 10 years.
- Upon re-opening of the renovated theater, Mr. Hagar will perform at the theater at least one time annually for five years at no cost to the city.
- Revenue related to merchandise developed for the new venue, if any, will be negotiated by separate agreement.
- The agreement does not create a partnership. The venue remains the sole property of the city and city retains the rights to all revenue generated by the venue, aside from net ticket sales proceeds generated specifically for performances by Mr. Hagar.

Approval of the Agreement will be a significant step in accomplishing the City's vision and plans to dramatically revitalize the Downtown Community.

FISCAL IMPACT:

The agreement requires retention of a branding consultant and renovations to update the theater. Monies are available for these costs, anticipated at approximately \$1,800,000 total, in Fund 601 - Capital Reinvestment. Appropriate paperwork will be submitted with the First Quarter Budget Status Report.

MOTION:

Accept Staff Recommendation.

NAMING RIGHTS AGREEMENT

This Agreement is executed as of this ____ day of September 2022, by and between the City of Fontana (“City”) and Red Head Inc., a California corporation (“Company”) and is made with reference to the following facts:

RECITALS

A. The City is the owner of the building located on that certain real property commonly referred to as 8463 and 8457 Sierra Avenue, in the City of Fontana, County of San Bernardino and more particularly described in Exhibit “A” attached hereto (“Venue”), currently known as The Center Stage Theater in Fontana, as more particularly described in Exhibit “B” attached hereto.

B. The City wishes to convey, and Company wishes to acquire, the rights to name the Venue (“Naming Rights”) in accordance with the terms and provisions described herein.

TERMS

The Parties therefore agree as follows:

1. Grant of License. Subject to and in accordance with the terms of this Agreement, Company grants City the right to use the Intellectual Property (defined below). The foregoing license grants are of limited duration, non-exclusive, royalty-free, worldwide, fully paid-up, irrevocable and non-assignable, except as otherwise specified in this Agreement. City agrees that the exercise of the rights granted hereunder will relate to the Venue, its events, operations and activities, but does not include the sale of merchandise. Notwithstanding the foregoing in this Section 1, the domain name for the Venue, any websites, social media accounts, or landing pages created specifically for or in support of Venue, shall remain property of City, provided however, City acknowledges any reference to the Intellectual Property in such domain name, website, social media account or landing page may only be used for as long as the license granted herein remains in effect. Following termination of this Agreement, all rights to use the Intellectual Property by City shall promptly end, and City shall cease all use of such Intellectual Property; provided, however, that City shall have a reasonable amount of time to remove the Intellectual Property from all signage, collateral and other materials containing such Intellectual Property. For purposes of this agreement, “Intellectual Property” shall mean the name Sammy Hagar.

City accepts and acknowledges that Company shall at all times be the sole and exclusive owner of all rights in and to the Intellectual Property, subject to the rights of the City with respect to the use thereof as set forth in this Agreement. Any use by City of the Intellectual Property beyond the use expressly authorized in this Agreement requires the additional express written consent of Company. Throughout the Term and thereafter: (i) all right, title and interest in and to the Intellectual Property and any derivatives thereof, including the goodwill associated therewith, shall remain vested in the Company, subject to the rights of the Company with respect to the use thereof as set forth in this Agreement, and (ii) all use of the Intellectual Property shall inure to the benefit of Company. City shall not use or register any trademark which is confusingly similar to the Intellectual Property without the prior written approval of Company. City shall ensure that no use by

City of the Intellectual Property is unflattering or disparaging and that no statement is made by City that disparages Company, its affiliates, or Sammy Hagar (“Artist”).

2. Naming Rights. For the consideration described herein, the City agrees to rename the Venue in honor of the Artist and that such name shall include the words “SAMMY HAGAR,” or such words as chosen by Company’s designated Agent, as defined below, and agreed to by City, and that any advertising and promotions involving the Venue by the City will include the full name of the Venue as set forth in this Agreement. Subject to the terms of this Agreement, the new name of the Venue shall remain until the expiration or termination of the Term (defined below) or such time as the Venue requires renovation or reprogramming for use other than for live music performances. Except as herein provided, City represents and warrants to Company, subject to the rights of termination as defined below, that the Venue shall not be reprogrammed or renovated for at least 10 years from execution of this Agreement. City further agrees to provide Company with an opportunity to provide input on (i) sound, lighting, and design of the renovation of the Venue, which is anticipated to occur prior to June 1, 2023; (ii) the performers who will be contracted to perform at the Venue; and (iii) ticket pricing for performances by the Artist; provided, however, that all final decisions regarding (i), (ii), and (iii) above, including, without limitation, the cost and timing of the renovation, will be at the sole discretion of the City.

3. Consideration. In consideration for this Agreement with respect to the naming of the Venue as set forth herein, for the term of this Agreement, as defined below, Company agrees that Artist shall perform annually for a minimum of sixty (60) minutes per calendar year for five (5) years to the Venue at no cost to the City, and to allow the City to use Artist’s image and likeness in advertising for the Venue. Annual performance requirements by Artist may include, at Artist’s option, a Live-Hosted Event by Artist. Live-Hosted Events may include performances by Artist or performers selected by Artist for the purpose of creating a unique entertainment event. All Live-Hosted Events shall be conducted consistent with City programming and content policies for the Venue. Any use of Artist’s image and likeness will be developed with and approved by Artist or Artist’s designated Agent, as defined below.

In the event the Consideration is not provided within the calendar year, City will provide written notice of such delinquency to Company. Failure by Company to provide such Consideration within thirty (30) calendar days following the date of such notice will constitute a material default under this Agreement.

4. Agent. As of the date of this Agreement, Company has appointed Todd Gallopo of Meat and Potatoes, Inc., a California corporation (“Agent”), as Company’s exclusive agent for the purpose of approving the use of Artist’s image and likeness. City shall enter into a written agreement for services with Agent for Agent’s input in the renovation, rebranding, and renaming of the Venue. City shall bear the full cost and expense of Agent’s services. The full scope of services to be performed by Agent is described on Exhibit “C” attached hereto. City will have the right to rely on the approval of Agent for the purposes of this Section 4 and the above Section 2 until such time as Company provides written notice to City of a change in Agent.

City shall be solely responsible for all costs associated with the ownership, maintenance, and operation of the Venue, including all costs associated with the renovation, rebranding, redesigning,

and renaming the Venue as provided by this Agreement. City further agrees that, for each performance by the Artist at the Venue, it shall: (i) remit to Company all of the net proceeds from ticket sales from Artist's performances (gross ticket sales receipts minus all direct and actual third-party costs incurred by City related specifically to the performance by the Artist); (ii) provide marketing and promotional material in advance of each scheduled performance by Artist; (iii) record, including video and sound, all performances by Artist and, at the request of Company, provide a recording of said performance and the exclusive rights to distribution and sale of such recorded performances (subject to recognition of the Venue as the location for such performances and an acknowledgment of the City for providing the Venue). Except for providing the Company with a copy of the master recording, if available, City shall bear no costs, responsibility or liability for the reproduction, distribution and sale by Company of the recorded performance. City shall retain rights for use of any original recording from such performances by Artist for the marketing and promotion of the Venue and the City, but not for the purpose of sale or distribution. City shall not be in default of this Agreement in the event of a failure of equipment or other material issue that prevents City's actual recording of any performance.

5. Term of Name Rights. The Term of this Agreement shall be for twenty (20) years following the date upon which the Venue opens to the public, which is currently anticipated to occur on or about May 26, 2023. City will provide written notice to Company regarding such opening date not less than sixty (60) days prior to the actual opening date.

6. Termination. City may terminate this Agreement for cause at any time. Without limiting the foregoing in this Section 6, City shall have the right to terminate this Agreement at any time if Company or Artist engages in any conduct which would be inconsistent with the City's values or which could cause reputational harm to the City or otherwise could lead the City to be disparaged. Company may terminate this Agreement for cause, at any time, by giving sixty (60) days written notice of termination to City, during which time City shall have the opportunity to cure the cause and/or reason(s) for termination provided in the written notice, and if so corrected, such termination shall not occur.

7. Assignment. Except as otherwise provided in this Agreement, neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of all the parties. Company shall have the right to assign this Agreement and any financial interests or benefits derived from this Agreement to an entity owned at least fifty one percent (51%) by Company or Artist without the written consent of City.

8. Compliance with Laws. Each party shall, at its sole cost, comply with all of the requirements of Municipal, State and Federal authorities now in force or which may hereafter be in force, pertaining to such party's obligations under this Agreement, and shall faithfully observe in all activities, all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force.

9. No Partnership. City and Company shall not become or be deemed a partner or joint venture with any other party or associate in any such relationship with any other party by reason of the provisions of this Agreement.

10. Representations and Warranties.

10.1 Mutual Warranties. Each party represents and warrants to the other party that (a) this Agreement has been duly authorized, executed and delivered by such party, (b) such party has the full power and authority and is free to enter into this Agreement and to perform its obligations hereunder, (c) this Agreement constitutes such party's valid and binding obligation, enforceable in accordance with its terms (except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity), (d) except as otherwise set forth herein, no consent of a third party is necessary to execute, deliver and perform such party's obligations under this Agreement and (e) except as otherwise set forth herein, the making of this Agreement and the performance of such party's obligations hereunder do not violate any agreement, right or obligation existing between such party and any other third party.

10.2 Company Warranties. Company represents and warrants to City that (a) Company owns all right, title and interest in and to the Intellectual Property, free and clear of any liens, claims or encumbrances, (b) Company has the right and authority to license to City the rights to use the Intellectual Property, as expressly authorized in this Agreement, (c) the Intellectual Property does not infringe the copyright, trademark or other rights of any third party, and (d) the City's use of the Intellectual Property, as authorized herein, shall not require the payment by the Company of any fees, royalties or other payment of any kind, or the grant by the Company of any right or interest, to any third party.

10.3 City Warranties. City represents and warrants to the Company that (a) City owns all right, title and interest in and to the Venue free and clear of any liens, claims or encumbrances, and (b) there is no litigation, action or other proceeding pending or threatened against City or any of its assets, properties or rights that relates to this Agreement or would reasonably be expected to impair, restrict or prohibit City's ability to perform its obligations hereunder.

11. Indemnification.

11.1 Company shall indemnify, defend (if requested by and with counsel satisfactory to City) and hold harmless City and its officers, Council Members, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them arising out of or connected with, or caused by (i) the sole active negligence or willful misconduct of Company, Company's employees, agents, independent contractors, companies or subcontractors in performance of, or in any way arising from, Artist's performances at the Venue pursuant to Section 3, or (ii) breach by Company of Company's warranties pursuant to Section 10. In no event shall the Company's indemnification or hold harmless obligations in this Agreement be construed as requiring Company to indemnify or hold harmless City for any damages or injuries to the extent caused by the negligence or willful misconduct of City or its employees, agents, independent contractors or subcontractors or their respective officers, directors, managers, equity holders, agents, employees or representatives.

11.2 City shall indemnify, defend (if requested by and with counsel satisfactory to Company) and save free and harmless the Company, Artist, its affiliates, employees, agents, and representatives, individually and collectively, from all claims, demands, suits, causes of action, liability, judgments, damages, costs and expenses (including reasonable attorneys' fees and court costs) of any person or persons arising out of, in connection with or as a result of (a) a breach by City its representations, warranties or covenants under this Agreement, or (b) death or bodily injuries to persons or damage to or loss of property occasioned by or in connection with Venue or any other matter connected to or arising from Venue, including all matters arising from the activities of contractors or sub-contractors of City, Venue or their designees, which claims are not the result of the sole negligence of the Artist.

12. Insurance. Throughout the Term, the City shall maintain in full force and effect Commercial General Liability Insurance with commercially reasonable limits and terms and conditions, but in any event, not less than the greater of (x) One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate in Commercial General Liability Insurance and (y) those limits and terms and conditions required by applicable Law, which insurance shall (a) contain broad form contractual liability endorsement, (b) insure against claims for bodily injury (including death), property damage, personal injury and advertising injury, (c) name as additional insureds each of the following: Red Head Inc., Sammy Hagar, his affiliated companies, their officers, employees, agents, representatives and licensees, Tom Consolo and TC Management Inc, (d) provide that it may not be canceled, terminated, reduced, materially changed, or allowed to expire without renewal unless at least thirty (30) days advance notice has been given to Company, (e) be written by one or more insurers that have a policyholder's rating of not less than A VIII in the most current edition of Best's Rating Guide, and (f) if available, upon commercially reasonable terms, contain a waiver of the insurer's rights of subrogation. Such liability insurance shall be primary to the Company's insurance, shall contain a severability of interests clause and shall not eliminate cross-liability claims. The limits of such insurance shall not limit the liability of the Parties. The coverage for an additional insured shall apply on a primary basis and shall be to the full limits of liability purchased by City, even if those limits are in excess of those required by this Agreement. City, Venue or their designees shall require that all contractors or sub-contractors of City, Venue or their designees engaged in connection with the Venue provide indemnities and insurance to Company, the Artist, its officers, employees, agents and licensees (individually and collectively) consistent with the requirements of this paragraph, including but not limited to worker's compensation insurance. This Section shall survive any termination or expiration of this Agreement.

13. Dispute Resolution. The parties agree that all decisions of fact and law in any action brought in connection with any action, proceeding or counterclaim brought by either City or Company against the other shall be decided, at the option of either party, by a referee appointed by the court in accordance with applicable state reference procedures. The referee shall be a retired judge, agreed upon by the parties, from either the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Service, Inc. ("JAMS"). If the parties cannot agree on the referee, the party who initially selected the reference procedure shall request a panel of ten retired judges from either AAA or JAMS, and the court shall select the referee from that panel. The costs of the reference procedure, including the fee for the court reporter, shall be borne equally by the parties as the costs are incurred. If a party fails to pay its portion of the costs as incurred, then that party shall forfeit the right to prosecute or defend the action. The referee shall hear all pre-trial and post-

trial matters, including requests for equitable relief; prepare an award with written findings of fact and conclusions of law; and apportion costs as appropriate. Judgment upon the award shall be entered in the court in which such proceeding was commenced and all parties shall have full rights of appeal.

City Initials: _____

Company Initials: _____

14. Notices. Any and all notices required or permitted to be given hereunder shall be in writing and shall be personally delivered, sent by recognized overnight delivery service or mailed by certified or registered mail, return receipt requested, postage prepaid, to the parties at the addresses indicated below:

To City:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn: City Manager

To Company:

Red Head Inc.
P.O. Box 5395
Novato, CA 94948
Attention: Renata Ravina

Any party may change its address by a notice given to the other party in the manner set forth above. Any notice given personally shall be deemed to have been given upon service, notices sent by overnight service shall be deemed received on the next business day and any notice given by certified or registered mail shall be deemed to have been given on the third (3rd) business day after such notice is mailed.

15. Confidentiality. To the extent permitted by law, each party shall retain in confidence the terms and conditions of this Agreement. Company acknowledges City is a public entity and as such, this Agreement shall be subject to the Public Records Act and the Freedom of Information Act.

16. Miscellaneous.

16.1 Integration. This Agreement supersedes all prior agreements and understandings between the parties relating to the subject matter hereof. Neither of the parties has relied upon any oral or written representation or oral or written information given to it by any representative of the other party.

16.2 Binding Effect. This Agreement shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns.

16.3 Construction of Agreement. This Agreement will be liberally construed to effectuate the intention of the parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or

provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party, under any rule of construction or otherwise, it being expressly understood and agreed that the parties have participated equally or have had equal opportunity to participate in the drafting hereof.

16.4 Force Majeure. Neither party shall be liable or responsible for any failure to perform its obligations hereunder, which failure is caused or brought about in any manner beyond the reasonable control of such party including, without limitation, strike, riot, act of God, terrorist acts, federal, state, or local government or inaction, declared pandemics, serious illness, or any other similar act or condition beyond its reasonable control, other than such party's inability to perform payment obligations. Upon the occurrence of any such event, the affected party's obligations hereunder shall be suspended and the other party shall have no right to seek damages or terminate this Agreement, provided the affected party acts diligently to effect timely performance of its obligations.

16.5 Amendment/Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless in writing and signed by both parties.

16.6 Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California.

16.7 Waiver. No waiver of any breach or default shall be construed as a continuing waiver of any provision or as a waiver of any other or subsequent breach of any provision contained in this Agreement.

16.8 Headings. The headings of Sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.

16.9 Attorneys' Fees. In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to attorneys' fees and costs.

16.10 Calculation of Dates. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate at 5:00 p.m. on such date or dates and references to "days" shall refer to calendar days; provided, however, in the event that any period terminates on a Saturday, Sunday or City holiday, the termination of such period shall be on the next succeeding business day. The time in which any act provided under this Agreement is to be done, shall be computed by excluding the first day and including the last, unless the last is a Saturday, Sunday or City holiday, and then it is also so excluded.

16.11 Time of Essence. Time is of the essence as to each and every provision of this Agreement.

16.12 Counterparts. This Agreement may be executed in counterparts and when so

executed by the parties, shall become binding upon them and each such counterpart will be an original document.

16.13 Sale of Goods. Nothing in this Agreement shall prohibit Company, or affiliates of Company, from providing additional goods, services, or merchandise to Venue for sale at Venue. Nothing in this Agreement shall entitle Company or affiliates of Company to the sale of specific goods, products or merchandise at Venue. Company, at Company's election, shall be entitled to participate in any competitive process that may be required for sale or distribution of goods, services, products or merchandise at Venue.

16.14 Venue Sponsorships. City, in City's sole and absolute discretion, may elect to sell sponsorship opportunities for and within Venue. Company shall have first rights of refusal for any sponsorship opportunities offered by City at Venue. Company shall be notified in writing of opportunity for sponsorship. Company shall confirm election of any offered sponsorship opportunity within 30 days or shall be deemed to have denied opportunity which shall release City from any liability or obligation to Company regarding the terms of this section 16.14.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

CITY OF FONTANA

RED HEAD INC.

By: _____
Matthew Ballantyne, City Manager

By: _____
Name:

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
Jennifer Farrell
Assistant City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF

8463 SIERRA AVENUE PROPERTY (THEATER PROPERTY)
AND
8457 SIERRA AVENUE PROPERTY (ADJACENT BUILDING PROPERTY)

Theater Property:

Assessor's Parcel No.: 0192-041-04

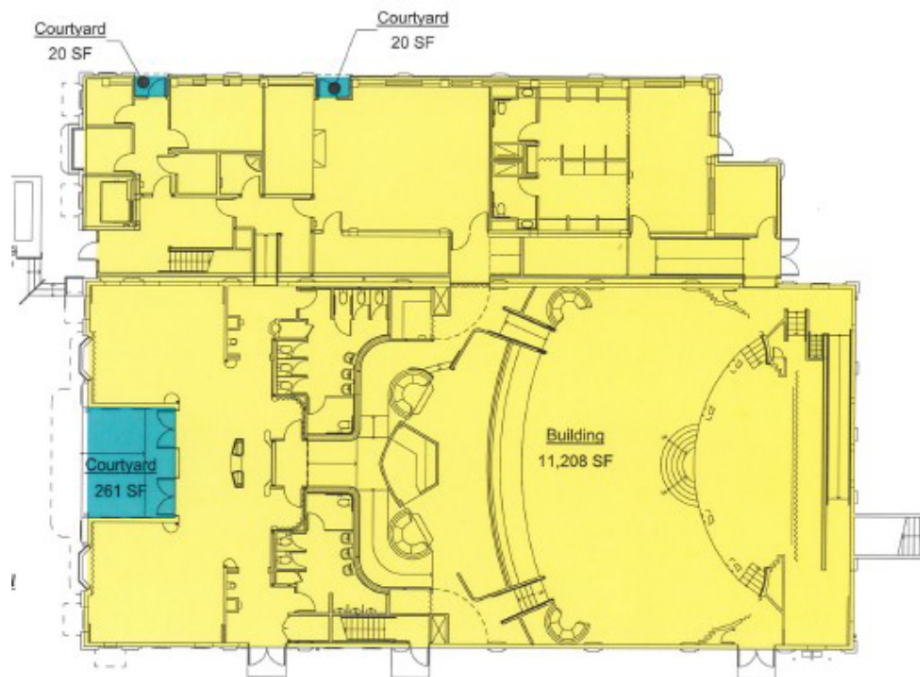
All that real property situated in the City of Fontana, County of San Bernardino, State of CA, described as: That portion of Block 17, Fontana Townsite, Tract No. 2266, in the City of Fontana, County of San Bernardino, State of California, as per Plat recorded in Book 32 of Maps, Pages 43 to 53, Inclusive, Records of said County, described as follows:

Beginning at a point on the westerly boundary line of said Block 17, 142.60 feet north of the southwest corner of said Block;
thence northerly along the along the westerly line of said Block 17, 75 feet to a point;
thence easterly and parallel to the northerly line of Arrow Highway, 156 feet to a point;
thence southerly and parallel to the westerly line of said Block 17, 55 feet;
thence westerly and parallel to the northerly line of Arrow Highway, to the point of beginning.

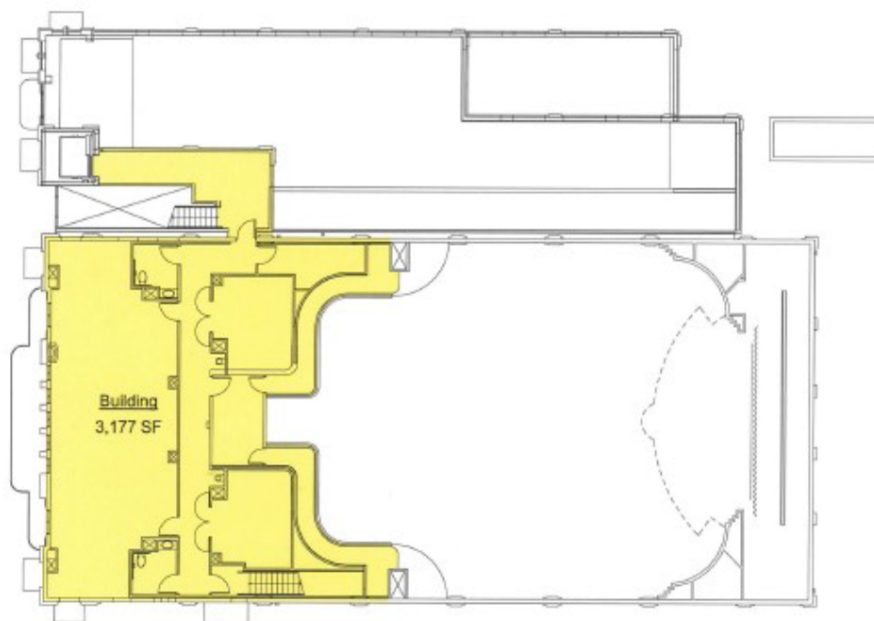
A.P.N.: 0192-041-05

Beginning at a point in the Westerly boundary line of Block 17, Tract no. 2266, Fontana Townsite, in the county of San Bernardino, State of California, 217.6 feet North of the Southwest corner of said block; thence North 30 feet along said westerly boundary of said block to a point; thence Easterly and parallel to Arrow Highway, a distance of 156 feet to a point; thence South and parallel to the Westerly boundary, a distance of 30 feet to a point, thence West and parallel to Arrow Highway, a distance of 156 feet to the point of beginning, as per plat recorded in Book 32 of Maps, pages 43 to 53, both inclusive, records of said county.

EXHIBIT “B”
DESCRIPTION OF PUBLIC PLACE OR BUILDING FOR NAMING RIGHTS



First Floor Gross Area Plan



Second Floor Gross Area Plan



EXHIBIT “C”

Scope of Services by Artist’s Agent

OVERVIEW:

Agent will provide creative direction, consulting and design services and work with the City to re-brand the Center Stage Theatre into a modern music venue. Agent will provide the following scope of services.

SCOPE:

Phase 1: Brand development

Agent will begin with a kick-off meeting to download all pertinent information and ideation from the Artist and City, as well as an on-site visit to review the venue, the surrounding town, and all new technology/lighting/sound upgrades that will be made to the venue. This is a key part of the re-branding development phase that helps visualize possible brand directions and how our brand will connect with the community and artists alike. As Agent develops a venue name and design style, Agent will work alongside the interior designer/architect to establish consistency in design from brand through the interior and consumer experience.

NAMING

Agent will propose naming options that incorporate Artist, his brand essence, etc., in order to position the new venue brand as a relevant and modern entertainment venue with local roots.

BRAND/VENUE STORY

The written concept / brand story will give dimension to the new brand vibe / voice and how it will connect the community and artists.

CONSUMER EXPERIENCE

The intended consumer and artist experience will be outlined early in the re-brand development phase to be used as a guide for everything from brand design to interior design, etc. Developing these experience guidelines help shape the style and design moving forward.

Phase 2: Brand Design

After the venue name has been legally cleared and approved by Artist, Logo/Wordmark Design phase will begin.

LOGO DESIGN

Agent will provide 3-5 initial logo designs in black and white, with 3 rounds of changes to arrive at the final design. Then a color palette will be developed.

LOGO STYLE GUIDE

Logo usage guidelines, color palette, supporting typeface styles, etc. will be included in a document that represents the “true north” moving forward to keep the visual look of the brand consistent. This guide is useful for the design of all collateral, website, merchandise, etc.

SIGNAGE PACKAGE

Agent will create the on-property signage package for the venue, including a new marquee sign and wayfinding signage package. We will also assess the external lighting on the venue to consult on aesthetics and if additional accent signage would be necessary for the venue. If so, we will design accordingly. M+P will work with the client’s preferred signage vendor for collaboration on signage materials, installation options, concerns & locations. M+P will travel to location for a walkthrough of the property and plot signage locations. If necessary, technical plans and permits will need to be handled by signage vendor. Note: M+P will need any area renderings and/or plan drawings developed by the architectural firm.

Phase 3: Brand Finalization

Agent will complete the branding package by designing materials to set the venue and the booking/sales/promotion team up for success. These materials include, but are not limited to the following:

BRAND GUIDE

A multi-page document will be developed that includes: brand story, consumer experience, artist experience, brand pillars, final logo, color palette, additional brand design elements, supporting typefaces, etc.

COLLATERAL

Agent will design supporting collateral for the venue: Business cards, letterhead, email signature.

ARTIST BOOKING DECK

Agent will develop a several page deck to be used as a tool for soliciting artists/talent/management/agents. This will outline, in general terms, the venue specifications, technology, F&B, and artist experience.

SALES DECK

Agent will develop a several page deck to be used as a tool for soliciting private and corporate events. Different from the artist deck, this will outline, in more detailed terms, the venue specifications, technology, F&B and consumer experience.

VENUE CALENDAR/AD TEMPLATE

Agent will develop an ad template in several sizes/dimensions for print publications and social media (Facebook & Instagram). In future, these files can be easily updated by the theatre's inhouse designer to maintain the brand look and feel.

Ongoing obligations:

CONSULTING/PROJECT MANAGEMENT

Agent will work directly with the interior designer/architect to develop a balanced re-design of the environment to achieve the desired consumer experience. Additionally, Agent will work with all vendors involved in the new venue.

AGENT'S SCOPE HEREIN INCLUDES:

- Creative Direction & Design
- Project management
- Strategic input / Consulting
- 3 rounds of revision per concept, per phase
- Printing/production consultation

AGENT'S SCOPE HEREIN DOES NOT INCLUDE:

- Stock imagery
- Photoshoots of completed space or of imagery needed for decks.
- Travel costs
- Cost or management of legal clearances



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1760

Agenda #: G.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Planning Department

SUBJECT:

Purchase and Sale Agreement for 16766 Arrow Blvd. - Downtown Fontana Property

RECOMMENDATION:

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the north side of Arrow Blvd, east of Juniper in Downtown Fontana, more specifically described as APN #0191-162-09.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

COUNCIL GOALS:

- Promote economic development by concentrating on job creation.
- Promote economic development by pursuing business attraction, retention, and expansion.

DISCUSSION:

The City of Fontana will be undertaking an expansive and comprehensive revitalization of Downtown Fontana. The specific geographic area to be targeted includes Upland Ave to the North, Orange Avenue to the South, Mango Ave to the East and Juniper Ave to the West. A primary component of this revitalization effort will require the acquisition, demolition, replanning, and redevelopment of several key properties within the area. To facilitate the implementation of this revitalization, the City will be acquiring various properties in Downtown Fontana. Notwithstanding the fact that any structures that exist on parcels being acquired will be demolished and therefore have no future value, parcels are being acquired at market rate based on values attributable to their current use.

The subject property recently became available for acquisition. The approximately 6,500 square foot parcel includes a building of approximately 5,600 square feet.

The city and the seller's brokers have reached agreement on a Purchase Agreement with the following proposed deal-points:

- The City of Fontana would acquire the property for the price of \$1,250,000.
- The City of Fontana and seller SW Events will equally split any/all escrow and title fees as

appropriate.

- The City will have sixty days to perform any due diligence on the subject property, including completion of an environmental assessment and title review.
- Following the due-diligence period the city will have a fifteen-day financing period to complete all wire-transfers and documents necessary for the close of escrow.

Approval of the Purchase Agreement and acquisition of the subject property will assist with the assemblage of various properties located in Downtown Fontana. That assemblage will facilitate the City's vision and plans to dramatically revitalize the Downtown Community.

FISCAL IMPACT:

Monies are available for the purchase of these properties (total cost of approximately \$1,300,000, including escrow costs and appropriate fees) in Fund 602 - Capital Improvement. Appropriate paperwork will be submitted to the Budget Office with the First Quarter Budget Status Report.

MOTION:

Approve staff recommendation.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant

City of Fontana Date 8.10.22

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant

Date _____

Agent Sierra Realty Fontana, Inc
Real Estate Broker (Firm)

DRE Lic. # 02038519

By _____
(Salesperson or Broker-Associate, if any)

Ken Galasso DRE Lic. # 00570875

Date _____

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AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: 909.822.1200 Fax: 909.822.0324
www.lwolf.com

16766 Arrow Blvd

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual transaction." (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)
 Seller's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is (check one): ☐ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)
 Buyer's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)
 Buyer's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

Produced with Lone Wolf Transactions (ZipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwlf.com

16766 Arrow Blvd





FAIR HOUSING AND DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, Revised 6/22)

1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

Race	Color	Ancestry	National Origin	Religion
Age	Sex, Sexual Orientation	Gender, Gender Identity, Gender expression	Marital Status	Familial Status (family with a child or children under 18)
Citizenship	Immigration Status	Primary Language	Military/Veteran Status	Source of Income (e.g., Section 8 Voucher)
Medical Condition	Disability (Mental & Physical)	Genetic Information	Criminal History (non-relevant convictions)	Any arbitrary characteristic

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC §10177(l)(1); 10 CCR § 2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.

<ul style="list-style-type: none"> • Sellers • Real estate licensees • Mobilehome parks • Insurance companies 	<ul style="list-style-type: none"> • Landlords • Real estate brokerage firms • Homeowners Associations ("HOAs"); • Government housing services 	<ul style="list-style-type: none"> • Sublessors • Property managers • Banks and Mortgage lenders • Appraisers
---	--	---
8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
- F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
- G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
- H. Denying a home loan or homeowner's insurance;
- I. Offering inferior terms, conditions, privileges, facilities or services;
- J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
- K. Harassing a person;
- L. Taking an adverse action based on protected characteristics;
- M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
- N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
- (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
- O. Retaliating for asserting rights under fair housing laws.
- 10. EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
 - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
 - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
 - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
 - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
- 11. FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
 - B. State: <https://www.dfeh.ca.gov/housing/>
 - C. Local: local Fair Housing Council office (non-profit, free service)
 - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
 - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
 - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
- 12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS:** No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
 - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
 - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
 - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
 - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
 - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant	<u>City of Fontana</u>	Date	<u>8.10.22</u>
Buyer/Tenant		Date	
Seller/Landlord	<u>SW Events LLC</u>	Date	
Seller/Landlord		Date	

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FHDA REVISED 6/22 (PAGE 2 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 2 OF 2)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com 16766 Arrow Blvd





WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY

(C.A.R. Form WFA, Revised 12/21)

Property Address: 16766 Arrow Blvd, Fontana, CA 92335-3802 ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant _____	<u>City of Fontana</u>	Date <u>8.10.21</u>
Buyer/Tenant _____		Date _____
Seller/Landlord _____	<u>SW Events LLC</u>	Date _____
Seller/Landlord _____		Date _____

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WFA REVISED 12/21 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form CPA, Revised 6/22)

Date Prepared: August 8, 2022

1. OFFER:

- A. THIS IS AN OFFER FROM City of Fontana ("Buyer").
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☒ Other Municipal Corporation
- B. THE PROPERTY to be acquired is 16766 Arrow Blvd, situated in Fontana (City), San Bernardino (County), California, 92335-3802 (Zip Code), Assessor's Parcel No(s). 0191-162-09-0000 ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm** Sierra Realty Fontana, Inc License Number 02038519
Is the broker of (check one): ☐ the Seller; or ☒ both the Buyer and Seller (Dual Agent).
Seller's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Seller's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** Sierra Realty Fontana, Inc License Number 02038519
Is the broker of (check one): ☐ the Buyer; or ☒ both the Buyer and Seller (Dual Agent).
Buyer's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Buyer's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. TERMS OF PURCHASE AND ALLOCATION OF COSTS: The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 17 pages. The Parties are advised to read all 17 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	<u>\$ 1,250,000.00</u>	<input checked="" type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input checked="" type="checkbox"/> <u>90</u> Days after Acceptance OR on <input type="checkbox"/> (date) (mm/dd/yyyy)	
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or (date) at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	<u>\$ 25,000.00</u> (<u>2.0</u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or) business days after Acceptance by wire transfer OR <input type="checkbox"/>
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	<u>\$</u> (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> (date) OR <input type="checkbox"/>
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	<u>\$</u> (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed % Buyer to pay zero points or up to % of the loan amount 17 (or) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing Other:
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	<u>\$</u> (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed % Buyer to pay zero points or up to % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing Other:
E(3)	7A	Occupancy Type	Investment	
F	5D	Balance of Down Payment	<u>\$ 1,225,000.00</u>	
		PURCHASE PRICE TOTAL	<u>\$ 1,250,000.00</u>	

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Buyer's Initials KG / Seller's Initials KG

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 1 OF 17)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

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www.lwof.com

16766 Arrow Blvd



Property Address: **16766 Arrow Blvd, Fontana, CA 92335-3802**Date: **August 8, 2022**

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (_____% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	<input type="checkbox"/> Prequalification <input type="checkbox"/> Preapproval
I	Intentionally Left Blank			
J	19	Final Verification of Condition	5 (or _____) Days prior to COE	
K	26	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 15	Investigation of Property	17 (or <u>60</u>) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. <input type="checkbox"/> CR attached
		Informational Access to Property Buyer's right to access the Property for informational purposes only is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	17 (or <u>60</u>) Days after Acceptance	
L(4)	8D, 17A	Review of Seller Documents	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 16A	Preliminary ("Title") Report	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11C	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms
M(1)		Vacant Units; Tenant Occupied Units being delivered subject to tenant rights	Upon notice of recordation On COE date	<input type="checkbox"/> Tenant Occupied Unit(s) to be delivered vacant (#s _____)
M(2)	7C	Seller Occupied	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or _____ AM/ <input type="checkbox"/> PM COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form CL attached if 30 or more days.
N		Documents/Fees/Compliance	Time for Performance	
N(1)	17A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after receipt	
N(3)	11C(2)	Time to pay fees for ordering OA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	35	Evidence of representative authority	3 Days after Acceptance	

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Buyer's Initials

MS

Seller's Initials

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16766 Arrow Blvd



O	Intentionally Left Blank			
P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____		
P(2)	9	Excluded Items: <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11D	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Provided by: _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____
Q(2)	15B(1)(D)	Environmental Survey	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both <i>if desired</i>	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	22B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	
Q(8)	16	Owner's title insurance policy	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): Orange Coast Title
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11C(2)	OA fee for preparing disclosures	Seller	
Q(13)		OA certification fee	Buyer	
Q(14)		OA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate OA move-out fee and Buyer shall pay for separate OA move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)	10B(4)	Installation of safety features, required by law	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
R	Additional Tenancy Documents <input type="checkbox"/> Income and Expense Statements <input type="checkbox"/> Tenant Estoppel Certificate			
S	OTHER TERMS: Offer and acceptance subject to approval of the Fontana City Council. Owner shall retain possession until Dec. 31, 2023. The amount of \$125,000 of seller's proceeds shall be held by escrow until the owner relinquishes possession.			

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)**A. PROPERTY TYPE ADDENDA:** This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Assumed Financing Addendum (C.A.R. Form AFA)
☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____



Property Address: **16766 Arrow Blvd, Fontana, CA 92335-3802**Date: **August 8, 2022****C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)**☒ Buyer's Investigation Advisory (C.A.R. Form BIA)☒ Wire Fraud Advisory (C.A.R. Form WFA)☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)

(Parties may also receive a privacy disclosure from their own Agent.)

☐ Wildfire Disaster Advisory (C.A.R. Form WFDA)☐ Trust Advisory (C.A.R. Form TA)☐ REO Advisory (C.A.R. Form REO)☐ Other:☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)☐ Short Sale Information and Advisory (C.A.R. Form SSIA)☐ Probate Advisory (C.A.R. Form PA)☐ Other:**5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE:** Buyer represents that funds will be good when deposited with Escrow Holder.**A. DEPOSIT:**(1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.(2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.(3) **RETENTION OF DEPOSIT:** Paragraph 36, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.**B. ALL CASH OFFER:** If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.**C. LOAN(S):**(1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(1)**.(2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(2)**.(3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.(4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.(5) Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements.**D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds)** to be deposited with Escrow Holder pursuant to Escrow Holder instructions.**E. LIMITS ON CREDITS TO BUYER:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.**6. ADDITIONAL FINANCING TERMS:****A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.**B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.**C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.**7. CLOSING AND POSSESSION:****A. OCCUPANCY:** Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.

B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW: If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.**

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**A. LOAN(S):**

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.**
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.

(3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

C. INVESTIGATION OF PROPERTY: This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

D. REVIEW OF SELLER DOCUMENTS: This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 16A**.

E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 16G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11C** ("CI Disclosures").



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- G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller disclosed leased or lienied items.
- H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.
- I. REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in **paragraph 3L** or **8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
 - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L** or **5 Days** after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
 - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.
- 9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
 - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not included in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing and owned by Seller at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager, tenant, or other third party, the item should be listed as being excluded in **paragraph 3P(2)** or excluded by Seller in a counter offer.
 - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (5) Non-Dedicated Devices: All smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
 - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
 - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
 - (8) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in **paragraph 3N(1)**.
 - (9) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
 - (10) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

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- C. ITEMS EXCLUDED FROM SALE:** Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in **paragraph 3P(2)**; (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**
- 10. ALLOCATION OF COSTS:**
- A. INSPECTIONS, REPORTS AND CERTIFICATES:** Paragraphs **3Q(1-3)** and **(5)** only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in **paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**
- B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:**
- (1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in **paragraph 3N(4)**. If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.
- (2) **POINT OF SALE REQUIREMENTS:**
- (A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.
- (B) Buyer shall be provided, within the time specified in **paragraph 3N(1)**, unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.
- (3) **REINSPECTION FEES:** If any repair in **paragraph 10B(1)** is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.
- (4) **INSTALLATION OF SAFETY FEATURES:**
- (A) The following installations shall be completed prior to final verification of condition unless Otherwise Agreed: (i) approved fire extinguisher(s), sprinkler(s), and hose(s), if required by law; and (ii) drain cover and anti-entrapment device or system meeting the minimum requirements permitted by the U.S. Consumer Products and Safety Commission for any pool or spa.
- (B) If Buyer is to pay for these installations, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the installation.
- (5) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.
- 11. SELLER DISCLOSURES**
- A. WITHHOLDING TAXES:** Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); OR (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; OR (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.
- B. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- C. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
- (1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
- (2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.



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- D. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- E. WATER CONSERVING PLUMBING DEVICES:** Civil Code § 1101.5 requires all multi-family residential and commercial real property be equipped with water-conserving plumbing devices. Seller shall, within the time specified in **paragraph 3N(1)**, disclose in writing whether the property includes any noncompliant plumbing fixtures. Seller may use C.A.R. Form SPQ or ESD. See C.A.R. Form WCMD for more information.
- F. SURVEY, PLANS, AND ENGINEERING DOCUMENTS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, Copies of surveys, plans, specifications, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
- G. PERMITS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, if in Seller's possession, copies of all permits and approvals, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
- H. STRUCTURAL MODIFICATIONS:** Seller, within the time specified in **paragraph 3N(1)**, shall in writing disclose to Buyer, known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
- I. GOVERNMENTAL COMPLIANCE:** Within the time specified in **paragraph 3N(1)**,
 (1) Seller shall disclose to Buyer any improvements, additions, alterations, or repairs to the Property made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals
 (2) Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property.
- J. VIOLATION NOTICES:** Within the time specified in **paragraph 3N(1)**, Seller shall disclose any notice of violations of any Law filed or issued against the Property and actually known to Seller
- K. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- L. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- 12. TENANCY RELATED DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:
- A. RENTAL/SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.
- B. INCOME AND EXPENSE STATEMENTS:** If checked in **paragraph 3R**, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.
- C. TENANT ESTOPPEL CERTIFICATES:** If checked in **paragraph 3R**, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.
- D. SELLER REPRESENTATIONS:** Unless otherwise disclosed under **paragraph 11, paragraph 12**, or under any disclosure Delivered to Buyer:
 (1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), Inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.
 (2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.
 (3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
- 13. CHANGES DURING ESCROW:**
A. Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in **paragraph 13B**: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.
B. (1) At least **7 Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change
 (2) Within **5 Days** after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
- 14. SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.



15. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A. Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
 - (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) A phase one environmental survey, paid for and obtained by the party indicated in **paragraph 3Q(2)**. If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in **paragraph 3L(3)**. Buyer has **5 Days** after receiving the survey to remove this portion of the Buyer's Investigation contingency.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, 12, and 16A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

16. TITLE AND VESTING:

- A. Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.



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17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER DELIVERY OF DOCUMENTS: Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B(6), 9B(8), 10, 11A, 11C, 11D, 11F-K, 12, 16A, and 16D**.

B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION

(1) Buyer has the time specified in **paragraph 3** to perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(6)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.

(2) Buyer may, within the time specified in **paragraph 3L(3)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.

(3) Buyer shall, by the end of the times specified in **paragraph 3L** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in **paragraph 3N(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3L**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under **paragraph 11L**.

(4) Continuation of Contingency: Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 17C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 17C(1)**.

C. SELLER RIGHT TO CANCEL:

(1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by **paragraph 5C(5)** (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (v) Deliver a letter as required by **paragraph 6B**; (vi) In writing assume or accept leases or liens specified in **paragraph 8G**; (vii) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 16E**; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraph 5A(2)** and **36**; (ix) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 35**; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.

(3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

D. BUYER RIGHT TO CANCEL:

(1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.

(2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3N(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.

(3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

E. NOTICE TO BUYER OR SELLER TO PERFORM: The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 17**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.

F. EFFECT OF REMOVAL OF CONTINGENCIES:

(1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

(2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

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Buyer's Initials

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Seller's Initials

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COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 10 OF 17)

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16766 Arrow Blvd

- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J, NOT AS A CONTINGENCY OF THE SALE**, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 11A, 11C(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 33, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**

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- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or OA or OA management company or others any fee required by **paragraphs 3, 8, 10, 11**, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11A**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11A**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 21A and paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 21A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
23. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 37A**.
26. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOAA).
27. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discover, location and evaluation of/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.



- 29. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 30. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 31. COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 32. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
 - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
 - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
 - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
 - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
 - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
 - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
 - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
 - I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
 - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
 - K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
 - L. **"Electronic Copy"** or **"Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 39** or **paragraph 40**.
 - O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
 - P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.



Property Address: **16766 Arrow Blvd, Fontana, CA 92335-3802**Date: **August 8, 2022**

- 33. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
- 34. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 35. LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 39** or **40** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within as specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

MS

36. LIQUIDATED DAMAGES:

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials *M* / _____

Seller's Initials _____ / _____

37. MEDIATION:

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

38. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials *M* / _____

Seller's Initials _____ / _____

Property Address: 16766 Arrow Blvd, Fontana, CA 92335-3802Date: August 8, 2022**39. OFFER**

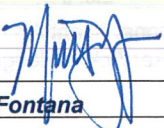
A. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

B. ☒ ENTITY BUYERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or ☐ other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: Matthew Ballantyne
- (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By,  Date: 8.10.22

Printed name of BUYER: City of Fontana

☒ Printed Name of Legally Authorized Signer: Matthew Ballantyne Title, if applicable, City Manager

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

40. ACCEPTANCE

A. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMCO)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

B. ☒ Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: Stephanie Wiltz
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: SW Events LLC

☒ Printed Name of Legally Authorized Signer: Stephanie Wiltz Title, if applicable, Managing Member

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials



REAL ESTATE BROKERS SECTION:

- 1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
- 2. Agency relationships are confirmed as stated in paragraph 2.**
- 3. Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
- 4. Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
- 5. Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm Sierra Realty Fontana, IncLic. # **02038519**By Ken Galasso Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.Address **9410 Sierra Ave.** City **Fontana** State **CA** Zip **92335****B. Seller's Brokerage Firm** Sierra Realty Fontana, IncLic. # **02038519**By Ken Galasso Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to paragraph 22 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder **Bennett Escrow** Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.**PRESENTATION OF OFFER:** _____ / _____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).
Broker or Designee Initials

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CPA REVISED 6/22 (PAGE 17 OF 17)

Buyer's Initials mg

Seller's Initials _____

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 17 OF 17)Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwof.com 16766 Arrow Blvd



BUYER'S INVESTIGATION ADVISORY

(C.A.R. Form BIA, Revised 12/21)

Property Address 16766 Arrow Blvd, Fontana, CA 92335-3802

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

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BIA REVISED 12/21 (PAGE 1 OF 2)



BUYER'S INVESTIGATION ADVISORY (BIA PAGE 1 OF 2)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

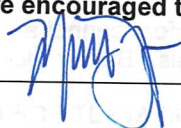
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Phone: 909.822.1200 Fax: 909.822.0324
www.lwolf.com


16766 Arrow Blvd

L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer  City of Fontana Date 8.10.22
Buyer _____ Date _____

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

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FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Other ("Agreement"),
dated _____, on property known as 16766 Arrow Blvd, Fontana, CA 92335-3802 ("Property"),
in which SW Events LLC is referred to as ("Seller")
and City of Fontana is referred to as ("Buyer").

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.

Buyer City of Fontana  Date 8.10.22
Buyer _____ Date _____
Seller SW Events LLC Date _____
Seller _____ Date _____

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FAAA 6/22 (PAGE 1 OF 1)

FAIR APPRAISAL ACT ADDENDUM (FAAA PAGE 1 OF 1)

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16766 Arrow Blvd



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller _____ SW Events LLC Date _____

Seller _____ Date _____

Buyer [Signature] _____ City of Fontana Date 8.10.22

Buyer _____ Date _____

Buyer's Brokerage Firm Sierra Realty Fontana, Inc DRE Lic # 02038519 Date _____

By _____ DRE Lic # 00570875 Date _____

Ken Galasso

Seller's Brokerage Firm Sierra Realty Fontana, Inc DRE Lic # 02038519 Date _____

By _____ DRE Lic # 00570875 Date _____

Ken Galasso

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POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) (“CCPA”) grants to California residents certain rights in their private, personal information (“PI”) that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, “opt out” or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant _____ Date 8.10.22
City of Fontana

Buyer/Seller/Landlord/Tenant _____ Date _____

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CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso Pro

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SELLER COUNTER OFFER No. 1

May not be used as a multiple counter offer.
(C.A.R. Form SCO, Revised 12/21)

Date 08/15/2022

This is a counter offer to the Purchase Agreement, OR ☐ Buyer Counter Offer No. _____, ☐ Other _____ ("Offer"),
dated 08/08/2022, on property known as 16766 Arrow Blvd, Fontana, CA 92335-3802 ("Property"),
between City of Fontana ("Buyer")
and SW Events LLC ("Seller").

Buyer and Seller are referred to as the "Parties."

1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following:

- A. The Liquidated Damages and Arbitration of Disputes paragraphs in the Offer each require initials by all Parties. If either of those paragraphs is not initialed by all Parties, that paragraph is excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
- B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer, but initial and increased deposit amount(s) shall remain unchanged from the original Offer.
- C. **OTHER TERMS:**

Seller shall retain possession until January 31, 2024. The seller shall have the right to remove electrical fixtures, sinks and other attached items. Close of escrow shall be within 21 days of Council approval.
Note: Commission to Sierra Realty Fontana Inc shall be paid by the buyer through separate agreement.

- D. The following attached documents are incorporated into this Seller Counter Offer when Signed and Delivered by both Parties (if both parties do not Sign and Deliver all attached addenda, then any acceptance of this Seller Counter Offer is not valid):

- ☐ Addendum No. _____ (C.A.R. Form ADM)
- ☐ Back Up Offer Addendum (C.A.R. Form BUO)
- ☐ Seller License to Remain in Possession Addendum (C.A.R. Form SIP) (occupancy up to 29 days)
- ☐ Seller Purchase of Replacement Property (C.A.R. Form SPRP)
- ☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA)
- ☐ Residential Lease After Sale (C.A.R. Form RLAS) (occupancy for 30 or more days)
- ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
- ☐ Other _____

2. EXPIRATION: This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:

- A. Unless by 5:00 PM on the third Day after the date this Seller Counter Offer is signed in paragraph 4 (if more than one signature then, the last signature date)(or by _____ ☐ AM/ ☐ PM on _____ (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the Signed Seller Counter Offer is Delivered to Seller or Seller's Authorized Agent.
- B. OR If Seller withdraws this Seller Counter Offer anytime prior to Buyer's Acceptance by communicating withdrawal to Buyer or Buyer's Agent (C.A.R. Form WOO may be used).
- C. OR If Seller accepts another offer prior to Buyer's Acceptance of this Seller Counter Offer.

3. MARKETING TO OTHER BUYERS: Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.

4. OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY. BY MAKING THIS COUNTER OFFER, ANY PREVIOUS OFFER OR COUNTER OFFER CAN NO LONGER BE ACCEPTED. The terms and conditions of those documents are incorporated into this Seller Counter Offer unless Otherwise Agreed.

Seller Stephane J. Nery SW Events LLC Date 8/17/22
Seller _____ Date _____

5. ACCEPTANCE: I/we accept the above Seller Counter Offer (If checked ☐ SUBJECT TO THE ATTACHED BUYER COUNTER OFFER) and acknowledge receipt of a Copy.

Buyer [Signature] City of Fontana Date 8.17.22
Buyer _____ Date _____

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SCO Revised 12/21 (PAGE 1 OF 1)



SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

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16766 Arrow Blvd



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1761

Agenda #: H.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Planning Department

SUBJECT:

Purchase and Sale Agreement for 8443 Nuevo Avenue - Downtown Fontana Property

RECOMMENDATION:

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the southeast corner of Nuevo Avenue and Spring Street in Downtown Fontana, more specifically described as APN #0191-163-27.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

COUNCIL GOALS:

- Promote economic development by concentrating on job creation.
- Promote economic development by pursuing business attraction, retention, and expansion.

DISCUSSION:

The City of Fontana will be undertaking an expansive and comprehensive revitalization of Downtown Fontana. The specific geographic area to be targeted includes Upland Ave to the North, Orange Avenue to the South, Mango Ave to the East and Juniper Ave to the West. A primary component of this revitalization effort will require the acquisition, demolition, replanning, and redevelopment of several key properties within the area. To facilitate the implementation of this revitalization, the City will be acquiring various properties in Downtown Fontana. Notwithstanding the fact that any structures that exist on parcels being acquired will be demolished and therefore have no future value, parcels are being acquired at market rate based on values attributable to their current use.

The subject property recently became available for acquisition. The approximately 15,200 square foot parcel includes a building of approximately 7,000 square feet.

The city and the seller's brokers have reached agreement on a Purchase Agreement with the following proposed deal-points:

- The City of Fontana would acquire the property for the price of \$1,625,000.
- The City of Fontana and sellers Doris Purola and Carole Peacock will equally split any/all

escrow and title fees as appropriate.

- The City will have sixty days to perform any due diligence on the subject property, including completion of an environmental assessment and title review.
- Following the due-diligence period the city will have a fifteen-day financing period to complete all wire-transfers and documents necessary for the close of escrow.

Approval of the Purchase Agreement and acquisition of the subject property will assist with the assemblage of various properties located in Downtown Fontana. That assemblage will facilitate the City's vision and plans to dramatically revitalize the Downtown Community.

FISCAL IMPACT:

Monies are available for the purchase of these properties (total cost of approximately \$1,690,000, including escrow costs and appropriate fees) in Fund 602 - Capital Improvement. Appropriate paperwork will be submitted to the Budget Office with the First Quarter Budget Status Report.

MOTION:

Approve staff recommendation.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

137

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ City of Fontana Date 8.17.22

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent _____ Sierra Realty Fontana, Inc DRE Lic. # 02038519
Real Estate Broker (Firm)

By _____ Ken Galasso DRE Lic. # 00570875 Date _____
(Salesperson or Broker-Associate, if any)

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AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)
Seller's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
Is (check one): ☐ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)
Buyer's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)
Buyer's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c)

"Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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FAIR HOUSING AND DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, Revised 6/22)

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1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

Race	Color	Ancestry	National Origin	Religion
Age	Sex, Sexual Orientation	Gender, Gender Identity, Gender expression	Marital Status	Familial Status (family with a child or children under 18)
Citizenship	Immigration Status	Primary Language	Military/Veteran Status	Source of Income (e.g., Section 8 Voucher)
Medical Condition	Disability (Mental & Physical)	Genetic Information	Criminal History (non-relevant convictions)	Any arbitrary characteristic

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC § 10177(l)(1); 10 CCR § 2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**

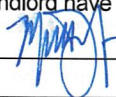
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.

 - Sellers
 - Real estate licensees
 - Mobilehome parks
 - Insurance companies
 - Landlords
 - Real estate brokerage firms
 - Homeowners Associations ("HOAs");
 - Government housing services
 - Sublessors
 - Property managers
 - Banks and Mortgage lenders
 - Appraisers
8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
 - F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
 - G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
 - H. Denying a home loan or homeowner's insurance;
 - I. Offering inferior terms, conditions, privileges, facilities or services;
 - J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
 - K. Harassing a person;
 - L. Taking an adverse action based on protected characteristics;
 - M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
 - N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
 - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
 - O. Retaliating for asserting rights under fair housing laws.
- 10. EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
 - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
 - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
 - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
 - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
- 11. FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
 - B. State: <https://www.dfeh.ca.gov/housing/>
 - C. Local: local Fair Housing Council office (non-profit, free service)
 - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
 - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
 - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
- 12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS: No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.**
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
 - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
 - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
 - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
 - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
 - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant  City of Fontana Date 6-17-22

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Doris Purola Date _____

Seller/Landlord _____ Carol Lee Peacock Date _____

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FHDA REVISED 6/22 (PAGE 2 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 2 OF 2)

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8443 Nuevo Ave





WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY

(C.A.R. Form WFA, Revised 12/21)

Property Address: 8443 Nuevo Ave, Fontana, CA 92335-4042 ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.


If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant  City of Fontana Date 8.17.22

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Doris Purola Date _____

Seller/Landlord _____ Carol Lee Peacock Date _____

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WFA REVISED 12/21 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

Phone: 909.822.1200 Fax: 909.822.0324
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

8443 Nuevo Ave



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form CPA, Revised 6/22)

Date Prepared: August 10, 2022

1. OFFER:

- A. **THIS IS AN OFFER FROM** City of Fontana ("Buyer").
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☒ Other A Municipal Corporation
- B. **THE PROPERTY** to be acquired is 8443 Nuevo Ave, situated in Fontana (City), San Bernardino (County), California, 92335-4042 (Zip Code), Assessor's Parcel No(s) 019116327 ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are **not** Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm** Sierra Realty Fontana, Inc License Number 02038519
Is the broker of (check one): ☐ the Seller; or ☒ both the Buyer and Seller (Dual Agent).
Seller's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Seller's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** Sierra Realty Fontana, Inc License Number 02038519
Is the broker of (check one): ☐ the Buyer; or ☒ both the Buyer and Seller (Dual Agent).
Buyer's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Buyer's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. TERMS OF PURCHASE AND ALLOCATION OF COSTS: The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 17 pages. The Parties are advised to read all 17 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	<u>\$ 1,650,000.00</u>	<input checked="" type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input checked="" type="checkbox"/> <u>90</u> Days after Acceptance OR on <input type="checkbox"/> (date) (mm/dd/yyyy)	
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or (date) at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	<u>\$ 25,000.00</u> (<u>1.5</u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or <u> </u>) business days after Acceptance by wire transfer OR <input type="checkbox"/>
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	<u>\$</u> (<u> </u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> (date) OR <input type="checkbox"/>
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	<u>\$</u> (<u> </u> % of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed <u> </u> % Buyer to pay zero points or up to <u> </u> % of the loan amount 17 (or <u> </u>) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: <u> </u>
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	<u>\$</u> (<u> </u> % of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed <u> </u> % Buyer to pay zero points or up to <u> </u> % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: <u> </u>
E(3)	7A	Occupancy Type	Investment	
F	5D	Balance of Down Payment	<u>\$ 1,625,000.00</u>	
		PURCHASE PRICE TOTAL	<u>\$ 1,650,000.00</u>	

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Buyer's Initials WV

Seller's Initials

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 1 OF 17)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

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8443 Nuevo Ave



Property Address: **8443 Nuevo Ave, Fontana, CA 92335-4042**Date: **August 10, 2022**

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	19	Final Verification of Condition	5 (or _____) Days prior to COE	
K	26	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 15	Investigation of Property	17 (or <u>60</u>) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. <input type="checkbox"/> CR attached
		Informational Access to Property	17 (or _____) Days after Acceptance Buyer's right to access the Property for informational purposes only is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	
L(4)	8D, 17A	Review of Seller Documents	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 16A	Preliminary ("Title") Report	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11C	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms
M(1)		Vacant Units; Tenant Occupied Units being delivered subject to tenant rights	Upon notice of recordation On COE date	<input checked="" type="checkbox"/> Tenant Occupied Unit(s) to be delivered vacant (#s <u>All units</u>)
M(2)	7C	Seller Occupied	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form CL attached if 30 or more days.
N		Documents/Fees/Compliance	Time for Performance	
N(1)	17A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after receipt	
N(3)	11C(2)	Time to pay fees for ordering OA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	35	Evidence of representative authority	3 Days after Acceptance	



O	Intentionally Left Blank			
P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <input type="checkbox"/> _____, <input type="checkbox"/> _____, <input type="checkbox"/> _____.		
P(2)	9	Excluded Items: <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____.		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11D	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____ _____ <input type="checkbox"/> Provided by: _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____
Q(2)	15B(1)(D)	Environmental Survey	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both <i>If desired</i> _____	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	22B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	Escrow Holder: <u>Bennett Escrow Services Inc</u>
Q(8)	16	Owner's title insurance policy	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): <u>Orange Coast Title</u>
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11C(2)	OA fee for preparing disclosures	Seller	
Q(13)		OA certification fee	Buyer	
Q(14)		OA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate OA move-out fee and Buyer shall pay for separate OA move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)	10B(4)	Installation of safety features, required by law	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
R	Additional Tenancy Documents <input type="checkbox"/> Income and Expense Statements <input type="checkbox"/> Tenant Estoppel Certificate			
S	OTHER TERMS: <u>Offer and acceptance subject to approval by the Fontana City Council.</u>			

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Assumed Financing Addendum (C.A.R. Form AFA)
☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____



Property Address: **8443 Nuevo Ave, Fontana, CA 92335-4042**Date: **August 10, 2022****C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)**

- ☒ Buyer's Investigation Advisory (C.A.R. Form BIA)
☒ Wire Fraud Advisory (C.A.R. Form WFA)

- ☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)
☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)

(Parties may also receive a privacy disclosure from their own Agent.)

- ☐ Wildfire Disaster Advisory (C.A.R. Form WFDA)
☐ Trust Advisory (C.A.R. Form TA)
☐ REO Advisory (C.A.R. Form REO)
☐ Other: _____

- ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Short Sale Information and Advisory (C.A.R. Form SSIA)
☐ Probate Advisory (C.A.R. Form PA)
☐ Other: _____

5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.**A. DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
- (2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
- (3) **RETENTION OF DEPOSIT:** Paragraph 36, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.**C. LOAN(S):**

- (1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(1)**.
- (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(2)**.
- (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
- (4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.
- (5) Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.**E. LIMITS ON CREDITS TO BUYER:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.**6. ADDITIONAL FINANCING TERMS:**

- A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.
- B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.
- C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

- A. OCCUPANCY:** Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.

Ms

B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

- C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW:** If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.

- D. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

- E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P** or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.**

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**A. LOAN(S):**

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

- C. INVESTIGATION OF PROPERTY:** This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

- D. REVIEW OF SELLER DOCUMENTS:** This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 16A**.

E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 16G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

- F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE):** This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11C** ("CI Disclosures").



Property Address: **8443 Nuevo Ave, Fontana, CA 92335-4042**Date: **August 10, 2022**

- G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller disclosed leased or lienied items.
- H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.
- I. REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in **paragraph 3L or 8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
 - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L or 5 Days** after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
 - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.
- 9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
 - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not included in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing and owned by Seller at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager, tenant, or other third party, the item should be listed as being excluded in **paragraph 3P(2)** or excluded by Seller in a counter offer.
 - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (5) Non-Dedicated Devices: All smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
 - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P or 9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
 - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
 - (8) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in **paragraph 3N(1)**.
 - (9) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
 - (10) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.



C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in paragraph 3P(2); (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

10. ALLOCATION OF COSTS:

A. INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs 3Q(1-3) and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**

B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:

(1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in paragraph 3N(4). If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.

(2) **POINT OF SALE REQUIREMENTS:**

(A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.

(B) Buyer shall be provided, within the time specified in paragraph 3N(1), unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

(3) **REINSPECTION FEES:** If any repair in paragraph 10B(1) is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.

(4) **INSTALLATION OF SAFETY FEATURES:**

(A) The following installations shall be completed prior to final verification of condition unless Otherwise Agreed: (i) approved fire extinguisher(s), sprinkler(s), and hose(s), if required by law; and (ii) drain cover and anti-entrapment device or system meeting the minimum requirements permitted by the U.S. Consumer Products and Safety Commission for any pool or spa.

(B) If Buyer is to pay for these installations, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the installation.

(5) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

11. SELLER DISCLOSURES

A. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; OR (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.**

B. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

C. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) Seller shall, within the time specified in paragraph 3N(1), disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).

(2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in paragraph 3N(3), order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.

[Signature]



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- D. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- E. WATER CONSERVING PLUMBING DEVICES:** Civil Code § 1101.5 requires all multi-family residential and commercial real property be equipped with water-conserving plumbing devices. Seller shall, within the time specified in **paragraph 3N(1)**, disclose in writing whether the property includes any noncompliant plumbing fixtures. Seller may use C.A.R. Form SPQ or ESD. See C.A.R. Form WCMD for more information.
- F. SURVEY, PLANS, AND ENGINEERING DOCUMENTS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, Copies of surveys, plans, specifications, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
- G. PERMITS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, if in Seller's possession, copies of all permits and approvals, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
- H. STRUCTURAL MODIFICATIONS:** Seller, within the time specified in **paragraph 3N(1)**, shall in writing disclose to Buyer, known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
- I. GOVERNMENTAL COMPLIANCE:** Within the time specified in **paragraph 3N(1)**,
 (1) Seller shall disclose to Buyer any improvements, additions, alterations, or repairs to the Property made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals
 (2) Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property.
- J. VIOLATION NOTICES:** Within the time specified in **paragraph 3N(1)**, Seller shall disclose any notice of violations of any Law filed or issued against the Property and actually known to Seller
- K. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- L. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- 12. TENANCY RELATED DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:
- A. RENTAL/SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.
- B. INCOME AND EXPENSE STATEMENTS:** If checked in **paragraph 3R**, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.
- C. TENANT ESTOPPEL CERTIFICATES:** If checked in **paragraph 3R**, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.
- D. SELLER REPRESENTATIONS:** Unless otherwise disclosed under **paragraph 11, paragraph 12**, or under any disclosure Delivered to Buyer:
 (1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), Inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.
 (2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.
 (3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
- 13. CHANGES DURING ESCROW:**
A. Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in **paragraph 13B**: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.
B. (1) At least **7 Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change
 (2) Within **5 Days** after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
- 14. SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.

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Buyer's Initials



Seller's Initials

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8443 Nuevo Ave



15. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A. Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) A phase one environmental survey, paid for and obtained by the party indicated in **paragraph 3Q(2)**. If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in **paragraph 3L(3)**. Buyer has **5 Days** after receiving the survey to remove this portion of the Buyer's Investigation contingency.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, 12, and 16A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

16. TITLE AND VESTING:

- A. Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.



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17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER DELIVERY OF DOCUMENTS: Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in paragraphs 9B(6), 9B(8), 10, 11A, 11C, 11D, 11F-K, 12, 16A, and 16D.

B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION

- (1) Buyer has the time specified in paragraph 3 to perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 9B(6), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.
- (2) Buyer may, within the time specified in paragraph 3L(3), request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
- (3) Buyer shall, by the end of the times specified in paragraph 3L (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in paragraph 3N(1), then Buyer has **5 Days** after Delivery of any such items, or the times specified in paragraph 3L, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under paragraph 11L.
- (4) Continuation of Contingency: Even after the end of the time specified in paragraph 3L and before Seller cancels, if at all, pursuant to paragraph 17C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 17C(1).

C. SELLER RIGHT TO CANCEL:

- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3D(1) or 3D(2) or if the funds deposited pursuant to paragraph 3D(1) or 3D(2) are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by paragraph 5C(3); (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by paragraph 5C(5) (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 5B or 6A; (v) Deliver a letter as required by paragraph 6B; (vi) In writing assume or accept leases or liens specified in paragraph 8G; (vii) Cooperate with the title company's effort to comply with the GTO as required by paragraph 16E; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraph 5A(2) and 36; (ix) Provide evidence of authority to Sign in a representative capacity as specified in paragraph 35; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

D. BUYER RIGHT TO CANCEL:

- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in paragraph 3N(1) or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in paragraph 8, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

E. NOTICE TO BUYER OR SELLER TO PERFORM: The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 17, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.

F. EFFECT OF REMOVAL OF CONTINGENCIES:

- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

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Buyer's Initials



Seller's Initials



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 10 OF 17)

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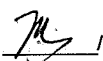
8443 Nuevo Ave

- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J**, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 11A, 11C(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 33, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**



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- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or OA or OA management company or others any fee required by **paragraphs 3, 8, 10, 11**, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11A**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11A**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 21A and paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 21A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
23. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 37A**.
26. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOAA).
27. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discover, location and evaluation of/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.



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- 29. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 30. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 31. COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 32. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
 - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
 - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
 - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
 - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
 - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
 - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
 - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
 - I. **"Counting Days"** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
 - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
 - K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
 - L. **"Electronic Copy"** or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 39** or **paragraph 40**.
 - O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
 - P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.



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- 33. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
- 34. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 35. LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 39 or 40** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within as specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).



36. LIQUIDATED DAMAGES:

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials MB / _____

Seller's Initials _____ / _____

37. MEDIATION:

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties **also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent.** Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

38. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ . The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials MB / _____

Seller's Initials _____ / _____

Property Address: 8443 Nuevo Ave, Fontana, CA 92335-4042Date: August 10, 2022**39. OFFER**

A. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

B. ☒ ENTITY BUYERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or ☐ other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: Matthew Ballantyne.
- (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By, _____ Date: 8.17.22

Printed name of BUYER: City of Fontana

☒ Printed Name of Legally Authorized Signer: Matthew Ballantyne Title, if applicable, City Manager

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

40. ACCEPTANCE

A. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMCO)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

B. ☐ Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: _____
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: Doris Purola

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of SELLER: Carol Lee Peacock

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials

REAL ESTATE BROKERS SECTION:

1. **Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
2. **Agency relationships are confirmed as stated in paragraph 2.**
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm **Sierra Realty Fontana, Inc** Lic. # **02038519**By **Ken Galasso** Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.Address **9410 Sierra Ave.** City **Fontana** State **CA** Zip **92335**B. Seller's Brokerage Firm **Sierra Realty Fontana, Inc** Lic. # **02038519**By **Ken Galasso** Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to **paragraph 22** of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder **Bennett Escrow Services Inc** Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.**PRESENTATION OF OFFER:** _____ / _____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).
Broker or Designee Initials

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Buyer's Initials

Seller's Initials

**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 17 OF 17)**Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

8443 Nuevo Ave



BUYER'S INVESTIGATION ADVISORY
(C.A.R. Form BIA, Revised 12/21)

159

Property Address **8443 Nuevo Ave, Fontana, CA 92335-4042**

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 1 OF 2)

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Ken Galasso


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www.lwolf.com


8443 Nuevo Ave

L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer  City of Fontana Date 8.17.22
Buyer _____ Date _____

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

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8443 Nuevo Ave



FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Other ("Agreement"), dated _____, on property known as 8443 Nuevo Ave, Fontana, CA 92335-4042 ("Property"), in which Doris Purola, Carol Lee Peacock is referred to as ("Seller") and City of Fontana is referred to as ("Buyer").

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.

Buyer City of Fontana Date 8.17.22

Buyer _____ Date _____

Seller Doris Purola Date _____

Seller Carol Lee Peacock Date _____

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FAAA 6/22 (PAGE 1 OF 1)



FAIR APPRAISAL ACT ADDENDUM (FAAA PAGE 1 OF 1)

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8443 Nuevo Ave



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller _____ Doris Purola Date _____
Seller _____ Carol Lee Peacock Date _____
Buyer _____ City of Fontana Date 8.17.22
Buyer _____ Date _____
Buyer's Brokerage Firm Sierra Realty Fontana, Inc DRE Lic # 02038519 Date _____
By _____ DRE Lic # 00570875 Date _____
Ken Galasso
Seller's Brokerage Firm Sierra Realty Fontana, Inc DRE Lic # 02038519 Date _____
By _____ DRE Lic # 00570875 Date _____
Ken Galasso

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, “opt out” or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant _____ Date 8.17.22

Buyer/Seller/Landlord/Tenant _____ Date _____

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CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)

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Ken Galasso Pro

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Phone: 909.822.1200

Fax: 909 822 0324

8443 Nuevo Ave



CALIFORNIA
ASSOCIATION
OF REALTORS®

SELLER COUNTER OFFER No. 1
May not be used as a multiple counter offer.
(C.A.R. Form SCO, Revised 12/21)

Date 08/19/2022

This is a counter offer to the Purchase Agreement, OR ☐ Buyer Counter Offer No. _____, ☐ Other _____ ("Offer"),
dated 08/10/2022, on property known as 8443 Nuevo Ave, Fontana, CA 92335-4042 ("Property"),
between City of Fontana ("Buyer")
and Doris Purola, Carol Lee Peacock ("Seller").
Buyer and Seller are referred to as the "Parties."

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. The Liquidated Damages and Arbitration of Disputes paragraphs in the Offer each require initials by all Parties. If either of those paragraphs is not initialed by all Parties, that paragraph is excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
 - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer, but initial and increased deposit amount(s) shall remain unchanged from the original Offer.
 - C. **OTHER TERMS:**
The city of Fontana is acquiring this property under the threat of condemnation. . The City shall before the close of escrow provide the Seller with a letter stating the property is being compulsorily or involuntarily converted allowing the Seller to exercise options allowed under IRS Section1033.

- D. The following attached documents are incorporated into this Seller Counter Offer when Signed and Delivered by both Parties (if both parties do not Sign and Deliver all attached addenda, then any acceptance of this Seller Counter Offer is not valid):

- ☐ Addendum No. _____ (C.A.R. Form ADM)
- ☐ Back Up Offer Addendum (C.A.R. Form BUO)
- ☐ Seller License to Remain in Possession Addendum (C.A.R. Form SIP) (occupancy up to 29 days)
- ☐ Seller Purchase of Replacement Property (C.A.R. Form SPRP)
- ☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA)
- ☐ Residential Lease After Sale (C.A.R. Form RLAS) (occupancy for 30 or more days)
- ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
- ☐ Other _____ ☐ Other _____

2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00 PM on the third Day after the date this Seller Counter Offer is signed in paragraph 4 (if more than one signature then, the last signature date)(or by ☐ AM/ ☐ PM on _____ (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the Signed Seller Counter Offer is Delivered to Seller or Seller's Authorized Agent.
 - B. OR If Seller withdraws this Seller Counter Offer anytime prior to Buyer's Acceptance by communicating withdrawal to Buyer or Buyer's Agent (C.A.R. Form WOO may be used).
 - C. OR If Seller accepts another offer prior to Buyer's Acceptance of this Seller Counter Offer.
3. **MARKETING TO OTHER BUYERS:** Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.
4. **OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY. BY MAKING THIS COUNTER OFFER, ANY PREVIOUS OFFER OR COUNTER OFFER CAN NO LONGER BE ACCEPTED. The terms and conditions of those documents are incorporated into this Seller Counter Offer unless Otherwise Agreed.**

Seller Doris Purola Date 08/22/2022
Seller Carol Lee Peacock Date 08/22/2022

5. **ACCEPTANCE:** I/we accept the above Seller Counter Offer (If checked ☐ **SUBJECT TO THE ATTACHED BUYER COUNTER OFFER**) and acknowledge receipt of a Copy.

Buyer City of Fontana Date 8.25.22
Buyer _____ Date _____

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SCO Revised 12/21 (PAGE 1 OF 1)

SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

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City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1762

Agenda #: I.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Planning Department

SUBJECT:

Purchase and Sale Agreement for 16762 Spring St. - Downtown Fontana Property

RECOMMENDATION:

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the north side of Spring Street, east of Juniper in Downtown Fontana, more specifically described as APN #0191-161-29.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

COUNCIL GOALS:

- Promote economic development by concentrating on job creation.
- Promote economic development by pursuing business attraction, retention, and expansion.

DISCUSSION:

The City of Fontana will be undertaking an expansive and comprehensive revitalization of Downtown Fontana. The specific geographic area to be targeted includes Upland Ave to the North, Orange Avenue to the South, Mango Ave to the East and Juniper Ave to the West. A primary component of this revitalization effort will require the acquisition, demolition, replanning, and redevelopment of several key properties within the area. To facilitate the implementation of this revitalization, the City will be acquiring various properties in Downtown Fontana. Notwithstanding the fact that any structures that exist on parcels being acquired will be demolished and therefore have no future value, parcels are being acquired at market rate based on values attributable to their current use.

The subject property recently became available for acquisition. The approximately 5,800 square foot parcel includes a building of approximately 1,500 square feet.

The city and the seller's brokers have reached agreement on a Purchase Agreement with the following proposed deal-points:

- The City of Fontana would acquire the property for the price of \$425,000.
- The City of Fontana and seller Jack Van Blarcom will equally split any/all escrow and title fees as appropriate.

- The City will have sixty days to perform any due diligence on the subject property, including completion of an environmental assessment and title review.
- Following the due-diligence period the city will have a fifteen-day financing period to complete all wire-transfers and documents necessary for the close of escrow.

Approval of the Purchase Agreement and acquisition of the subject property will assist with the assemblage of various properties located in Downtown Fontana. That assemblage will facilitate the City's vision and plans to dramatically revitalize the Downtown Community.

FISCAL IMPACT:

Monies are available for the purchase of these properties (total cost of approximately \$445,000, including escrow costs and appropriate fees) - in Fund 602 - Capital Improvements. Appropriate paperwork will be submitted to the Budget Office with the First Quarter Budget Status Report.

MOTION:

Approve staff recommendation.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ City of Fontana Date 9.12.22
☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent Sierra Realty Fontana, Inc. DRE Lic. # 02038519
 Real Estate Broker (Firm)

By Ken Galasso DRE Lic. # 00570875 Date _____
 (Salesperson or Broker-Associate, if any)

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AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the seller; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Seller's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Seller's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		
Buyer's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the buyer; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Buyer's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Buyer's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c)

"Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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16762 Spring St





FAIR HOUSING AND DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, Revised 6/22)

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1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

Race	Color	Ancestry	National Origin	Religion
Age	Sex, Sexual Orientation	Gender, Gender Identity, Gender expression	Marital Status	Familial Status (family with a child or children under 18)
Citizenship	Immigration Status	Primary Language	Military/Veteran Status	Source of Income (e.g., Section 8 Voucher)
Medical Condition	Disability (Mental & Physical)	Genetic Information	Criminal History (non-relevant convictions)	Any arbitrary characteristic

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC § 10177(l)(1); 10 CCR § 2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**

Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.

 - Sellers
 - Real estate licensees
 - Mobilehome parks
 - Insurance companies
 - Landlords
 - Real estate brokerage firms
 - Homeowners Associations ("HOAs");
 - Government housing services
 - Sublessors
 - Property managers
 - Banks and Mortgage lenders
 - Appraisers
8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;

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FHDA REVISED 6/22 (PAGE 1 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 1 OF 2)

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www.lwolf.com

16762 Spring St



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
 - F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
 - G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
 - H. Denying a home loan or homeowner's insurance;
 - I. Offering inferior terms, conditions, privileges, facilities or services;
 - J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
 - K. Harassing a person;
 - L. Taking an adverse action based on protected characteristics;
 - M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
 - N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
 - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
 - O. Retaliating for asserting rights under fair housing laws.
- 10. EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
 - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
 - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
 - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
 - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
- 11. FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
 - B. State: <https://www.dfeh.ca.gov/housing/>
 - C. Local: local Fair Housing Council office (non-profit, free service)
 - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
 - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
 - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
- 12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS: No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.**
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
 - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED **no real estate licensee is involved** in the rental;
 - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) **no real estate licensee is involved** in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
 - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED **no real estate licensee is involved** in the rental; and
 - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
 - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant _____ City of Fontana Date 9.12.22

Buyer/Tenant _____ Date _____

Seller/Landlord _____ John C. Van Blarcom Date _____

Seller/Landlord _____ Rachel A Van Blarcom Date _____

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FHDA REVISED 6/22 (PAGE 2 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 2 OF 2)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com 16762 Spring St



**WIRE FRAUD AND ELECTRONIC FUNDS
TRANSFER ADVISORY**
(C.A.R. Form WFA, Revised 12/21)

Property Address: 16762 Spring St, Fontana, CA 92335-3845 ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

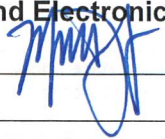
If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant		City of Fontana	Date	9.12.22
Buyer/Tenant			Date	
Seller/Landlord		John C. Van Blarcom	Date	
Seller/Landlord		Rachel A Van Blarcom	Date	

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WFA REVISED 12/21 (PAGE 1 OF 1)



WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form CPA, Revised 6/22)

Date Prepared: August 22, 2022

1. OFFER:

- A. **THIS IS AN OFFER FROM** City of Fontana ("Buyer").
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☒ Other A Municipal
- B. **THE PROPERTY** to be acquired is 16762 Spring St, situated in Fontana (City), San Bernardino (County), California, 92335-3845 (Zip Code), Assessor's Parcel No(s). 0191-161-29-0000 ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are **not** Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm** Sierra Realty Fontana, Inc License Number 02038519
Is the broker of (check one): ☐ the Seller; or ☒ both the Buyer and Seller (Dual Agent).
Seller's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Seller's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** Sierra Realty Fontana, Inc. License Number 02038519
Is the broker of (check one): ☐ the Buyer; or ☒ both the Buyer and Seller (Dual Agent).
Buyer's Agent Ken Galasso License Number 00570875
Is (check one): ☐ the Buyer's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. TERMS OF PURCHASE AND ALLOCATION OF COSTS: The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 17 pages. The Parties are advised to read all 17 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	\$ <u>425,000.00</u>	<input type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input type="checkbox"/> Days after Acceptance OR on <input type="checkbox"/> (date) (mm/dd/yyyy)	
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or (date) at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	\$ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or) business days after Acceptance by wire transfer OR <input type="checkbox"/>
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> (date) OR <input type="checkbox"/>
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	\$ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed % Buyer to pay zero points or up to % of the loan amount 17 (or) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other:
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed % Buyer to pay zero points or up to % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other:
E(3)	7A	Occupancy Type	Investment	
F	5D	Balance of Down Payment	\$ <u>425,000.00</u>	
		PURCHASE PRICE TOTAL	\$ <u>425,000.00</u>	

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CPA REVISED 6/22 (PAGE 1 OF 17)

Buyer's Initials MB / Seller's Initials /

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 1 OF 17)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: 909.822.1200

Fax: 909.822.0324

16762 Spring St



Property Address: 16762 Spring St, Fontana, CA 92335-3845

Date: August 22, 2022

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	19	Final Verification of Condition	5 (or _____) Days prior to COE	
K	26	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 15	Investigation of Property	17 (or <u>60</u>) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. <input type="checkbox"/> CR attached
		Informational Access to Property	17 (or <u>60</u>) Days after Acceptance Buyer's right to access the Property for informational purposes only is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	
L(4)	8D, 17A	Review of Seller Documents	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 16A	Preliminary ("Title") Report	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11C	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms
M(1)		Vacant Units; Tenant Occupied Units being delivered subject to tenant rights	Upon notice of recordation On COE date	<input type="checkbox"/> Tenant Occupied Unit(s) to be delivered vacant (#s _____)
M(2)	7C	Seller Occupied	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form CL attached if 30 or more days.
N		Documents/Fees/Compliance	Time for Performance	
N(1)	17A	Seller Delivery of Documents	7 (or <u>20</u>) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or <u>20</u>) Days after receipt	
N(3)	11C(2)	Time to pay fees for ordering OA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	35	Evidence of representative authority	3 Days after Acceptance	

MS



O	Intentionally Left Blank			
P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked:		
P(2)	9	Excluded Items:		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11D	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both	<input type="checkbox"/> Environmental <input type="checkbox"/> Other
Q(2)	15B(1)(D)	Environmental Survey	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both <i>if desired</i>	
Q(3)		Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(7)	22B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both <input type="checkbox"/> Each to pay their own fees	Escrow Holder: Bennett Escrow Services Inc
Q(8)	16	Owner's title insurance policy	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both	Title Company (If different from Escrow Holder): Seller's Choice
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(12)	11C(2)	OA fee for preparing disclosures	Seller	
Q(13)		OA certification fee	Buyer	
Q(14)		OA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	Unless Otherwise Agreed, Seller shall pay for separate OA move-out fee and Buyer shall pay for separate OA move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both	
Q(16)	10B(4)	Installation of safety features, required by law	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
Q(17)		fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both	
R	Additional Tenancy Documents <input type="checkbox"/> Income and Expense Statements <input type="checkbox"/> Tenant Estoppel Certificate			
S	OTHER TERMS:			

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Other

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☒ Addendum # 1 (C.A.R. Form ADM) ☐ Assumed Financing Addendum (C.A.R. Form AFA)
☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other



Property Address: **16762 Spring St, Fontana, CA 92335-3845**Date: **August 22, 2022****C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)**☒ Buyer's Investigation Advisory (C.A.R. Form BIA)☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)☒ Wire Fraud Advisory (C.A.R. Form WFA)☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)

(Parties may also receive a privacy disclosure from their own Agent.)

☐ Wildfire Disaster Advisory (C.A.R. Form WFDA)☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBBSA)☐ Trust Advisory (C.A.R. Form TA)☐ Short Sale Information and Advisory (C.A.R. Form SSIA)☐ REO Advisory (C.A.R. Form REO)☐ Probate Advisory (C.A.R. Form PA)☐ Other:☐ Other:**5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.****A. DEPOSIT:**

(1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.

(2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.

(3) **RETENTION OF DEPOSIT:** Paragraph 36, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.

C. LOAN(S):

(1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(1)**.

(2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(2)**.

(3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.

(4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

(5) Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. LIMITS ON CREDITS TO BUYER: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. ADDITIONAL FINANCING TERMS:

A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.

B. VERIFICATION OF LOAN APPLICATIONS: Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

C. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

A. OCCUPANCY: Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.

B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW: If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P** or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**A. LOAN(S):**

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

C. INVESTIGATION OF PROPERTY: This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

D. REVIEW OF SELLER DOCUMENTS: This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 16A**.

E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 16G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11C** ("CI Disclosures").

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Property Address: **16762 Spring St, Fontana, CA 92335-3845**Date: **August 22, 2022**

- G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller disclosed leased or lienied items.
- H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.
- I. REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in **paragraph 3L or 8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
 - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L or 5 Days** after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
 - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.
- 9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
 - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not included in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing and owned by Seller at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager, tenant, or other third party, the item should be listed as being excluded in **paragraph 3P(2)** or excluded by Seller in a counter offer.
 - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (5) Non-Dedicated Devices: All smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
 - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
 - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
 - (8) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in **paragraph 3N(1)**.
 - (9) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
 - (10) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

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- C. ITEMS EXCLUDED FROM SALE:** Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in paragraph 3P(2); (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**
- 10. ALLOCATION OF COSTS:**
- A. INSPECTIONS, REPORTS AND CERTIFICATES:** Paragraphs 3Q(1-3) and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).
- B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:**
- (1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in paragraph 3N(4). If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.
- (2) **POINT OF SALE REQUIREMENTS:**
- (A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.
- (B) Buyer shall be provided, within the time specified in paragraph 3N(1), unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.
- (3) **REINSPECTION FEES:** If any repair in paragraph 10B(1) is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.
- (4) **INSTALLATION OF SAFETY FEATURES:**
- (A) The following installations shall be completed prior to final verification of condition unless Otherwise Agreed: (i) approved fire extinguisher(s), sprinkler(s), and hose(s), if required by law; and (ii) drain cover and anti-entrapment device or system meeting the minimum requirements permitted by the U.S. Consumer Products and Safety Commission for any pool or spa.
- (B) If Buyer is to pay for these installations, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the installation.
- (5) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.
- 11. SELLER DISCLOSURES**
- A. WITHHOLDING TAXES:** Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); OR (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; OR (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.
- B. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- C. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
- (1) Seller shall, within the time specified in paragraph 3N(1), disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
- (2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in paragraph 3N(3), order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.



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- D. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- E. WATER CONSERVING PLUMBING DEVICES:** Civil Code § 1101.5 requires all multi-family residential and commercial real property be equipped with water-conserving plumbing devices. Seller shall, within the time specified in **paragraph 3N(1)**, disclose in writing whether the property includes any noncompliant plumbing fixtures. Seller may use C.A.R. Form SPQ or ESD. See C.A.R. Form WCMD for more information.
- F. SURVEY, PLANS, AND ENGINEERING DOCUMENTS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, Copies of surveys, plans, specifications, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
- G. PERMITS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, if in Seller's possession, copies of all permits and approvals, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
- H. STRUCTURAL MODIFICATIONS:** Seller, within the time specified in **paragraph 3N(1)**, shall in writing disclose to Buyer, known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
- I. GOVERNMENTAL COMPLIANCE:** Within the time specified in **paragraph 3N(1)**,
 (1) Seller shall disclose to Buyer any improvements, additions, alterations, or repairs to the Property made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals
 (2) Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property.
- J. VIOLATION NOTICES:** Within the time specified in **paragraph 3N(1)**, Seller shall disclose any notice of violations of any Law filed or issued against the Property and actually known to Seller
- K. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- L. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- 12. TENANCY RELATED DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:
- A. RENTAL/SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.
- B. INCOME AND EXPENSE STATEMENTS:** If checked in **paragraph 3R**, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.
- C. TENANT ESTOPPEL CERTIFICATES:** If checked in **paragraph 3R**, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.
- D. SELLER REPRESENTATIONS:** Unless otherwise disclosed under **paragraph 11**, **paragraph 12**, or under any disclosure Delivered to Buyer:
 (1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), Inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.
 (2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.
 (3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
- 13. CHANGES DURING ESCROW:**
- A.** Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in **paragraph 13B**: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.
- B.** (1) At least **7 Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change
 (2) Within **5 Days** after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
- 14. SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.

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Buyer's Initials

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Seller's Initials

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 8 OF 17)Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

16762 Spring St



15. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A. Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) A phase one environmental survey, paid for and obtained by the party indicated in **paragraph 3Q(2)**. If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in **paragraph 3L(3)**. Buyer has **5 Days** after receiving the survey to remove this portion of the Buyer's Investigation contingency.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, 12, and 16A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnify and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

16. TITLE AND VESTING:

- A. Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

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Property Address: **16762 Spring St, Fontana, CA 92335-3845**Date: **August 22, 2022**

- 17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B(6), 9B(8), 10, 11A, 11C, 11D, 11F-K, 12, 16A, and 16D**.
- B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**
- (1) Buyer has the time specified in **paragraph 3** to perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(6)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.
 - (2) Buyer may, within the time specified in **paragraph 3L(3)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
 - (3) Buyer shall, by the end of the times specified in **paragraph 3L** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in **paragraph 3N(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3L**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under **paragraph 11L**.
 - (4) Continuation of Contingency: Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 17C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 17C(1)**.
- C. SELLER RIGHT TO CANCEL:**
- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
 - (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by **paragraph 5C(5)** (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (v) Deliver a letter as required by **paragraph 6B**; (vi) In writing assume or accept leases or liens specified in **paragraph 8G**; (vii) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 16E**; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraph 5A(2)** and **36**; (ix) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 35**; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
 - (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.
- D. BUYER RIGHT TO CANCEL:**
- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
 - (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3N(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
 - (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.
- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 17**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
 - (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

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Buyer's Initials

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Seller's Initials



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 10 OF 17)

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16762 Spring St

- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J, NOT AS A CONTINGENCY OF THE SALE**, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 11A, 11C(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 33, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**

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- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or OA or OA management company or others any fee required by **paragraphs 3, 8, 10, 11**, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11A**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11A**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 21A and paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 21A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
23. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 37A**.
26. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA).
27. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discover, location and evaluation of/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.



- 29. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 30. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 31. COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 32. DEFINITIONS AND INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
 - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
 - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
 - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
 - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
 - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
 - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
 - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
 - I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
 - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
 - K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
 - L. **"Electronic Copy"** or **"Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 39** or **paragraph 40**.
 - O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
 - P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.



Property Address: 16762 Spring St, Fontana, CA 92335-3845Date: August 22, 2022

- 33. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
- 34. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 35. LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 39** or **40** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within as specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).



36. LIQUIDATED DAMAGES:

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials MB / _____

Seller's Initials _____ / _____

37. MEDIATION:

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

38. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials MB / _____

Seller's Initials _____ / _____



Property Address: **16762 Spring St, Fontana, CA 92335-3845**Date: **August 22, 2022****39. OFFER**

A. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

B. ☒ ENTITY BUYERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or ☐ other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: Matthew Ballantyne
- (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By, _____ Date: 9.12.22

Printed name of BUYER: City of Fontana

☒ Printed Name of Legally Authorized Signer: Matthew Ballantyne Title, if applicable, City Manager

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

40. ACCEPTANCE

A. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMCO)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

B. ☒ Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: John C Van Blarcom, Rachel A Van Blarcom
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: The Van Blarcom Family Trust

C. The CPA has 17 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: John C. Van Blarcom

☒ Printed Name of Legally Authorized Signer: John C Van Blarcom Title, if applicable, Co-Trustee

(Signature) By, _____ Date: _____

Printed name of SELLER: Rachel A Van Blarcom

☒ Printed Name of Legally Authorized Signer: Rachel A Van Blarcom Title, if applicable, Co-Trustee

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials

REAL ESTATE BROKERS SECTION:

- 1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
- 2. Agency relationships are confirmed as stated in paragraph 2.**
- 3. Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
- 4. Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
- 5. Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm Sierra Realty Fontana, Inc.Lic. # **02038519**By Ken Galasso Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.Address **9410 Sierra Ave.** City **Fontana** State **CA** Zip **92335****B. Seller's Brokerage Firm Sierra Realty Fontana, Inc**Lic. # **02038519**By Ken Galasso Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):**Email **Kgalasso@sierrarealty.net** Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to paragraph 22 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder **Bennett Escrow Services Inc** Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.**PRESENTATION OF OFFER:** _____ / _____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).

Broker or Designee Initials _____

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Buyer's Initials

MS

Seller's Initials

**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 17 OF 17)**



BUYER'S INVESTIGATION ADVISORY

(C.A.R. Form BIA, Revised 12/21)

Property Address **16762 Spring St, Fontana, CA 92335-3845**

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 1 OF 2)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

Phone: 909.822.1200 Fax: 909.822.0324
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwof.com

16762 Spring St

L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer  City of Fontana Date 9.12.22

Buyer _____ Date _____

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

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16762 Spring St




FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Other ("Agreement"), dated _____, on property known as 16762 Spring St, Fontana, CA 92335-3845 ("Property"), in which John C. Van Blarcom, Rachel A Van Blarcom is referred to as ("Seller") and City of Fontana is referred to as ("Buyer").

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.

Buyer		Date	<u>9.12.22</u>
	<u>City of Fontana</u>		
Buyer	_____	Date	_____
Seller	_____	Date	_____
	<u>John C. Van Blarcom</u>		
Seller	_____	Date	_____
	<u>Rachel A Van Blarcom</u>		

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FAAA 6/22 (PAGE 1 OF 1)



FAIR APPRAISAL ACT ADDENDUM (FAAA PAGE 1 OF 1)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335
Ken Galasso

Phone: 909.822.1200
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Fax: 909.822.0324
www.lwof.com

16762 Spring St



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller	<u>John C. Van Blarcom</u>	Date	
Seller	<u>Rachel A Van Blarcom</u>	Date	
Buyer	<u>City of Fontana</u>	Date	<u>9.12.22</u>
Buyer		Date	
Buyer's Brokerage Firm	<u>Sierra Realty Fontana, Inc.</u>	DRE Lic #	<u>02038519</u> Date
By		DRE Lic #	<u>00570875</u> Date
	<u>Ken Galasso</u>		
Seller's Brokerage Firm	<u>Sierra Realty Fontana, Inc</u>	DRE Lic #	<u>02038519</u> Date
By		DRE Lic #	<u>00570875</u> Date
	<u>Ken Galasso</u>		

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PRBS REVISED 12/21 (PAGE 1 OF 1)



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

Sierra Realty, 9410 Sierra Ave. Fontana CA 92335 Ken Galasso	Phone: 909.822.1200 Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201	Fax: 909.822.0324 www.lwof.com 16762 Spring St
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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, "opt out" or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant  Date 9.12.22
City of Fontana

Buyer/Seller/Landlord/Tenant _____ Date _____

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CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)

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www.lwolf.com

16762 Spring St



ADDENDUM No. 1
(C.A.R. Form ADM, Revised 12/21)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____, dated August 23, 2022, on property known as 16762 Spring St

Fontana, CA 92335-3845 ("Property/Premises"), in which City of Fontana is referred to as ("Buyer/Tenant") and John C. Van Blarcom, Rachel A Van Blarcom is referred to as ("Seller/Landlord"). Buyer/Tenant and Seller/Landlord are referred to as the "Parties."

The city of Fontana is acquiring this property under the threat of condemnation. . The City shall before the close of escrow provide the Seller with a letter stating the property is being compulsorily or involuntarily converted allowing the Seller to exercise options allowed under IRS Section1033.Offer contingent upon approval of the Fontana City Council.

The seller my retain possession for a period not to exceed 6 months from the close of escrow. The escrow holder shall retain \$10,000 from proceeds due the seller until possession is relinquished to the City.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this Addendum.

Buyer/Tenant [Signature] Date 9.12.22
City of Fontana

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Date _____
John C. Van Blarcom

Seller/Landlord _____ Date _____
Rachel A Van Blarcom

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ADM REVISED 12/21 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM No. 2
(C.A.R. Form ADM, Revised 12/21)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____

dated August 22, 2022, on property known as 16762 Spring St
Fontana, CA 92335-3845 ("Property/Premises"),

in which City of Fontana is referred to as ("Buyer/Tenant")

and John C. Van Blarcom, Trustee, Rachel A Van Blarcom, Trustee is referred to as ("Seller/Landlord").

Buyer/Tenant and Seller/Landlord are referred to as the "Parties."

The following corrections shall be incorporated into the original contract:

Paragraph 3B shall be amended to read that the close of escrow shall occur 90 days after acceptance.

Paragraph 3D1 shall provide for a initial deposit in the amount of \$10,000.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this Addendum.

Buyer/Tenant [Signature] Date 9.21.22
City of Fontana

Buyer/Tenant _____ Date _____

Seller/Landlord [Signature] Date 09/20/2022
John C. Van Blarcom, Trustee

Seller/Landlord [Signature] Date 09/20/2022
Rachel A Van Blarcom, Trustee

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ADM REVISED 12/21 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1763

Agenda #: J.

Agenda Date: 10/11/2022

Category: Consent Calendar

FROM:

Planning Department

SUBJECT:

Purchase and Sale Agreement for 16717 Spring St. - Downtown Fontana Property

RECOMMENDATION:

1. Approve a Purchase & Sale Agreement for the purchase of a building and associated land located on the south side of Spring Street, just east of Juniper in Downtown Fontana, more specifically described as APN #0191-162-18.
2. Authorize the City Manager to execute any documents necessary or appropriate to effectuate said approvals and/or agreement.

COUNCIL GOALS:

- Promote economic development by concentrating on job creation.
- Promote economic development by pursuing business attraction, retention, and expansion.

DISCUSSION:

The City of Fontana will be undertaking an expansive and comprehensive revitalization of Downtown Fontana. The specific geographic area to be targeted includes Upland Ave to the North, Orange Avenue to the South, Mango Ave to the East and Juniper Ave to the West. A primary component of this revitalization effort will require the acquisition, demolition, replanning, and redevelopment of several key properties within the area. To facilitate the implementation of this revitalization, the City will be acquiring various properties in Downtown Fontana. Notwithstanding the fact that any structures that exist on parcels being acquired will be demolished and therefore have no future value, parcels are being acquired at market rate based on values attributable to their current use.

The subject property recently became available for acquisition. The approximately 6,500 square foot parcel includes a building of approximately 2,400 square feet.

The city and the seller's brokers have reached agreement on a Purchase Agreement with the following proposed deal-points:

- The City of Fontana would acquire the property for the price of \$520,000.
- The City of Fontana and seller Eva Sandoval will equally split any/all escrow and title fees as

appropriate.

- The City will have sixty days to perform any due diligence on the subject property, including completion of an environmental assessment and title review.
- Following the due-diligence period the city will have a fifteen-day financing period to complete all wire-transfers and documents necessary for the close of escrow.

Approval of the Purchase Agreement and acquisition of the subject property will assist with the assemblage of various properties located in Downtown Fontana. That assemblage will facilitate the City's vision and plans to dramatically revitalize the Downtown Community.

FISCAL IMPACT:

Monies are available for the purchase of these properties (total cost of approximately \$535,000, including escrow costs and appropriate fees) in Fund 602 - Capital Improvement. Appropriate paperwork will be submitted to the Budget Office with the First Quarter Budget Status Report.

MOTION:

Approve staff recommendation.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

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☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant

City of Fontana Date 8.17.22

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant

Date

Agent Sierra Realty Fontana, Inc.

DRE Lic. # 02038519

Real Estate Broker (Firm)

By _____
(Salesperson or Broker-Associate, if any)

Ken Galasso DRE Lic. # 00570875

Date

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AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

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16717 Spring St

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual transaction." (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)
 Seller's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is (check one): ☐ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)
 Buyer's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)
 Buyer's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____
 Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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16717 Spring St





FAIR HOUSING AND DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, Revised 6/22)

200

1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both; discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

Race	Color	Ancestry	National Origin	Religion
Age	Sex, Sexual Orientation	Gender, Gender Identity, Gender expression	Marital Status	Familial Status (family with a child or children under 18)
Citizenship	Immigration Status	Primary Language	Military/Veteran Status	Source of Income (e.g., Section 8 Voucher)
Medical Condition	Disability (Mental & Physical)	Genetic Information	Criminal History (non-relevant convictions)	Any arbitrary characteristic

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC § 10177(l)(1); 10 CCR § 2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.
 - Sellers
 - Real estate licensees
 - Mobilehome parks
 - Insurance companies
 - Landlords
 - Real estate brokerage firms
 - Homeowners Associations ("HOAs");
 - Government housing services
 - Sublessors
 - Property managers
 - Banks and Mortgage lenders
 - Appraisers

8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
- F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
- G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
- H. Denying a home loan or homeowner's insurance;
- I. Offering inferior terms, conditions, privileges, facilities or services;
- J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
- K. Harassing a person;
- L. Taking an adverse action based on protected characteristics;
- M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
- N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
 - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
- O. Retaliating for asserting rights under fair housing laws.

10. EXAMPLES OF POSITIVE PRACTICES:

- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
- B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
- C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
- D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
- E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).

11. FAIR HOUSING RESOURCES: If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.

- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
- B. State: <https://www.dfeh.ca.gov/housing/>
- C. Local: local Fair Housing Council office (non-profit, free service)
- D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
- E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
- F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.

12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS: No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.

- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
- B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
- C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
- D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
- E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
- F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race, the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant _____ City of Fontana Date 8.17.22

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Eva Sandoval Date _____

Seller/Landlord _____ Carlos Vargas Sandoval Date _____

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FHDA REVISED 6/22 (PAGE 2 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 2 OF 2)

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**WIRE FRAUD AND ELECTRONIC FUNDS
TRANSFER ADVISORY**
(C.A.R. Form WFA, Revised 12/21)

Property Address: 16717 Spring St, Fontana, CA 92335-3844 ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.


If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant  City of Fontana Date 8.17.22

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Eva Sandoval Date _____

Seller/Landlord _____ Carlos Vargas Sandoval Date _____

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WFA REVISED 12/21 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)

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Ken Galasso

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www.lwolf.com

16717 Spring St



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form CPA, Revised 6/22)

Date Prepared: August 12, 2022

1. OFFER:

- A. **THIS IS AN OFFER FROM** City of Fontana ("Buyer").
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☒ Other A Municipal Corporation
- B. **THE PROPERTY** to be acquired is 16717 Spring St, situated in Fontana (City), _____ (County), California, 92335-3844 (Zip Code), Assessor's Parcel No(s). 0191-162-18-0000 ("Property").
 (Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are **not** Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm** Sierra Realty Fontana, Inc. License Number 02038519
 Is the broker of (check one): ☐ the Seller; or ☒ both the Buyer and Seller (Dual Agent).
Seller's Agent Ken Galasso License Number 00570875
 Is (check one): ☐ the Seller's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** Sierra Realty Fontana, Inc. License Number 02038519
 Is the broker of (check one): ☐ the Buyer; or ☒ both the Buyer and Seller (Dual Agent).
Buyer's Agent Ken Galasso License Number 00570875
 Is (check one): ☐ the Buyer's Agent (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. **TERMS OF PURCHASE AND ALLOCATION OF COSTS:** The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 17 pages. The Parties are advised to read all 17 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	<u>\$ 520,000.00</u>	<input type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input checked="" type="checkbox"/> <u>90</u> Days after Acceptance OR on <input type="checkbox"/> _____ (date) (mm/dd/yyyy)	
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or _____ (date) at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	<u>\$ 10,000.00</u> (<u>1.9</u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or _____) business days after Acceptance by wire transfer OR <input type="checkbox"/> _____
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	<u>\$ _____</u> (_____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> _____ (date) OR <input type="checkbox"/> _____
E(1)	5C(1)	Loan Amount(s): First Interest Rate _____ Points _____ If FHA or VA checked, Deliver list of lender required repairs	<u>\$ _____</u> (_____ % of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount 17 (or _____) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: _____
E(2)	5C(2)	Additional Financed Amount Interest Rate _____ Points _____	<u>\$ _____</u> (_____ % of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: _____
E(3)	7A	Occupancy Type	Investment	
F	5D	Balance of Down Payment	<u>\$ 510,000.00</u>	
		PURCHASE PRICE TOTAL	<u>\$ 520,000.00</u>	

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CPA REVISED 6/22 (PAGE 1 OF 17)

Buyer's Initials MG

Seller's Initials _____

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 1 OF 17)

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16717 Spring St



Property Address: 16717 Spring St, Fontana, CA 92335-3844

Date: August 12, 2022

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (_____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	19	Final Verification of Condition	5 (or _____) Days prior to COE	
K	26	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input checked="" type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 15	Investigation of Property	17 (or <u>60</u>) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. <input type="checkbox"/> CR attached
		Informational Access to Property	17 (or <u>60</u>) Days after Acceptance	
		Buyer's right to access the Property for informational purposes only is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.		
L(4)	8D, 17A	Review of Seller Documents	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 16A	Preliminary ("Title") Report	17 (or <u>60</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11C	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms
M(1)		Vacant Units; Tenant Occupied Units being delivered subject to tenant rights	Upon notice of recordation On COE date	<input type="checkbox"/> Tenant Occupied Unit(s) to be delivered vacant (#s _____)
M(2)	7C	Seller Occupied	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form CL attached if 30 or more days.
N		Documents/Fees/Compliance	Time for Performance	
N(1)	17A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after receipt	
N(3)	11C(2)	Time to pay fees for ordering OA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	35	Evidence of representative authority	3 Days after Acceptance	

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Buyer's Initials MB / _____ Seller's Initials _____ / _____

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 2 OF 17)

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16717 Spring St



O	Intentionally Left Blank			
P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <input type="checkbox"/> _____, <input type="checkbox"/> _____, <input type="checkbox"/> _____		
P(2)	9	Excluded Items: <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11D	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Provided by: _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____
Q(2)	15B(1)(D)	Environmental Survey	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both <i>if desired</i>	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	22B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	
Q(8)	16	Owner's title insurance policy	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): Orange Coast Title
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11C(2)	OA fee for preparing disclosures	Seller	
Q(13)		OA certification fee	Buyer	
Q(14)		OA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate OA move-out fee and Buyer shall pay for separate OA move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)	10B(4)	Installation of safety features, required by law	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
R		Additional Tenancy Documents <input type="checkbox"/> Income and Expense Statements <input type="checkbox"/> Tenant Estoppel Certificate		
S	OTHER TERMS: Offer and acceptance subject to approval by the Fontana City Council. The seller may retain possession for a period not to exceed 6 months from the close of escrow. The escrow holder shall retain \$52,000 from proceeds due the seller until the seller relinquishes possession.			

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Assumed Financing Addendum (C.A.R. Form AFA)
☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____

Property Address: **16717 Spring St, Fontana, CA 92335-3844**Date: **August 12, 2022****C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)**

- | | |
|--|---|
| <input checked="" type="checkbox"/> Buyer's Investigation Advisory (C.A.R. Form BIA) | <input checked="" type="checkbox"/> Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) |
| <input checked="" type="checkbox"/> Wire Fraud Advisory (C.A.R. Form WFA) | <input checked="" type="checkbox"/> Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA) |
| (Parties may also receive a privacy disclosure from their own Agent.) | |
| <input type="checkbox"/> Wildfire Disaster Advisory (C.A.R. Form WFDA) | <input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) |
| <input type="checkbox"/> Trust Advisory (C.A.R. Form TA) | <input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA) |
| <input type="checkbox"/> REO Advisory (C.A.R. Form REO) | <input type="checkbox"/> Probate Advisory (C.A.R. Form PA) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |

5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.**A. DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
- (2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
- (3) **RETENTION OF DEPOSIT:** Paragraph 36, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.

C. LOAN(S):

- (1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(1)**.
- (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in **paragraph 3E(2)**.
- (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
- (4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.
- (5) Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. LIMITS ON CREDITS TO BUYER: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. ADDITIONAL FINANCING TERMS:

- A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.
- B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.
- C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

- A. OCCUPANCY:** Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.

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Buyer's Initials

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Seller's Initials

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16717 Spring St



B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW: If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.**

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**A. LOAN(S):**

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

C. INVESTIGATION OF PROPERTY: This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

D. REVIEW OF SELLER DOCUMENTS: This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 16A**.

E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 16G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11C** ("CI Disclosures").



Property Address: **16717 Spring St, Fontana, CA 92335-3844**Date: **August 12, 2022**

- G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller disclosed leased or lienied items.
- H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.
- I. REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in **paragraph 3L** or **8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
 - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L** or **5 Days** after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
 - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.
- 9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
 - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not included in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing and owned by Seller at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager, tenant, or other third party, the item should be listed as being excluded in **paragraph 3P(2)** or excluded by Seller in a counter offer.
 - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
 - (5) Non-Dedicated Devices: All smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
 - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
 - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
 - (8) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in **paragraph 3N(1)**.
 - (9) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
 - (10) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

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Buyer's Initials

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Seller's Initials



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 6 OF 17)

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C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in **paragraph 3P(2)**; (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

10. ALLOCATION OF COSTS:

A. INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs **3Q(1-3)** and **(5)** only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**

B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:

(1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in **paragraph 3N(4)**. If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.

(2) **POINT OF SALE REQUIREMENTS:**

(A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.

(B) Buyer shall be provided, within the time specified in **paragraph 3N(1)**, unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

(3) **REINSPECTION FEES:** If any repair in **paragraph 10B(1)** is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.

(4) **INSTALLATION OF SAFETY FEATURES:**

(A) The following installations shall be completed prior to final verification of condition unless Otherwise Agreed: (i) approved fire extinguisher(s), sprinkler(s), and hose(s), if required by law; and (ii) drain cover and anti-entrapment device or system meeting the minimum requirements permitted by the U.S. Consumer Products and Safety Commission for any pool or spa.

(B) If Buyer is to pay for these installations, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the installation.

(5) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

11. SELLER DISCLOSURES

A. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR** (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR** (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.

B. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

C. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).

(2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.

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- D. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- E. WATER CONSERVING PLUMBING DEVICES:** Civil Code § 1101.5 requires all multi-family residential and commercial real property be equipped with water-conserving plumbing devices. Seller shall, within the time specified in **paragraph 3N(1)**, disclose in writing whether the property includes any noncompliant plumbing fixtures. Seller may use C.A.R. Form SPQ or ESD. See C.A.R. Form WCMD for more information.
- F. SURVEY, PLANS, AND ENGINEERING DOCUMENTS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, Copies of surveys, plans, specifications, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
- G. PERMITS:** Seller, within the time specified in **paragraph 3N(1)**, shall provide to Buyer, if in Seller's possession, copies of all permits and approvals, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
- H. STRUCTURAL MODIFICATIONS:** Seller, within the time specified in **paragraph 3N(1)**, shall in writing disclose to Buyer, known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
- I. GOVERNMENTAL COMPLIANCE:** Within the time specified in **paragraph 3N(1)**,
 (1) Seller shall disclose to Buyer any improvements, additions, alterations, or repairs to the Property made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals
 (2) Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property.
- J. VIOLATION NOTICES:** Within the time specified in **paragraph 3N(1)**, Seller shall disclose any notice of violations of any Law filed or issued against the Property and actually known to Seller
- K. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- L. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- 12. TENANCY RELATED DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:
A. RENTAL/SERVICE AGREEMENTS: (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.
B. INCOME AND EXPENSE STATEMENTS: If checked in **paragraph 3R**, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.
C. TENANT ESTOPPEL CERTIFICATES: If checked in **paragraph 3R**, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.
D. SELLER REPRESENTATIONS: Unless otherwise disclosed under **paragraph 11, paragraph 12**, or under any disclosure Delivered to Buyer:
 (1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), Inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.
 (2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.
 (3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
- 13. CHANGES DURING ESCROW:**
A. Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in **paragraph 13B**: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.
B. (1) At least **7 Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change
 (2) Within **5 Days** after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
- 14. SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.

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Buyer's Initials

Seller's Initials

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15. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A. Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) A phase one environmental survey, paid for and obtained by the party indicated in **paragraph 3Q(2)**. If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in **paragraph 3L(3)**. Buyer has **5 Days** after receiving the survey to remove this portion of the Buyer's Investigation contingency.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, 12, and 16A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

16. TITLE AND VESTING:

- A. Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

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- 17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in paragraphs 9B(6), 9B(8), 10, 11A, 11C, 11D, 11F-K, 12, 16A, and 16D.
- B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**
- (1) Buyer has the time specified in paragraph 3 to perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 9B(6), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.
 - (2) Buyer may, within the time specified in paragraph 3L(3), request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
 - (3) Buyer shall, by the end of the times specified in paragraph 3L (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in paragraph 3N(1), then Buyer has 5 Days after Delivery of any such items, or the times specified in paragraph 3L, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under paragraph 11L.
 - (4) Continuation of Contingency: Even after the end of the time specified in paragraph 3L and before Seller cancels, if at all, pursuant to paragraph 17C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 17C(1).
- C. SELLER RIGHT TO CANCEL:**
- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
 - (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3D(1) or 3D(2) or if the funds deposited pursuant to paragraph 3D(1) or 3D(2) are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by paragraph 5C(3); (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by paragraph 5C(5) (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 5B or 6A; (v) Deliver a letter as required by paragraph 6B; (vi) In writing assume or accept leases or liens specified in paragraph 8G; (vii) Cooperate with the title company's effort to comply with the GTO as required by paragraph 16E; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraph 5A(2) and 36; (ix) Provide evidence of authority to Sign in a representative capacity as specified in paragraph 35; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
 - (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.
- D. BUYER RIGHT TO CANCEL:**
- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
 - (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in paragraph 3N(1) or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
 - (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in paragraph 8, or Otherwise Agreed, so long as that contingency has not already been removed in writing.
- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 Days after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than 2 Days prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 17, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
 - (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

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Buyer's Initials

Seller's Initials

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- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J, NOT AS A CONTINGENCY OF THE SALE**, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 11A, 11C(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 33, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**

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- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or OA or OA management company or others any fee required by **paragraphs 3, 8, 10, 11**, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11A**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11A**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 21A** and **paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 21A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
23. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 37A**.
26. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOAA).
27. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation off/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discover, location and evaluation off/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.



- 29. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 30. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 31. COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 32. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
 - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
 - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
 - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
 - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
 - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
 - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
 - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
 - I. **"Counting Days"** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
 - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
 - K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
 - L. **"Electronic Copy"** or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 39** or **paragraph 40**.
 - O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
 - P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.



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- 33. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
- 34. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 35. LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 39** or **40** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within as specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).



36. LIQUIDATED DAMAGES:

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).

Buyer's Initials MS / _____

Seller's Initials _____ / _____

37. MEDIATION:

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

38. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials MS / _____

Seller's Initials _____ / _____

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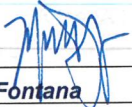
A. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

B. ☒ ENTITY BUYERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or ☐ other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: Matthew Ballantyne
- (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By,  Date: 8.12.22

Printed name of BUYER: City of Fontana

☒ Printed Name of Legally Authorized Signer: Matthew Ballantyne Title, if applicable, City Manager

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

40. ACCEPTANCE

A. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMC0)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

B. ☐ Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: _____
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The CPA has 17 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: Eva Sandoval

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of SELLER: Carlos Vargas Sandoval

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials



REAL ESTATE BROKERS SECTION:

1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.
2. Agency relationships are confirmed as stated in paragraph 2.
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm **Sierra Realty Fontana, Inc.** Lic. # **02038519**By **Ken Galasso** Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.Address **9410 Sierra Ave.** City **Fontana** State **CA** Zip **92335**B. Seller's Brokerage Firm **Sierra Realty Fontana, Inc.** Lic. # **02038519**By **Ken Galasso** Lic. # **00570875** Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.**Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):**

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to paragraph 22 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder **Bennett Escrow Services Inc** Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.**PRESENTATION OF OFFER:** _____ / _____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).
Broker or Designee Initials _____

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CPA REVISED 6/22 (PAGE 17 OF 17)

Buyer's Initials **WJ** / _____ Seller's Initials _____ / _____**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 17 OF 17)**Produced with Lorie Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com 16717 Spring St



BUYER'S INVESTIGATION ADVISORY

(C.A.R. Form BIA, Revised 12/21)

Property Address 16717 Spring St, Fontana, CA 92335-3844

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

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16717 Spring St

- L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer  City of Fontana Date 8.17-22
Buyer _____ Date _____

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16717 Spring St



FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Other ("Agreement"), dated _____, on property known as 16717 Spring St, Fontana, CA 92335-3844 ("Property"), in which Eva Sandoval, Carlos Vargas Sandoval is referred to as ("Seller") and City of Fontana is referred to as ("Buyer").

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.

Buyer City of Fontana  Date 8/17/22

Buyer _____ Date _____

Seller Eva Sandoval Date _____

Seller Carlos Vargas Sandoval Date _____

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FAAA 6/22 (PAGE 1 OF 1)



FAIR APPRAISAL ACT ADDENDUM (FAAA PAGE 1 OF 1)

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16717 Spring St



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller _____ Eva Sandoval Date _____
Seller _____ Carlos Vargas Sandoval Date _____
Buyer _____ City of Fontana Date 8.17.22
Buyer _____ Date _____
Buyer's Brokerage Firm Sierra Realty Fontana, Inc. DRE Lic # 02038519 Date _____
By _____ DRE Lic # 00570875 Date _____
Ken Galasso
Seller's Brokerage Firm Sierra Realty Fontana, Inc. DRE Lic # 02038519 Date _____
By _____ DRE Lic # 00570875 Date _____
Ken Galasso

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, “opt out” or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant _____ Date 8.17-22

Buyer/Seller/Landlord/Tenant _____ Date _____

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City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1743

Agenda #: A.

Agenda Date: 10/11/2022

Category: Public Hearing

FROM:

Planning Department

SUBJECT:

Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).

RECOMMENDATION:

(a) Determine that the project is Categorically Exempt pursuant to Sections 15060(c), Section No. 15061 (B)(3) (the "common sense" exemption), Section 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for implementing the CEQA, and direct staff to file a Notice of Exemption; and

(b) Read by title only and waive further reading of and introduce **Ordinance No. 1906**, an Ordinance of the City Council of the City of Fontana approving Master Case No. 22-110 and Municipal Code Amendment No. 22-007 amending Sections of Chapter 2, Chapter 25, Chapter 26, and Chapter 30 to remove the Development Advisory Board (DAB); amending Chapter 9 to revise the definition of "sensitive receptors"; amending Chapter 30 to exempt the City from certain zoning regulations for City owned, controlled, or leased properties or facilities; amending Chapter 30 to allow development projects over two acres to develop common open space; adding Article XV to Chapter 30 creating a No Net Loss density bonus/replacement program; and amending Section 30-489 and Table Nos. 30-489 and 30-453 to rename commercial cannabis to cannabis retail stores and reference special regulations for same; and making minor modifications to Chapter 33 related to phasing and authorization letters for permit applications; and the reading of the title constitutes the first thereof.

COUNCIL GOALS:

- Promote economic development by pursuing business attraction, retention, and expansion.
- Promote economic development by establishing a quick, consistent development process.

DISCUSSION:

Background:

The Planning Commission reviewed Master Case No. 22-110 and Municipal Code Amendment No. 22-007 during its September 20, 2022 meeting. At the conclusion of the hearing, the Planning Commission adopted Resolution PC No. 2022-040 to recommend approval of Municipal Code

Amendment No. 22-007 to the City Council.

Analysis:

The City is proposing approval of Municipal Code Amendment No. 22-007 to update Chapter 2, 25, 26, and 30 to remove the Development Advisory Board (DAB) process; Chapter 9 to revise the definition of sensitive receptors; Chapter 30 to modify park/open space requirements within the Form Based Code, add language for density bonus/replacement units to address Senate Bill 330, and provide exemptions for City initiated projects; and Chapter 30 and Chapter 33 to make minor text modifications to the Cannabis Business regulations. The amendments are proposed in order to provide flexibility, clarity, and streamlining of the City's Municipal Code.

The following is a brief summary of the proposed amendments. A detailed list of the proposed amendments are provided under the Ordinance, attached to this staff report as Attachment No. 1.

1. Revisions to Chapter 2, 25, and 26 and 30: This amendment includes the removal of all references to the Development Advisory Board (DAB) process. This will enable staff to facilitate the processing of development projects in a more efficient manner by streamlining the development process.
2. Revisions to Chapter 9, Section 9-71: With implementation of the recently-approved Sustainability Ordinance, staff has identified requirements related to certain (generally nonconforming) residential properties, which are identified as sensitive receptors but which also contain industrial or commercial uses - including storage - operating on the same property as the residence, are resulting in undesirable design outcomes for proposed development adjacent to these properties. For example, commerce center docks and truck circulation routes must be sited away from sensitive receptors, which may require relocation to an area adjacent to the street right of way resulting in a less desirable visual aesthetic, while having little to no beneficial effect on a residence already surrounded by, or at least co-located with, industrial or similar uses. As a result, staff proposes amending the definition of sensitive receptors as identified in the ordinance. Subsequent to the Planning Commission's consideration, minor language was added to allow for future interpretations by the Director of Planning should it be necessary.
3. Revisions to Chapter 30: These amendments will add to or update various sections of the zoning and development code including adding language for city-initiated projects eliminating the requirement to comply with development standards and entitlement requirements, modifying regulations related to Form Based Code open space requirements, and establishing a program for residential replacement units to address SB 330:

Add language to Chapter 30, Section 30-4: Public Projects: Division 1 of Article I of the Development Code does not currently exclude "public projects"; the proposed addition of language to the Development Code of Section 30-3.1 to Chapter 30 will improve the efficiency of public projects by eliminating the need to comply with specific development standards and the requirement for entitlement approvals following the City Council's direction to initiate public projects.

Add language to Chapter 30, Section 30-399 through 404: Public Open Space: Division 10 of Article 3 of the Development Code will be amended to allow developers to build common open space or public open space that includes amenities. Currently, developers are required to provide public open space for projects over two acres. The public open space was intended to be open to the public and constructed on private properties along street frontages; however, Planning staff has determined this can be a challenge for projects with narrower lots and interior amenities and that the provision of amenities for project residents would provide similar benefit.

Add Article XV (No Net Loss/Density Bonus Program) to Chapter 30: The proposed Development Code Amendment would establish a “No Net Loss Program” to provide that concurrent with the approval of any change in zone from a residential use to a less intensive or non-residential use, replacement units in the form of a density bonus will become available to project applicants subsequently seeking to develop property for residential use within the City. In doing so, the proposed changes will incentivize residential development and ensure that there is no net loss of residential capacity within the City as required by Senate Bill 330 (“SB 330”).

This ordinance provides a mechanism that maintains the total number of potential residential units available to build within the city while also providing immediate and direct incentives for development of properties that may otherwise remain undeveloped. Many cities, including Fontana prior to adoption of the proposed ordinance, address the SB 330 requirements by concurrent rezoning of properties, whereby a reduction in residential uses proposed on one property must be offset by a concurrent rezoning of a separate property that increases residential development potential by the same number of units “lost” on the primary property. Effectively, while meeting the letter of the law, this process focuses on potential development rather than encouraging actual development. This new ordinance provides a density bonus of up to 20% above current zoning, available on a first come, first serve basis, for any landowner or developer within the city. This process provides a valuable incentive for new residential development and places the onus for increased housing activity with the market and the development community.

This approach to meeting the requirements of SB 330 is more flexible and facilitative than simply rezoning a specific alternative property. It is targeted to facilitate development for those who are demonstrably ready, willing, and able to move forward with the development process as evidenced by submittal of entitlements for residential development, whereas a rezoned property may or may not have a property owner that is ready, willing, and able to develop.

Additionally, SB 330 specifically provides for alternative approaches beyond just rezoning property to ensure no net loss in residential capacity. Government Code Section 66300 (i)(1) states that “This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use *if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels* within the jurisdiction to ensure that there is no net loss in residential capacity” (*emphasis added*). The proposed ordinance

would ensure that upon rezoning properties subject to SB 330, the development standards, policies, and conditions applicable to other parcels are concurrently changed to ensure no net loss in residential capacity. Multiple other cities have adopted similar ordinances to meet the requirements of SB 330.

4. Revisions to Chapter 30 and Chapter 33: These amendments include clarifying inconsistencies with the cannabis application process and land use titles located within permitted uses tables.

In summary, the proposed amendments are proposed in order to provide flexibility in, and streamlining of, the Municipal Code.

FISCAL IMPACT:

None.

MOTION:

Approve staff recommendation

ORDINANCE NO. 1906

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, APPROVING MASTER CASE NO. 22-110 AND MUNICIPAL CODE AMENDMENT (MCA) NO. 22-007 AMENDING SECTIONS OF CHAPTERS 2, 25, 26, AND 30 TO ELIMINATE THE DEVELOPMENT ADVISORY BOARD (DAB); AMENDING CHAPTER 9 TO REVISE THE DEFINITION OF “SENSITIVE RECEPTORS”; AMENDING CHAPTER 30 TO EXEMPT THE CITY FROM CERTAIN ZONING REGULATIONS FOR CITY OWNED, CONTROLLED, OR LEASED PROPERTIES OR FACILITIES; AMENDING CHAPTER 30 TO ALLOW DEVELOPMENT PROJECTS OVER TWO ACRES TO DEVELOP COMMON SPACE; ADDING ARTICLE XV TO CHAPTER 30 CREATING A NO NET LESS DENSITY BONUS/REPLACEMENT PROGRAM; AND AMENDING SECTION 30-489 AND TABLE NOS. 30-489 AND 30-453 TO RENAME COMMERCIAL CANNABIS TO CANNABIS RETAIL STORES AND REFERENCE SPECIAL REGULATIONS FOR SAME, AND MAKING MINOR CLARIFYING MODIFICATIONS TO CHAPTER 33 RELATED TO PHASING AND AUTHORIZATION LETTERS FOR PERMIT APPLICATIONS.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. City staff initiated Master Case No. 22-110 and Municipal Code Amendment No. 22-007 – Update to the Fontana Municipal Code for amendments to: Chapter 2, 25, 26, and 30 to remove the Development Advisory Board (DAB) process; Chapter 9 to revise the definition of sensitive receptors; Chapter 30 to modify park/open space requirements within the Form Based Code, add language for density bonus/replacement units to address Senate Bill 330, and provide exemptions for City initiated projects, amend Chapter 30 Section 30-489 and Table No. 30-489 and 30-453; and Chapter 33 to include minor text modification to the Cannabis Business regulations.

Section 2. On September 20, 2022, the Planning Commission received public testimony and evidence presented by the applicant, City staff, and other interested parties, at the Public Hearing held with respect hereto on Master Case No. 22-110 and Municipal Code Amendment No. 22-007 as it relates to a request to amendment to Chapter 2, 25, 26, and 30 to remove the Development Advisory Board (DAB) process; Chapter 9 to revise the definition of sensitive receptors; Chapter 30 to modify park/open space requirements within the Form Based Code, amend Section 30-489 and Table No. 30-489 and 30-453, add language for density bonus/replacement units to address Senate Bill 330, and provide exemptions for City initiated projects; and Chapter 33 to include

minor text modification to the Cannabis Business regulations. During this hearing, the Planning Commission approved Resolution PC No. 2022-040 to recommend approval to City Council of Municipal Code Amendment No. 22-007.

Section 3. On October 11, 2022, the City Council held a duly noticed public hearing for Municipal Code Amendment No. 22-007, received testimony, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is in conformance with the goals and policies of the General Plan to plan Fontana as a complete community, promote a diversified economy, and promote diverse economic and social opportunities for our citizens and those who wish to invest here.

Section 4. The City of Fontana City Council hereby makes the following findings for Municipal Code Amendment No. 22-007 accordance with Section 30-40 "Purpose" of the Fontana Zoning and Development Code:

Finding: **A Zoning and Development Code may be amended by changing the development standards (text) or zoning designation map boundaries of any zone whenever such an amendment is deemed necessary to protect or promote the public's health, safety or general welfare or when modification is viewed as appropriate in the context of generally accepted planning principles, surrounding land uses, and the General Plan.**

Findings of Fact: The city initiated the proposed Municipal Code Amendment (Master Case No. 22-110 and Municipal Code Amendment No. 22-007) to amend: Chapter 2, 25, 26, and 30 to remove the Development Advisory Board (DAB) process; Chapter 9 to revise the definition of sensitive receptors; Chapter 30 to modify park/open space requirements within the Form Based Code, amend Section 30-489 and Tables No. 30-489 and 30-453 to clarify cannabis business titles and special regulations, add language for density bonus/replacement units to address Senate Bill 330, and provide exemptions for City initiated projects; and Chapter 33 to include minor text modification to the Cannabis Business regulations. These amendments would provide clarity, eliminate inconsistencies, and streamline City processes, and will improve implementation of the Municipal Code which will be beneficial to the community to promote public welfare and furthers good planning principals.

Below are the Amendments to Chapters 2, 9, 25, 26, 30, and 33 of the Municipal Code.

Section 5. Chapter 2, Article VIII. – Boards, Commissions and Committees, Footnote 6 of the Code is hereby restated and amended as follows:

Footnotes:

--- (6) ---

Cross reference— Historic preservation commission, § 5-353 et seq.; fly abatement and appeals board, § 13-98; parks and community services commission, § 19-31 et seq.; planning commission, § 21-51 et seq.; ~~development advisory board, § 30-1072.~~

Section 6. Amendments to Chapters 9 (Environmental Protection and Resource Extraction), Article V of the Municipal Code, as follows:

Sec. 9-71. - Buffering and screening/adjacent uses.

- (a) For any warehouse building larger than 50,000 square feet in size, a ten-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. For any warehouse building larger than 400,000 square feet in size, a 20-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. The buffer area(s) shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. For any warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), prisons, dormitories, and any residence including; private homes, condominiums, apartments, and living quarters, where such residence is that are not located on a parcel with an existing industrial, commercial, unpermitted or non-conforming use as determined by the Director of Planning.
- (b) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.
- (c) All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- (d) All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth

- (e) Trees shall be installed in automobile parking areas to provide at least 35 percent shade cover of parking areas within 15 years. Trees shall be planted that are capable of meeting this requirement.
- (f) Unless physically impossible, loading docks and truck entries shall be oriented away from abutting sensitive receptors. To the greatest extent feasible, loading docks, truck entries, and truck drive aisles shall be located away from nearby sensitive receptors. In making feasibility decisions, the city must comply with existing laws and regulations and balance public safety and the site development's potential impacts to nearby sensitive receptors. Therefore, loading docks, truck entries, and drive aisles may be located nearby sensitive receptors at the discretion of the planning director, but any such site design shall include measures designed to minimize overall impacts to nearby sensitive receptors.
- (g) For any warehouse building larger than 400,000 square feet in size, the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest dock door which does not exclusively serve electric trucks using a direct straight-line method.

Section 7. Amendments to the Municipal Code, Chapters 25 (Street, Sidewalks and other Public Ways), Article VII (Wireless Facilities in the Public Right-of-way) is hereby amended as followings:

Sec. 25-252. Applications.

(a) *Preapplication (PAM) application and wireless facilities in the public right-of-way application are required for all new wireless facilities in the public right-of-way (collocation, small cell facility, and all other types of wireless facilities that are not modifications or eligible facilities requests).* An applicant proposing to install a new wireless facility on either an existing or new pole/infrastructure shall submit a PAM in conjunction with an application for wireless facilities in the public right-of-way (collocation, small cell facility, and all other types of wireless facilities that are not considered modifications or eligible facilities requests) and any required supplemental information to the planning division, at 8353 Sierra Avenue, Fontana Ca. 92335. Pre-applications will be reviewed **by the Planning Department.** ~~at a development advisory board conference meeting to discuss the proposed facility, the requirements of this article, and any potential impacts of the proposed facility.~~

(b) *Wireless facilities in the public right-of-way application is required for modifications/replacement of existing wireless facilities in the public right-of-way (including eligible facilities requests).* Applications to modify/replace existing wireless facilities on an existing pole/infrastructure in the public right-of-way and for projects qualifying as eligible facilities requests shall be filed with the engineering department,

at 8353 Sierra Avenue, Fontana Ca. 92335. City staff will review the proposal along with the requirements of this article, and any potential impacts of the proposed facility.

(c) *Additional applicable permits.* In addition to the applications mentioned in subsections 25-252(a) and 25-252(b) above, the applicant is required to file applications for and obtain all applicable permits, such as, but not limited to, the following: Building permits, electrical permits, excavation permit and traffic control permit, landscaping plan check, certificate of appropriateness, and annual blanket permit for wireless facilities in the public right-of-way.

(d) *Fees.* Application fee(s) shall be submitted with any applications.

(e) *Incompleteness.* For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the city may notify the applicant in writing, and specifying the material omitted from the application.

(Ord. No. 1862 , § 5(Exh. A), 1-26-21)

Section 8. Amendments to the Municipal Code, Chapter 26, Subdivisions, Article II. - Tract Maps - Division 1 is hereby restated and amended as follows:

Section 26-26. – Definitions.

“The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of building commissioners means the five-member board appointed by the mayor with the approval of the city council which hears matters pertaining to buildings and structures relative to the Uniform Building Code.

Circulation master plan means the plan for streets and thoroughfares which has been adopted and approved by the city council, together with any approved revisions or modifications thereof.

City attorney means the city attorney, acting either directly or through properly authorized agents acting within the scope of the particular duties entrusted to them.

City engineer means the city engineer, acting either directly or through properly authorized agents acting within the scope of the particular duties entrusted to them.

County means the County of San Bernardino, and when used to modify an officer, office or department shall mean that officer, office or department of the county and shall include properly authorized agents of that officer, office or department acting within the scope of the particular duties entrusted to them.

~~Development advisory board means a board composed of various city departments, county agencies and other autonomous agencies which reviews projects for consistency with adopted codes and standards and makes recommendations to the planning commission."~~

General plan means the general plan of the city providing goals, objectives and policies for the longterm orderly development of the city.

Notice of official filing means a written notice issued by the planning department indicating that a project has received environmental clearance and is now considered as officially filed providing that all submittal requirements have been met.

Owner means the person having sufficient proprietary interest in the land to be subdivided to commence and maintain proceedings to subdivide the land under this article.

Public improvements includes streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, lighting facilities and traffic controls, including traffic control devices and traffic control signals.

Specific plan means a detailed plan which reviews economic, environmental and design impacts of development within a specific area and sets forth goals, objectives, policies and regulations for the development of that specific area.

Subdivider means any person commencing proceedings under this article to effect a subdivision of land under this article for himself or for another.

Subdivision means the division, by any subdivider, of any unit of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future, except for leases of agricultural land for agricultural purposes. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easements or railroad rights-of-way. The word "subdivision" includes a condominium project as defined in Civil Code § 1350, a community apartment project as defined in Business and Professions Code § 11004, or the conversion of five or more existing dwelling units to a stock cooperative as defined in Business and Professions Code § 11003.2.

Vesting tentative tract or parcel map means a tentative tract or parcel map which, if approved, allows development in substantial compliance with the ordinances, policies and standards in effect at the time a notice of official filing is issued by the planning department in conformance with the state Subdivision Act.

Section 9. Amendments to the Municipal Code, Chapter 26, Article II – Tract Maps - Division 2. – Tentative Tract Map Requirements, Section 26-52 – Application is hereby restated and amended as follows:

Sec. 26-52. - Application.

(a) All subdividers requesting approval of tentative tract maps shall file with the planning department a tentative tract map application in form, format and content as established by ordinance and resolution of the city council. The application shall be subject to the provisions of chapter 30, article XVI.

(b) At least one copy of the map shall be forwarded to each of the following agencies and departments, which shall have 21 calendar days after receipt thereof to comment or make recommendations with respect to the subdivision:

(1) Each government agency entitled by law to review and recommend thereon.

(2) The district engineer of the division of highways of the state, as provided by Business and Professions Code § 11528.1.

(3) The affected school districts ~~which are not members of the development advisory board.~~

(4) Publicly and privately owned utilities serving the area.

~~(c) At least one copy of the map shall be forwarded to each of the following entities members of the development advisory board:~~

~~(1) The building and safety department.~~

~~(2) The Central Valley Fire District.~~

~~(3) The Fontana Unified School District.~~

~~(4) The parks and recreation department.~~

~~(5) The police department.~~

~~(6) The public works and engineering department.~~

~~The development advisory board shall review the map and forward a recommendation with appropriate conditions to the planning commission within the processing time limits prescribed by section 30-1365.~~

Section 10. Amendments to the Municipal Code, Chapter 30, Zoning and Development Code, Article I. – Provisions and Definitions is hereby restated and amended as follows:

Sec. 30-1. Purpose.

This article establishes official land use zoning regulations and design guidelines. The zoning districts and regulations set forth in this article are consistent with the goals and policies of the general plan and are designed to:

- (1) Encourage the most appropriate use of land and ensure compatibility between uses;
- (2) Provide open space for light, air, and the preservation of resources;
- (3) Facilitate the timely provision of adequate infrastructure and community facilities;
- (4) Promote excellent architectural design; and
- (5) Promote health, safety, and general welfare of the residents and visitors of the City.

Sec. 30-2. Minimum requirements.

The interpretation and application of the provisions of this article shall be the minimum requirements for the promotion of public health, safety, and welfare. It is not the intent of this article to limit standards to minimums.

Sec. 30-3. Greater or conflicting provisions.

Where any provision of this article imposes more stringent requirements, regulations, restrictions, or limitations than are imposed or required by any other provisions of the Municipal Code, law, ordinance, restrictive covenant, or easement, this article shall govern.

Sec. 30-3.1 Public Projects.

Notwithstanding any other lawful exemptions to zoning regulations, the provisions of this title, shall not apply to any development standards or entitlement processes any buildings, improvements, lots, or premises, owned, leased, operated or controlled by the City or any City Project for public purpose by the City of Fontana. Such projects would still require discretionary review by the City.

Section 11. Amendments to the Municipal Code, Chapter 30, Article II. - Division 4. - Hearing Bodies and Notification is hereby restated and amended as follows:

Section 30-22. – Hearing bodies.

The following ~~three~~ hearing bodies shall make decisions on the various procedures provided for in this Development Code. All hearing bodies shall be responsible for the hearings indicated in Table No. 30-22.

Decisions of any “reviewing body” may be appealed to the City Council, except where State law limits such appeal to the City Engineer. If the Planning Commission is listed above as the “appeal body,” the Commission must first review an appeal before it may be forwarded to the City Council for consideration.

~~DAB—Development Advisory Board—Recommending body~~

~~DCD—Director of Community Development—Approval body~~

~~PC—Planning Commission—Approval body~~

~~CC—City Council—Approval body~~

~~PR—Parks, Community, and Human Services Commission—Recommending body~~

X- Indicates the reviewing and/or the approval body

a—Indicates that the reviewing body is to provide a recommendation to the City Council

b—Indicates that the reviewing body is to provide a recommendation to the Planning Commission

Table No. 30-22							
	Reviewing Bodies					Appeal Body	
Project Type	DAB	DCD	PR	PC	CC	PC	CC
Administrative Site Plan, Amendment	X	X				X	

Administrative Site Plan, Major	X	X				X	
Administrative Site Plan, Minor	X	X				X	
Administrative Site Plan, Modification	X	X				X	
Area Plan	X			Xa	X		
Certificate of Appropriateness					X		
Conditional Use Permit	X			X			X
Conditional Use Permit Amendment	X			X			X
Conditional Use Permit Modification	X			X			X
Density Bonus	X			Xa	X		
Design Review	X			X			X
Design Review, Amendment	X			X			X
Design Review, Modification	X			X			X
Design Review, Signs		X				X	
Director's Determination		X				X	
Development Agreements				Xa	X		

Development Agreements, Amendment				Xa	X		
General Plan Amendments	X			Xa	X		
Home Occupation Permit		X				X	
Lot Line Adjustment		X				X	
Minor Use Permit	X	X				X	
Minor Use Permit, Amendment	X	X				X	
Minor Use Permit, Modification	X	X				X	
Parcel Maps, Tentative	X	X				X	
Parcel Maps, Final		X				X	
Park Review	X		Xb	X			X
Specific Plan, Amendment	X			Xa	X		
Temporary Use		X		X			
Tract Maps, Tentative	X			X	X		
Tract Maps, Final					X		
Variances	X			X	X		
Variances, Administrative	X	X				X	

Time Extension, Parcel Map						X	
Time Extension, Tract Map				X			X
Time Extension, Projects	X	X				X	
Development Code and Zoning District Map, Amendment	X			Xa	X		

Section 12. Amendments to the Municipal Code, Chapter 30, Article II. Division 4.
– Hearing Bodies and Notification is hereby restated and amended as follows:

Section 30-24. – Posting.

(a) *City initiated projects.* If a notice of public hearing for a City initiated general plan amendment, specific plan, zone change, design review, and tentative tract or any other application affecting a specific property or properties exceeding 20 acres and/or would result in the mailing or delivering of more than 1,000 notices, the notice of public hearing shall also either be:

(1) Published in at least one newspaper of general circulation in the City no less than one time and no less than ten days prior to the date of the hearing; or

(2) Posted at least ten days prior to the hearing in at least three public places in the City, including one public place in the area directly affected by the proceeding.

(b) *Applicant initiated projects.* Notice of public hearing for applicant-initiated projects affecting a specific property shall also be made by a posting on the site (by the applicant) in a conspicuous location no longer than ten days after the initial ~~Development Advisory Board (DAB)~~ review.

(1) A four-foot by eight-foot sign or signs shall be required to be posted at the project site. Daycare notification may be a two by two banner visible from the right-of-way. The purpose of the sign notice requirement is to notify the community and the neighbors in the affected area early in the review process, allowing the applicant and the City the benefit of citizens' comments during the initial stage of project review. A cash deposit to the City is required to ensure compliance with the notification requirements including removal of

the notification sign. The project application shall not be deemed complete until the large sign is installed.

(2) Sign criteria. In order to implement the signs as an effective form of public notification, the following rules and standards shall apply.

a. *Sign size and specification.* All sign(s) shall be four feet by eight feet in size and be constructed to the specifications determined by the Planning Division. The specific project information text on the sign shall be provided by the Planning Division.

b. *Location and installation standards.* All sign(s) shall be installed according to the specifications determined by the Planning Division. The signs shall be posted on each street frontage. Additional signs may be required as determined by the Planning Division.

c. *Sign removal and maintenance.* All sign(s) shall be maintained and remain in place until the final decision on the application has been made or the application has been withdrawn. All sign(s) shall be removed by the applicant after 15 days of the final decision or date of withdrawal. Failure to remove the sign(s) within the prescribed period may result in forfeiture of the cash deposit.

Section 13. Amendments to the Municipal Code, Chapter 30, Article II. Division 6 – General Plan Amendment is hereby restated and amended as follows:

Section 30-33 – Pre-application meeting.

Prior to the filing of an application for a general plan amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The Staff recommendations~~ should be incorporated into the project prior to filing the formal application.

Section 14. Amendments to the Municipal Code, Chapter 30, Article II. – Administrative Procedures - Division 4. – Hearing Bodies and Notification, Section 30-35 “Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Section 30-35 – Reserved.

Section 15. Amendments to the Municipal Code, Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision I. Area Plan is hereby restated, amended, and renumbered as follows:

Sec. 30-49. - Submission requirements.

A proposal for an area plan shall be processed upon the application of the property owner(s), subject to the following provisions:

~~(1) Submission of a preliminary application and area plan for review by the Development Advisory Board.~~

(1) Submission of a formal area plan and related material as required on the application form for review and recommendation by the Planning Commission and final decision by the City Council.

(2) Submission of a conditional use permit and design review applications.

Section 16. Amendments to the Municipal Code, Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision I. – Area Plan, Section 30-51 is hereby deleted in entirety and amended to read as follows:

Section 30-51. – Pre-application meeting for area plan.

Prior to the filing of an application for an area plan, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 17. Amendments to the Municipal Code, Chapter 30, Article II. – Division 8. - Area Plan and Area Plan Amendment, Subdivision I. – Area, Section 30-54 “Development Advisory Board (DAB) Review” is hereby deleted and amended to read as follows:

Section 30-54 – Reserved.

Section 18. Amendments to the Municipal Code, Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision II. – Area Plan Amendments, Section 30-60 – Pre-application meeting for area plan is hereby restated and amended as follows:

Section 30-60 – Pre-application meeting for area plan.

(a) Prior to the filing of an application for an area plan amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the~~

~~project. The recommendation should be incorporated into the project prior to filing the formal application.~~

~~(b) Following the preliminary consultation of the applicant and City staff, The Director of Community Development Planning will determine when the conceptual project will be submitted to the Planning Commission for a workshop. The presentation to the Planning Commission shall be an informal presentation for informative purposes only and is only intended to obtain Planning Commission comments on the proposed project. The applicant shall not receive any rights or entitlements pursuant to this informal review procedure and the Planning Commission shall not be bound by their comments. The Planning Commission or City Council may request changes to the project when it is formally presented for their consideration even if those changes differ from the Planning Commission comments and requests made during the informal review procedure.~~

Section 19. Amendments to the Municipal Code, Chapter 30, Article II. – Administrative Procedures – Division 8. - Area Plan and Area Plan Amendment, Subdivision II. – Area Plan Amendments, Section 30-62 – Development Advisory Board (DAB) is hereby deleted and amended to read as follows:

Section 30-62 – Reserved.

Section 20. Amendments to the Municipal Code, Chapter 30, Article II. Division 9. – Specific Plan Amendment, Section 30-68. – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-68. - Pre-application meeting.

~~Prior to the filing of an application for an amendment to a specific plan, the applicant or the applicant's representative shall apply for a pre-application review by City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 21. Amendments to the Municipal Code, Chapter 30, Article II. Division 9. – Specific Plan Amendment, Section 30-70. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-70. – Reserved.

Section 22. Amendments to the Municipal Code, Chapter 30, Article II, Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision

I. – Administrative Site Plan – Major, Section 30-76 – Authority is hereby restated and amended as follows:

Sec. 30-76. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny administrative site plan, major, minor, modifications and amendment review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

Section 23. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision I. – Administrative Site Plan – Major, Section 30-78 is hereby restated and amended to read as follows:

Sec. 30-78. – Pre-application meeting.

Prior to the filing of an application for an administrative site plan, major, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 24. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision II. – Administrative Site Plan – Minor, Section 30-88. – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-88. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, minor, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 25. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision II. – Administrative Site Plan – Minor, Section 30-90. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-90. – Reserved.

Section 26. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision III. – Administrative Site Plan – Amendment, Section 30-97 is hereby restated and amended as follows:

Sec. 30-97. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny administrative site plan, amendment review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.”

Section 27. Amendments to the Municipal Code, Chapter 30, Article II. Division 10, Subdivision III. Administrative Site Plan Amendment, Section 30-98 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-98. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

Section 28. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. Subdivision III., Administrative Site Plan Amendment, 30-100. – “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-100 – Reserved.

Section 29. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. Subdivision IV., Administrative Site Plan Modification, Section 30-107 “Authority”, is hereby restated and amended as follows

Sec. 30-107. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny administrative site plan, modification review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.”

Section 30. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. Subdivision IV. Administrative Site Plan Modification, Section 30-108 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-108. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, modification, the applicant or the applicant's representative shall apply for a pre-application ~~review by City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

Section 31. Amendments to the Municipal Code, Chapter 30, Article II. Division 10. Subdivision IV. Administrative Site Plan Modification, Section 30-110. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-110 – Reserved.

Section 32. Amendments to the Municipal Code, Chapter 30, Article II. Division 11. – Design, Review, Amendment, and Modification, Subdivision I. Design Review, Section 30-117 – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-117. - Pre-application meeting.

Prior to the filing of an application for a design review, the applicant or the applicant's representative shall apply for a pre-application review by City

~~staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 33. Amendments to the Municipal Code, Chapter 30, Article II. Division 11, Subdivision I. Design Review, Section 30-119. "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-119 – Reserved.

Section 34. Amendments to the Municipal Code, Chapter 30, Article II. Division 11, Subdivision II. Design Review Amendment, Section 30-126 is hereby restated and amended as follows:

Sec. 30-126. - Pre-application meeting.

Prior to the filing of an application for a design review, amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 35. Amendments to the Municipal Code, Chapter 30, Article II. Division 11. Subdivision II. Design Review Amendment, Pre-application meeting Section 30-128, "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-128 – Reserved.

Section 36. Amendments to the Municipal Code, Chapter 30, Article II. – Division 11. Subdivision II. – Design Review - Modification, Section 30-137. "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-137. - Pre-application meeting.

Prior to the filing of an application for a design review, modification, the applicant or the applicant's representative shall apply for pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

Section 37. Amendments to the Municipal Code, Chapter 30, Article II. – Division 11. Subdivision II. – Design Review - Modification, 30-139. – "Development Advisory

Board (DAB)” review are hereby deleted in their entirety is hereby deleted and amended to read as follows:

Sec. 30-139 – Reserved.

Section 38. Amendments to the Municipal Code, Chapter 30, Article II. Division 12. – Conditional Use Permit, Amendment, and Modification, Subdivision I. – Conditional Use Permit, Section 30-146 is hereby restated and amended as follows:

Sec. 30-146. - Authority.

The Planning Commission is authorized to approve or deny applications for conditional use permit, ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval.

Section 39. Amendments to the Municipal Code, Chapter 30, Article II. Division 12. Subdivision I. Conditional Use Permit, Section 30-147. “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-147. - Pre-application meeting.

Prior to the filing of an application for a conditional use permit, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

Section 40. Amendments to the Municipal Code, Chapter 30, Article II. Division 12. Subdivision I. – Conditional Use Permit, Section 30-149. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-149 – Reserved.

Section 41. Amendments to the Municipal Code, Chapter 30, Article II. Division 12, Subdivision II. Conditional Use Permit - Amendment, Section 30-157 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-157 – Pre-application meeting.

Prior to the filing of an application for a conditional use permit amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The Staff recommendations should be incorporated into the project prior to filing the formal application. Projects~~

determined minor in nature may be waived of this process by the Director of ~~Community Development Planning~~.

Section 42. Amendments to the Municipal Code, Chapter 30, Article II, Division 12, Subdivision II. Conditional Use Permit Amendment, Section 30-159, "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-159 – Reserved.

Section 43. Amendments to the Municipal Code, Chapter 30, Article II, Division 12, Subdivision III, Conditional Use Permit Modification, Section 30-166 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-166 – Pre-application meeting.

Prior to the filing of an application for a conditional use permit modification, the applicant or the applicant's representative shall apply for a pre-application ~~review by City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~ Projects determined minor in nature may be waived of this process by the Director of Community Development.

Section 44. Amendments to the Municipal Code, Chapter 30, Article II, Division 12, Conditional Use Permit, Amendment, and Modification, Subdivision III, Conditional Use Permit, Section 30--168. "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-168 – Reserved.

Section 45. Amendments to the Municipal Code, Chapter 30, Article II, Division 13, Minor Use Permit, Section 30-175. "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-175 – Pre-application meeting.

Prior to the filing of an application for a minor use permit, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application ~~conference with the Development Advisory Board~~ review by City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

Section 46. Amendments to the Municipal Code, Chapter 30, Article II, Division 13 Minor Use Permit, Section 30-177, "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-177 – Reserved.

Section 47. Amendments to the Municipal Code, Chapter 30, Article II, Division 13, Subdivision II, Minor Use Permits Amendment, Section 30-186 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-186 – Pre-application meeting.

Prior to the filing of an application for a minor use permit amendment, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application conference with the Development Advisory Board review by City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

Section 48. Amendments to the Municipal Code, Chapter 30, Article II, Division 13, Subdivision II, Minor Use Permits Amendment, Section 30-188 “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-188 – Reserved.

Section 49. Amendments to the Municipal Code, Chapter 30, Article II. Division 13. – Minor Use Permits, Amendment, and Modification, Subdivision III. – Minor Use Permits Modification, Section 30-194 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-194. - Pre-application meeting.

Prior to the filing of an application for a minor use permit modification, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application conference with the Development Advisory Board review by City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

Section 50. Amendments to the Municipal Code, Chapter 30, Article II, Division 13, Subdivision III. Minor Use Permits Modification, Section 30-196 “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-196 – Reserved.

Section 51. Amendments to the Municipal Code, 30, Article II, Division 14, Subdivision I. Administrative Variance, Section 30-204 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-204. - Pre-application meeting.

Prior to the filing of an application for an administrative variance, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application conference with the Development Advisory Board City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

Section 52. Amendments to the Municipal Code, Chapter 30, Article II. Division 14, Variance, Subdivision I. Administrative Variance, Section 30-207. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-207 – Reserved.

Section 53. Amendments to the Municipal Code, Chapter 30, Article II. Division 14, Subdivision II. Variance, Major, Section 30-214 “Authority” is hereby restated and amended as follows:

Sec. 30-214. - Authority.

The Planning Commission is authorized to approve or deny applications for variance, major, ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval.

Section 54. Amendments to the Municipal Code, Chapter 30, Article II. Division 16. – Park Review, Section 30-231 – Authority, is hereby restated and amended as follows:

Sec. 30-231. - Authority.

The Parks, Community, and Human Services Commission (PCHSC) is authorized to review and provide comments for parks. The park review shall be presented to the PCHSC at a regular meeting. ~~during the Development Advisory Board review.~~

The Planning Commission is authorized to approve or deny applications for park review upon review of the ~~Development Advisory Board~~ and PCHSC, and to impose conditions upon such approval.

Section 55. Amendments to the Municipal Code, Chapter 30, Article II, Division 16. Park Review, Section 30-232 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-232. - Pre-application meeting.

Prior to the filing of an application for a park review, the applicant or the applicant's representative shall ~~file~~ apply for a pre-application review ~~meeting application~~ in order to meet with the Director of Planning Community Development ~~and the Development Advisory Board~~ prior to submitted the formal application.

Section 56. Amendments to the Municipal Code, Chapter 30, Article II. Division 16. – Park Review, Section 30-234. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-234 – Reserved.

Section 57. Amendments to the Municipal Code, Chapter 30, Article II. Division 17. - California Redemption Value (CRV) Recycling Collection Facility, Section 30-241. – Authority, is hereby restated and amended as follows:

Sec. 30-241. - Authority.

The Director of ~~Community Development Planning~~ or designee is authorized to approve or deny California Redemption Value (CRV) Recycling Collection Facility through the process of minor use permit review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for installation and maintenance of landscaping and erosion control measures; requirements for vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

Section 58. Amendments to the Municipal Code, Chapter 30, Article II. Division 17. - California Redemption Value (CRV) Recycling Collection Facility, Section 30-246. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-246 – Reserved.

Section 59. Amendments to the Municipal Code, Chapter 30, Article II. – Administrative Procedures – Division 18. – Temporary Use, Section 30-354. – Authority, is hereby restated and amended as follows:

Sec. 30-254. - Authority.

The Director of ~~Community Development Planning~~ or designee is authorized to approve or deny temporary use applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for buffers and/or barriers; requirements for vehicular ingress, egress, and on-site traffic circulation; regulation of hours or other characteristics of operation; establishment of development schedules or time limits for performance or completion.

Section 60. Amendments to the Municipal Code, Chapter 30, Article II. Division 21. – Mapping, Tentative Parcel Map, Tentative Tract Map, and Lot Line Adjustment, Subdivision I – Tentative Parcel Map, Section 3-280 "Authority" is hereby restated and amended as follows:

Sec. 30-280. - Authority.

The Director of ~~Community Development Planning~~ or designee is authorized to approve or deny tentative parcel map applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval.

Section 61. Amendments to the Municipal Code, Chapter 30, Article II, Division 21, Subdivision I – Tentative Parcel Map, Section 30-281 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-281. - Pre-application meeting.

Prior to the filing of an application for a tentative parcel map application the applicant or the applicant's representative shall apply for a pre-application ~~meeting application review with City Staff. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

Section 62. Amendments to the Municipal Code, Chapter 30, Article II, Division 21, Subdivision I – Tentative Parcel Map, Section 30-283 “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-283 – Reserved.

Section 63. Amendments to the Municipal Code, Chapter 30, Article II, Division 21. Subdivision II – Tentative Tract Map, Section 3-290. “Authority” is hereby restated and amended as follows:

Sec. 30-290. - Authority.

The Planning Commission is authorized to approve or deny applications for design review, ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

Section 64. Amendments to the Municipal Code, Chapter 30, Article II. Division 212. Subdivision II – Tentative Tract Map, Section 3-292, “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-292 – Reserved.

Section 65. Amendments to the Municipal Code, Chapter 30, Article II. Division 22. – Time Extension, Mapping and Project, Subdivision II – Time Extension - Tentative Tract Maps, Section 3-310. “Authority”, is hereby restated and amended as follows:

Sec. 30-310. - Authority.

The Planning Commission is authorized to approve or deny applications for time extension for tentative tract maps ~~upon review of the Development Advisory Board comments~~, and to impose conditions upon such approval.

Section 66. Amendments to the Municipal Code, Chapter 30, Article II, Division 24 Planned Unit Development (PUD), Section 30-328 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-328. - Pre-application meeting.

Prior to the filing of an application for a planned unit development, the applicant or the applicant's representative shall apply for a pre-application ~~review with City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application~~

Section 67. Amendments to the Municipal Code, Chapter 30, Article II. Division 24. – Planned Unit Development (PUD), Section 30-330. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-330 – Reserved.

Section 68. Amendments to the Municipal Code, Chapter 30, Article II. Division 25. – Density Bonus, Section 30-343, Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-343 – Reserved.

Section 69. Amendments to the Municipal Code, Chapter 30, Article II, Division 27 Non-Conforming Structures, Section 30-353, “Special exemption to permit incremental improvements to nonconforming buildings, structures, and sites with administrative site plan approval” is hereby restated, renumbered, and amended as follows:

Sec. 30-353. - Special exemption to permit incremental improvements to nonconforming buildings, structures, and sites with administrative site plan approval.

- (a) Notwithstanding any other provisions of Division 10 of this article herein to the contrary, the Director of ~~Community Development~~ Planning may permit the following limited improvements to be made to an existing nonconforming building, structure or site without the requirement that

the building, structure and/or site be improved to current Development Code standards:

- (1) Additions to existing commercial and/or industrial buildings or structures that do not exceed ten percent of the total square footage of the existing building or structure, provided said additions meet the fire protection requirements of Chapter 11 of the City Code;
 - (2) Paving, repaving or realignment of parking lots and areas, provided that the number of parking spaces is not reduced to less than currently existing and provided that all applicable drainage, storm water (NPDES), and similar requirements are met;
 - (3) Alteration of the exterior of an existing building or structure;
 - (4) Installation of new landscaping or alteration of existing landscaping, provided that the amount of landscaping is not reduced to less than currently existing unless the Director of Community Development Planning further finds that other improvements approved under this section require a reduction in the landscaping. Any allowed reduction in landscaping shall be the minimum required to permit the improvements to be constructed.
- (b) Any person seeking a special exemption under this section shall submit a completed administrative site plan application to the Community Development Planning Department in a manner prescribed by the Director of Community Development Planning and shall pay any applicable fees.
- ~~(c) Applications under this section shall be processed as prescribed in Division 3 of Article III of Chapter 30 of this Code (administrative site plan review), except for the following:~~
- ~~(1) At the option of the Director of Community Development, the application may (but is not required to) be reviewed by the Development Advisory Board prior to a decision by the Director of Community Development;~~
 - ~~(2) Notice required by Division 4 of this article shall be provided, however, it shall be sent ten calendar days prior to the decision by the Director of Community Development.~~
- (c) Notwithstanding Division 10 of this article herein, the Director of Community Development Planning shall make the following findings before granting approval of the exemption and the administrative site plan application:
- (1) All of the existing building(s), structures(s) and uses on the site are pre-existing and legal nonconforming, and are not illegal or unpermitted;

- (2) The improvement(s) subject to the exemption support(s) a pre-existing legal nonconforming building, structure and/or use already on the site;
 - (3) The exemption will provide an incremental improvement to the building, structure or use on the site in furtherance of the requirements of Chapter 30 of this Code;
 - (4) The improvement(s) subject to the exemption will not, physically, legally, or otherwise, preclude the building(s), structure(s) or the site to come into compliance with current Development Code standards at a future date;
 - (5) Granting the exemption will not substantially expand or intensify the existing or anticipated use of the building(s) and/or the site;
 - (6) Granting the exemption will not be contrary to the goals of the City's general plan or any applicable specific plan; and
 - (7) Granting the exemption will not otherwise be deleterious to the public health, safety and welfare.
- (d) The Director of ~~Community Development~~ Planning is authorized to impose such reasonable conditions upon an exemption in order to protect the health, safety and welfare of the surrounding area.
 - (e) Except as expressly set forth herein, the benefits of this section shall not abrogate, extend, expand or otherwise alter the provisions of this Division 22 and shall not eliminate or extend pre-existing legal nonconforming rights, or create them where they do not otherwise exist.
 - (f) The benefits of this section shall apply only to complete applications, as provided for in subsection (b), which have been submitted to the ~~Community Development~~ Planning Department within a period of two years following the effective date of this section. Any exemptions requested after said two-year period must be sought pursuant to Section 30-85.

Section 70. Amendments to the Municipal Code, Chapter 30, Article IX. Division 5. – Auto Center Overlay District, Section 30-643. – Minimum development standards, is hereby restated, renumbered, and amended as follows:

Sec. 30-643. - Minimum development standards.

The minimum site development standards listed in this section shall only apply to the specific planning area within the overlay district.

(1) *Planning area 1—Auto center development standards.*

a. *Building and parking setbacks.*

1. All buildings and parking, except for vehicle display pads and allowed monument signs, shall be setback from all street property lines as follows:

Sierra Avenue: 25 Feet

Citrus Avenue: 20 Feet

South Highland Avenue: 15 Feet

Secondary Streets: 10 Feet

Collector Streets: 10 Feet

Local Streets: 10 Feet

2. Vehicle display pads shall have no required setback and shall be allowed to encroach into the landscape setback. Adequate site distance must be demonstrated at street intersections and driveway entrances for each vehicle display pad. Display pads shall not exceed 14 inches in height as measured from the sidewalk grade.

3. Monument signs are required to be set back a minimum of five feet from the street property line.

b. Building height.

1. Buildings and other structures shall not exceed a maximum of 60 feet in height as measured from the top of curb located adjacent to the street property line to the highest building ridge.

c. Lot coverage.

1. No more than 50 percent of the net lot area may be covered with buildings or other structures.

d. Off-street parking and circulation.

1. Required off-street parking spaces for vehicle dealerships shall be provided at the following ratios:

Show Room: One space per 300 square feet.

Service Area: One space per 300 square feet.

Outdoor Display: One space per 2,500 square feet.

Employees: One space per employee on the maximum shift.

Note: Service department parking/stacking is counted and included as required parking spaces.

2. Except for vehicle display pads, all parking spaces shall be a minimum of nine feet wide and 19 feet deep.

3. Drive aisle widths are required to be 26 feet wide, unless otherwise required by the San Bernardino County Fire Department.

4. Driveway approaches on South Highland Avenue are required to be 55 feet deep to allow for adequate stacking distance if entry gates are closed. Driveways must demonstrate adequate turning movement widths for car carrier trucks, per the City of Fontana Traffic Engineer.

e. Landscaping.

1. All vehicle dealerships shall have a minimum of 15 percent landscaping of the net project site (minus the dealership building footprint). A maximum of seven percent of the required landscape area can be provided as decorative hardscape, including vehicle display pads and driveway approaches.

2. Required setback areas shall be landscaped with trees, shrubs, plants, grasses and hardscape as set forth within the overlay district landscape design guidelines plant palette.

3. There shall be a five-foot landscape setback between abutting auto dealership display areas.

f. Lighting.

1. On-site lighting plans shall be submitted showing the design, intensity, layout and exact fixture mounting. ~~Lighting plans shall be reviewed and approved through the required Development Advisory Board (DAB) process.~~

2. Lighting plans shall be consistent with the lighting design criteria and guidelines set forth within this overlay district.

3. Shielded fixtures shall direct all lighting downward, and shall illuminate areas used for parking and driveways.

4. All exterior areas shall have light standards no taller than 20 feet in height.

5. All lighting fixtures shall be properly shielded to prevent off-site glare. Spot fixtures shall only be downward directed,

except at strategic areas such as monument signs and other landscape locations along the project's perimeter.

6.Strings of incandescent fixtures are not allowed in any exterior commercial area.

7.Strings of incandescent fixtures are not allowed in any exterior dealership area.

g. *Walls, fences and screening.* Walls and fences constructed on an interior lot line, at the rear of the required landscape setback area, or along the 210 Freeway right-of-way shall comply with the development standards set forth herein.

1.Walls shall not exceed eight feet in height, except that within the required building and parking landscaped setback, vehicle pad display areas, walls may not exceed three feet in height.

2.All perimeter walls and fences shall be designed to be consistent with the design guidelines set forth herein.

3.Chain link fencing and all types of barbed wire are prohibited, except that chain link fencing is allowed during construction for security purposes.

4.The Freeway edge treatment shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

5.Pilasters located within 90 feet of South Highland Avenue shall also be eight-foot tall at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters will also be covered with flagstone that matches the monument sign flagstone required along South Highland Avenue, consistent with the design as set forth within the auto center design guidelines.

6. Solid eight-foot tall block walls located within the interior of auto dealerships are permitted, provided they are not visible from the public rights-of-way. Security walls that are visible from public rights-of-way shall consist of solid walls limited to three feet in height with pilasters on top that are limited to five feet in height (eight feet total height) and tubular or wrought iron fencing between pilasters.

7. All service, trash and employee parking areas shall be screened from view from all public streets by walls and approved fencing. No storage areas shall be visible from any public right-of-way, including the 210 Freeway.

8. Roof mounted mechanical equipment shall be screened and not be visible from any public rights-of-way, including the 210 Freeway. Roof mounted equipment screening techniques shall involve an integrated architectural design element which is compatible with the architectural design of the dealership building.

9. Solid block walls eight feet tall are required on the property line adjacent to A.B. Miller High School and Warren Ruble Middle School.

h. Sound attenuation.

1. All air compressor exhaust stacks shall contain noise-muffling devices.

2. Exterior loud speakers shall not be mounted higher than ten feet above finished grade, and shall be oriented toward the interior of each dealership.

(2) Planning area 2—Auto center supporting uses.

a. Building setbacks.

1. All buildings and parking areas, except for allowed monument signs, shall be setback from all street property lines as follows:

Sierra Avenue: 25 Feet

South Highland Avenue: 20 Feet

Mango Avenue: 15 Feet

210 Freeway Right-of-way: 5 Feet

2. Monument signs are required to be set back a minimum of five feet from the street property line, and must comply with site distance traffic standards at all street corners and driveway entrances.

b. Building height.

1. Buildings and other structures shall not exceed a maximum of 60 feet as measured from the top of curb located adjacent to the street property line to the highest building ridge.

c. Lot coverage:

1. No more than 50 percent of the net lot area may be covered with buildings or other structures.

d. Off-street parking and circulation.

1. Required off-street parking spaces for retail shall be provided at the ratio set forth in Chapter 30 of the Fontana Municipal Code.

2. All parking spaces shall be a minimum of nine feet wide and 19 feet deep.

3. Drive aisle widths are required to be 26 feet wide unless otherwise required by the San Bernardino County Fire Department.

e. Landscaping.

1. All retail commercial uses shall have a minimum of 15 percent landscaping of the net project site (minus the building footprint).

2. Required setback areas shall be landscaped with trees, shrubs, plants, grasses and hardscape as set forth within the overlay district landscape design guidelines plant palette.

3. For projects that are adjacent to the 210 Freeway right-of-way, there shall be a minimum five-foot wide landscape strip planted with trees and shrubs.

4. Solid block walls adjacent to the 210 Freeway right-of-way are prohibited. The Freeway edge treatment shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

f. Lighting.

1. On-site lighting plans shall be submitted showing the design, intensity, layout and exact fixture mounting. Lighting

plans shall be reviewed and approved through the required Development Advisory Board (DAB) review process.

2. Lighting plans shall be consistent with the lighting design criteria and guidelines set forth within this overlay district.

3. Shielded fixtures shall direct all lighting downward, and shall illuminate areas used for parking and driveways.

4. All exterior areas shall have light standards no taller than 20 feet in height.

5. All lighting fixtures shall be properly shielded to prevent off-site glare. Spot fixtures shall only be downward directed, except at strategic areas such as monument signs and other landscape locations along the project's perimeter.

6. Strings of incandescent fixtures are not allowed in any exterior commercial area.

g. *Walls, fences and screening.* Walls and fences constructed on an interior lot line, at the rear of the required landscape setback area, or along the 210 Freeway right-of-way shall be in keeping with the development standards set forth herein.

1. Walls shall not exceed eight feet in height, except that within the required building and parking landscaped setback, walls may not exceed three feet in height.

2. All walls shall be constructed of split face or masonry material that is compatible with the building design.

3. Chain link fencing and all types of barbed wire are prohibited, except that chain link fencing is allowed during construction for security purposes.

4. All service and trash enclosure areas shall be screened from view from all public streets by walls and approved fencing, wherever feasible. No storage areas shall be visible from any public right-of-way, including the 210 Freeway.

5. Solid block walls are prohibited. Wall edge treatments shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

6. Roof mounted mechanical equipment shall be screened and not be visible from any public rights-of-way, including the 210 Freeway. Roof mounted equipment screening techniques shall involve an integrated architectural design element which is compatible with the architectural design of the commercial building.

h. Sound attenuation.

1. A drive-through lane is not permitted adjacent to any parcel of land that is zoned for residential use.

(3) Planning areas 3 and 4.

a. All minimum site development standards listed in planning areas 1 and 2 apply to planning areas 3 and 4.

Section 71. Amendments to the Municipal Code, Chapter 30, Article XII. Division 12. – Administration and Enforcement, Section 30-781. – Sign variances, is hereby restated, renumbered, and amended as follows:

Sec. 30-781. - Sign variances.

- (a) *Purpose.* The purpose of a sign variance is to provide for deviations from the literal provisions of this article in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual sign under consideration, and to grant such variances only when it is demonstrated that such actions align with the applicability and the findings of this section.
- (b) *Authority.* The Planning Commission is authorized to approve or deny sign variance applications.
- (c) *Application.*
 - (1) Applications for a sign variance shall be filed with the Planning Division on forms, and accompanied by data, information, and fees as required by the ~~Community Development~~ Planning Department. No application shall be considered by the Planning Commission until the application is determined to be complete and all required fees have been paid to the City.
 - (2) At a minimum, the application shall include:
 - a. A statement that the applicant is the owner of the subject property or an agent thereof;
 - b. The legal description of the property involved, the proposed use, and site plans;
 - c. A reference to the specific provisions of this article that are applicable to the requested sign variance; and
 - d. The specific use and standard for which the sign variance is being requested shall be described in detail.

- ~~(d) *Development Advisory Board Review.* All applications for sign variances shall be reviewed by the Development Advisory Board to provide recommendations for the sign. The recommendations should be incorporated into the sign prior to moving forward to the Planning Commission.~~
- (d) *Limitation on variances.* In no case shall any sign variance be granted that would result in a sign that exceeds the height, size, or setback provisions of this article by 25 percent or that would increase the number of signs permitted by this article by more than 25 percent.
- (e) *Findings.* The following findings are required to be made by the Planning Commission for approval of a sign variance application, with or without conditions:
- (1) Variances from the terms of this article shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the article deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.
 - (2) The characteristics that make compliance with the requirements of this article difficult must be related to the premises for which the sign variance is sought, not some other location;
 - (3) The characteristics that make compliance with the requirements of this article difficult must not have been created by the owner of the premises, a previous owner, or the applicant; and
 - (4) The proposed sign variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase congestion in public streets, or increase the danger of fire or endanger public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City.
- (f) *Consistency.* Any sign variance granted shall be subject to such conditions as will ensure that the adjustment thereby authorized shall not constitute a grant of a special privilege inconsistent with the limitations upon other properties.
- (g) *Noticing.* Notice of hearings for sign variances shall be as set forth in Chapter 30, Article II, Division 4.

- (h) *Hearing.* Upon receipt of a complete application for a sign variance, a time and place for the hearing before the Planning Commission shall be set.
- (i) *Appeal.* The decision of the Planning Commission shall be final unless an appeal is filed. An appeal could be made as set forth in Chapter 30, Article II, Division 5.
- (j) *Time limitations.* Each sign variance granted under the provisions of this article shall become null and void two years after the date of the action approving the sign variance unless:
 - (1) The construction authorized by the sign variance or permit has been commenced within two years after the granting of the sign variance and diligently advanced to completion;
 - (2) The decision approving a sign variance contains in its findings and conditions specific authority for extending the time limit defined; or
 - (3) The Director of ~~Community Development~~ Planning finds that circumstances beyond the control of the applicant have caused delays which do not permit compliance with the time limits established.

Section 72. Amendments to the Municipal Code, Chapter 30, Article XIII. Division 2.
 – Permit and Application Procedures, Section 30-941 “Processing and hearing procedure”, is hereby restated, renumbered, and amended as follows:

Sec. 30-941. - Processing and hearing procedure.

Upon submittal of a complete application for resource extraction permit and/or resource reclamation plan and filing of all environmental documents and all documents required by the Planning Manager, consideration of the resource extraction permit or resource reclamation plan for the proposed surface mining operation or exempt activity shall be completed pursuant to the following:

- (1) The Planning Division shall, within 30 days of receipt of such applications, certify the application requests with regard to completeness in accordance with California Government Code § 65920 et seq. (Permit Streamlining Act). The Planning Division shall process the application(s) in accordance with all requirements of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) and the City's environmental review guidelines.
- (2) Within 30 days of acceptance of an application for resource extraction permit and/or resource reclamation plan as complete, the Planning Division shall notify the State Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the flood insurance rate maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the Planning Division shall also notify the State Department of Transportation that the application(s) have been received.

~~(3) Development Advisory Board. Upon deeming the application complete and completing the environmental review procedures, the Planning Division shall forward the application(s) to the Development Advisory Board (DAB). The DAB shall review the plot plan, landscape plans, elevations and any environmental review documents for the intended operation. Upon completion of the review, the DAB shall forward its recommendation and recommended approval conditions to the Planning Commission.~~

(3) Planning Commission review. The Planning Commission shall hold at least one noticed public hearing on the application for resource extraction permit and/or resource reclamation plan. The Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission. The staff report shall include, but not be limited to, recommendations concerning the following:

- a. A statement of the recommended intensity of use;
- b. Acceptable accessory uses;
- c. The suitability of the extraction and reclamation proposals; and
- d. Suggested conditions for approval to ensure that the resource extraction use and related accessory uses may be conducted and reclaimed without creating a public nuisance or otherwise adversely affecting the public welfare.

The staff report may recommend denial of the resource extraction permit and/or resource reclamation plan applications if it is determined that the intent of this article cannot be met by the proposed applications.

(4) Planning Commission approvals.

- a. The Planning Commission shall take action approving, conditionally approving or denying the resource extraction permit. If a resource extraction permit is being processed concurrently with the resource reclamation plan, the Planning Commission may simultaneously also conceptually approve the resource extraction permit. However, the Planning Commission may defer action on the resource extraction permit until taking final action on the resource reclamation plan and financial assurances.

- b. Prior to final approval of a resource reclamation plan, approval of financial assurances (as provided in this article), or any amendments to a resource reclamation plan or existing financial assurances, the Planning Commission shall:

- 1. Certify to the State Department of Conservation that the resource reclamation plan and/or financial assurances comply with the

applicable requirements of state law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. The Planning Commission may conceptually approve the resource reclamation plan and any financial assurances before submittal to the State Department of Conservation.

2. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the resource extraction permit with a condition that the planning division shall not issue any required subsidiary permits for mining operations, including grading and/or building permits, until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the reclamation plan and financial assurances.
3. Pursuant to Public Resources Code § 2774(d), the State Department of Conservation shall be given 30 days to review and comment on the reclamation plan and 45 days to review and comment on the financial assurances. The Planning Commission shall evaluate written comments received, if any, from the State Department of Conservation during the comment periods. Staff shall prepare a written response describing the disposition of the major issues raised by the state for the Planning Commission's approval. In particular, when the Planning Commission's position is at variance with the recommendations and objections raised in the state's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the operator/applicant.
- c. Once comments are received by the Department of Conservation, and within 30 days of receipt of such comments, the Planning Commission shall then take action to approve, conditionally approve, or deny the resource extraction permit and/or reclamation plan, and to approve the financial assurances pursuant to Public Resources Code § 2770(d).
- d. The decisions of the Planning Commission shall become final unless appealed to the City Council within the time period indicated in Article II, Division 5 of the Fontana Municipal Code.
- e. The Planning Division shall forward a copy of each approved Resource extraction permit and/or approved reclamation plan, and a copy of the approved financial assurance to the State Department of

Conservation. By July 1st of each year, the Planning Division shall submit to the State Department of Conservation for each active or idle mining operation a copy of any resource extraction permit or reclamation plan amendments, as applicable, or a statement that there have been no changes or amendments during the previous year.

Section 73. Amendments to the Municipal Code, Chapter 30, Article III, Division 10. – Public Open Spaces Standards, Sections 30.399 to 30.404 are hereby restated, renumbered, and amended as follows:

DIVISION 10. COMMON AND PUBLIC OPEN SPACE STANDARDS

Sec. 30-399. Purpose.

The purpose of this section is to provide common open spaces and a catalog of pre-approved public open space types that are appropriate to use within walkable urban environments.

Sec. 30-400. Applicability.

- (a) This section describes the guidelines for the development of common and public open spaces throughout the Form-Based Code areas.
- (b) The standards in this section shall apply to all proposed development within the Form-Based Code districts and shall be considered in combination with the standards for the applicable district.
- (c) Additional public open spaces can be integrated into this section as they are approved by the City of Fontana.

Sec. 30-401. Design objectives.

Common open spaces and public open spaces play an important role in place-making. Their standards must be considered alongside building form, building types, frontage types, and thoroughfares in creating urban environments. The diverse palette of common open spaces, parks and other publicly accessible open spaces are assigned to one or more downtown zones.

Sec. 30-402. Common open space and public open space required.

Each application that involves at least two acres shall be required to provide a minimum of five percent of the project area as either common open space or public open space. The required open space shall be designed in compliance with the applicable requirements from Exhibit 678404.A.—Public Open Space Types.

For development projects that are two acres or more in size that propose only commercial development (no residential uses) or civic development, the Planning Commission shall have the authority to reduce or eliminate the requirements for open space size, type, and location if the following findings are made:

- (1) The proposed commercial use(s) is incompatible with a large open space area.
- (2) The Police Department recommends the elimination or reduction of the open space requirement.
- (3) Eliminating or reducing the open space requirement promotes public health and safety.

Subdividing or phasing the project to separate commercial and residential uses or to reduce lot size to less than two acres shall not eliminate the open space requirement.

Sec. 30-403. Regulation.

- (a) Common open spaces shall be designed within private development projects for patrons of commercial development and residential communities with amenities as required in 30-404 below.
- (ab) Public open spaces shall be designed as one of the public open space types defined in Exhibit 30-404.A.
- (bc) Public open spaces shall include amenities such as seating, lighting, and landscaping.
- (ed) Public open spaces shall be built within the development area by developers as development occurs.
- (de) At the discretion of the ~~Community Development~~ Planning Director, required open space may be constructed off-site and/or as part of a larger public open space that will be provided by the City or other private developments. Sec. 30-404. General requirements.
- (f) Common open spaces shall include an amenity such as a tot lot, outdoor sports recreation area, bar-b-que with picnic tables, or equivalent. This requirement can include paseos connecting the amenity to the rest of the site.
- (fg) All public open spaces shall abut public right-of-way or be otherwise connected to public sidewalks and shall be open to the public 24 hours per day. At the discretion of the ~~Community Development~~ Planning Director, public access to a public open space may be restricted after dark.
- (gh) All public open spaces shall be visible from surrounding streets and masses of shrubs around edges shall be avoided.

Sec. 30-404. General requirements.

- (a) All public open spaces shall abut public right-of-way or be otherwise connected to public sidewalks and shall be open to the public 24 hours per day. At the discretion of the Community Development Director, public access to a public open space may be restricted after dark.
- (b) All public open spaces shall be visible from surrounding streets and masses of shrubs around edges shall be avoided.

Exhibit 404.A.—Public Open Space Types

Plaza			Pocket Park			Playground			Community Garden		
Plazas are open spaces available for civic purposes and commercial activities. Building frontages should define these spaces. Plazas are typically hardscaped.			An open space available for informal activities in close proximity to neighborhood residences.			An open space designed for the recreation of children and interspersed in residential areas. May be included in other open spaces.			An open space designed as a grouping of plots for nearby residents for small-scale cultivation. May be included within other open spaces.		
1/2 acre to 2 1/2 acres			4,000 sf to 1/2 acre			No min. or max. size			No min. or max. size		
2 streets			1 street			1 street			1 street		
			Passive recreation, accessory structure, drinking								

Passive recreation, accessory structure, drinking fountains, and paths.	fountains, and paths.	Accessory structures, drinking fountains, and paths.	Accessory structures, drinking fountains, and paths.
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Section 74. Amendments to the Municipal Code, Chapter 30, Article V, Division 4, Section 30-453 is hereby amended to replace “Medical marijuana dispensaries in Table No. 30-453 as follows:

Table No. 30-453 Uses Permitted Within Mixed Use Development Projects		
C. Business and Professional Offices	R-4	R-5
Medical marijuana dispensaries Commercial <i>Retail</i> Cannabis Businesses	—	—

Section 75. Amendments to the Municipal Code, Chapter 30, Article VI, Division 3, Section 30-489 “Uses Permitted” is hereby amended to restate and amend Sec. 30-489.-Uses Permitted, part (b), and Table No. 30-489 as follows:

(b) Uses subject to specific requirements. Permitted uses marked with an asterisk "*" indicate that the use is subject to special use regulations in Chapter 33, Section 30-491 and Chapter 15 of the Municipal Code. Conditional uses are subject to the provisions in Section 30-492.

Table No. 30-489 Allowed Uses within Commercial Zoning Districts			
Use	C-1	C-2	RMU
Retail Sales			
Adult Businesses	P*	P*	—
Antique Shop	P	P	P
Automobile Sales Agency with or without Incidental Repair and Sales Display Area	—	C	C
Automobile Supply Store (no machine shop)	P	P	P
Bakery Goods Store	P	P	P
Bar, Cocktail Lounge	C	C	C
Bicycle Shop	P	P	P
Boat Sales with Incidental Repair and Sales Display Area	—	C	C
Book Store	P	P	P

Building Materials, Retail Sale of (if contained within a completely enclosed building)	—	P	P
Building Materials with Outdoor Storage	—	P*	P*
Blueprinting Establishment	—	P	P
Commercial Cannabis <u>Retailer, Storefront Business</u> (with City Permit)	P*	P*	—
Caterer	P	P	P
Clothing Store	P	P	P
Computer Store	P	P	P
Convenience Store	P	P	P
Cyber Cafés	C	C	C
Department Store	—	P	P
Discount Store	P	P	P
Drugstore	P	P	P
Electrical Supply Store	P	P	P
Feed Store	C	M	—
Florist Shop	P	P	P
Furniture Store	P	P	P
Garden Furniture and Supplies Store	P*	P*	P*
Glass or Mirror Store	P	P	P
Grocery, Fruit, Vegetable, Meat, Fish, Poultry, or Delicatessen Store,	P	P	C
Hardware Store	P*	P*	P*
Hobby Supplies Store	P	P	P
Home Furnishing Store	P	P	P
Household Appliance Store	P	P	P
Ice Cream Store	P	P	P
Ice Storage Locker (if not more than five-ton capacity)	P	P	P
Interior Decorating Shop	P	P	P
Jewelry and Coin Store	P	P	P
Liquor Store	C	C	C
Micro-Brewery	—	C	C
Newsstand	P	P	P
Novelties Store	P	P	P
Nursery, Plant (includes statuary sales)	P*	P*	P*
Paint and Wallpaper Shop	P	P	P
Pawn Shop	—	C	C
Pet Boarding	—	M	—
Pet Shop	P	P	P
Plumbing Supply Store	—	P	P

Radio, Television, and Small Electrical Appliance Shop (including repair when incidental to retail sales)	P	P	P
Restaurant and Café, Excluding Those Having Dancing and/or Floorshows. Alcoholic Beverages are not Permitted.	P*	P*	P*
Restaurant and Café with Entertainment and/or Dancing. Alcoholic Beverages Permitted.	C*	C*	C*
Restaurant and Café Without Entertainment and/or Dancing. Alcoholic Beverages Permitted. (See Section 30-492 For Alcoholic Beverage Sales)	C	C	C
Restaurant, Drive-Thru and Take Out	P*	P*	P*
Secondhand Store	—	P	P
Shoe Store	P	P	P
Smoke/Tobacco Shop and Vape Shop	C	C	C
Sporting Goods Store	P	P	P
Swap Meet (Indoor/outdoor)	—	—	—
Tattoo Establishments	P*	P*	P*
Trailer and Mobile Home Sales and Rental	—	P*	C
Wholesale Auto Sales (requires one stall)	C	C	—
Warehousing Sales, Retail	C	P*	P*
Warehousing Sales, Wholesale	—	C	P*
Business and Professional Offices	C-1	C-2	RMU
Administrative and Professional Offices Involving no Retail Trade	P	P	P
Art Gallery	P	P	P
Financial Institution	P	P	P
Clinic, Medical or Dental, Acupuncture	P	P	P
Convention Centers	—	—	P
Government Offices	P	P	P
Medical Laboratory	—	P	P
Optician	P	P	P
Pharmacy	P	P	P
Radio/Television Studio (with transmitter)	—	C	C
Studio (without transmitter)	P	P	P
Studios for Professional Work or Teaching of Any Form Of Fine Art	P	P	P
Service Establishments	C-1	C-2	RMU
Ambulance Service	P	P	P
Animal Hospital	M	P	C
Animal Hospital (w/ Boarding)		M	—
Assembly/Meeting Hall For, Private Clubs, Religious Services, or Similar Uses	C	C	C
Automobile Fueling Station	C	C	C

Automobile and Truck Rental, Two-Ton, Single Unit Maximum	—	C	C
Automobile/Vehicle Body and Fender Repair Shop	—	C	C
Automobile/Vehicle Repair	C	C	C
Automotive Custom Repair (includes lowering and lifting)	C	C	C
Automotive Stereo, Alarm and Upholstery Installation	C	M	M
Automobile Wash,	—	M	M
Barber Shop or Beauty Parlor	P	P	P
Chemical substance abuse facility	C	C	C
Cleaners	P*	P*	P*
Clothing and Costume Rental Establishment	P	P	P
Community Care Facility	C	C	C
Community Center	C	C	C
Construction Trailer (Temporary Use Permit)	P*	P*	P*
Convalescent Hospital	M	M	C
Copying, Packing and Mailing Services	P	P	P
Day Care—Commercial	M	M	M
Day Care—Commercial (24 hour)	—	C	C
Depot—Bus	—	P*	P*
Depot—Railway, Park-and-Ride	—	P	P
Dressmaker or Millinery Shop	P	P	P
Equipment Rental	—	P*	P*
Fortune-Telling	P	P	P
Hospitals	—	M	M
Hotels	—	C	C
Laundromat, Self Service	P	P	P
Locksmith	P	P	P
Machine Shop	—	C	C
Masseur or Masseuse, Day Spa, Acupressure	—	C	C
Self-Storage Facility	—	C	C
Mortuaries	—	C	C
Library	P	P	P
Museums	P	P	P
Motel	—	C	C
Music and Vocal Instruction	P	P	P
Nightclub	—	C	C
Nursing Home	M	M	C
Parks	P	P	P
Photographer	P	P	P
Pick-Up Truck Rated Over One Ton (carrying weight), Commercial Truck or Van, or Trailer Rental	—	C	C
Picture Framing Store	P	P	P

Post office	M	M	M
Printer, Blueprint Shop	—	P	P
Private Schools	C	C	C
Public Utility Structures and Facilities	M	M	M
Publishing Establishments	—	P	P
Repair Shop for Household Appliances	P	P	P
Schools Such as Business Colleges, Music Conservatories, Dancing Schools, and Other Schools That Offer Training In Non-Industrial Professions	P	P	P
Stenographic Services	P	P	P
Swimming Pool, Commercial	P	P	P
Sign Shop in Enclosed Structure	—	P	P
Tailor	P	P	P
Telephone Answering Service or Exchange	P	P	P
Ticket Agency, Travel Bureau	P	P	P
Tire Shop	—	C	C
Truck Repair Service	—	—	—
Truck Storage Yard	—	—	—
Upholstery Shop	—	P	P
Wedding Chapel	P	P	P
Amusement Establishments	C-1	C-2	RMU
Amusement Enterprise for Children Including Pony Rides (No Stables), Merry-Go-Round, and The Like When Incidental To A Permitted Use	P	P	P
Amusement Park	—	C	C
Arcades—Pinball, Video, and the Like	—	C	C
Archery Range	—	C	C
Baseball; Batting Range	—	C	C
Bowling Alley	C	C	C
Boxing Arena	—	C	C
Dance Hall	—	C	C
Entertainment Centers	C	C	C
Golf, Driving Range, Miniature, Pitch and Putt	—	C	C
Gymnasiums, Health Spas, or Physical Culture Establishments Under 4,000 Square Feet in Floor Area	P	P	P
Gymnasiums, Health Spas, or Physical Culture Establishments Over 4,000 Square Feet in Floor Area	C	C	C
Pool Hall, Billiard Center	C	C	C
Skating Rink, Roller or Ice	C	C	C
Smoking Lounge, Hookah Lounge, Vapor Lounge, E-Lounge (allowed only as a secondary use to a full-service restaurant)	C	C	C

Theater, Indoor	C	C	C
Indoor Playground/Recreation	P	P	P
Residential Uses	C-1	C-2	RMU
Senior Housing	M	M	M
Multiple-Family Dwellings with an Area Plan			C
Other Uses	C-1	C-2	RMU
Animal Kennel	—	C	C
Animals, Small—Keeping and Raising	P*	P*	P*
Antenna, Transmitting	C	C	C
Cemetery and Related Uses	—	M	C
Construction Trailer	P*	P*	P*
Home Occupation	P*	P*	P*
Homeless Shelters	—	—	—
Emergency Shelter Subject to the activation of an Emergency Operation Center	P	P	P
Metal Storage Containers (temporary storage only with a temporary use permit)	P*	P*	P*
Museum and Art Galleries	—	M	M
Parking Lots (not related to use on same property)	—	P	P
Parking Structures	—	P	P
Research and Development	—	P	P

Section 76. Amendments to the Municipal Code, Chapter 30 is hereby amended to add Article XV “No Net Loss Program” as follows:

ARTICLE XV - NO NET LOSS PROGRAM

Sec. 30-965 - Purpose and authority

The City desires to ensure its compliance with Senate Bill 330 (SB330) and establish a no Net Loss Density Bonus Program for certain residential projects. This Chapter provides, concurrent with the approval of any change in zone from a residential use to a less intensive or non-residential use, a density bonus will become available to project applicants subsequently seeking to develop property for residential use within the City. In doing so, the proposed Section will ensure that there is no net loss of residential capacity within the City as required by SB330.

On October 9, 2019, the California Legislature adopted SB330 which, among other things, adopted Government Code Section 66300, declared a

housing crisis in the State of California and imposed certain requirements designed to streamline the construction of new housing, and prevent the loss of existing housing and land available for future residential use, unless the city concurrently changes the development standards, policies, and conditions applicable to other areas of the affected jurisdiction to ensure no net loss in residential capacity. SB330 became effective on January 1, 2020.

Sec. 30-966 - Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this Chapter shall have the following meanings:

Density Bonus. A density increase of up to those percentages above the otherwise maximum residential density as specified in this Chapter.

Density Bonus/Transfer Agreement. A legally binding agreement between a developer of a Housing Development and the City containing such terms and conditions as determined by the City Attorney, which ensures that the requirements of this Chapter are satisfied.

Density Bonus Units. Those residential units granted pursuant to the provisions of this Chapter, that exceed the maximum residential density for the development site and that are available in the Unit Bank.

Housing Development. Construction projects consisting of five or more residential units or Lots, including single-family and multifamily, that are proposed to be constructed pursuant to this Chapter.

Lot. (1) a Lot when shown as a delineated Lot of land with a number or other designation on a parcel map or tract map and not to be used for the common benefit of other Lots recorded in the Office of the County Recorder of San Bernardino County and legally created under the Subdivision Map Act ; (2) a Lot of land held under separate ownership from adjacent property that constitutes a legal lot under applicable Law.

Maximum Residential Density. The maximum number of residential units permitted by the City's General Plan Land Use Element and Zoning and Development Code, applicable to the subject property at the time an application for the construction of a Housing Development is deemed complete by the City, excluding the additional units permitted by this Chapter.

Director of Planning. The Director of Planning of the City of Fontana.

Unit Bank. The number of units available to the No Net Loss Program as a result of a change of zone from a residential use to a less intensive residential use or a non-residential use. The Director of Planning, or his or her designee, shall have the sole authority to administer and maintain the Unit Bank balances, credits and availability as he or she determines, which determination shall be final.

Sec. 30-967 - Requirements.

The City shall grant a density bonus through the No Net Loss Program to projects which meet the following criteria:

A. The project is on a parcel of at least one acre, or the applicant is processing an application concurrently with a parcel merger of two or more Lots or more which will create a Lot of not less than one-acre.

B. The project takes place in one of the following residential zones in the City:

a. Residential Estate (R-E)

b. Single-Family Residential (R-1)

c. Medium-Density Residential (R-2)

d. High-Density Residential (R-3)

e. Multi-Family/Medium-High Residential (R-4)

f. Multi-Family/High Residential (R-5)

g. Residential Planned Community (R-PC)

C. In determining the number of Density Bonus Units to be granted (transferred) pursuant to this Section, the maximum allowable residential density for the site shall be calculated as follows:

a. Multiplying the maximum density allowed under the applicable zoning designation and multiplying the result by 1.2 for a 20 percent density bonus. If the result, including the density bonus, contains a fraction of a unit, the number of allowable units shall be determined by rounding down to the nearest whole number if the fraction is below 0.5. Calculations containing fractions of 0.5 or above shall be rounded up.

b. Density bonuses in the No Net Loss Program can be combined with other density bonus programs as established in Article II, Division 25 – Density Bonus of the Fontana Municipal Code.

- i. In no case shall the number of No Net Loss/Density Bonus Units awarded under the No Net Loss Program exceed the number of units in the Unit Bank.
- ii. In no case shall the number of No Net Loss/Density Bonus Units available in the Unit Bank exceed 2,200 units.

D. A Density Bonus/Transfer Agreement shall be required for any project seeking a density bonus as part of the No Net Loss Density Bonus Program.

E. The Planning Department shall publish the available number of units available in the Unit Bank on the Planning Department's page on the City's website. The number of units available is expected to change periodically and, as such, any information contained on the City's website or any other published source shall be considered draft for informational purposes only. Confirmation of the number of units available shall be made upon submittal of a development application, including the payment of appropriate fees

Sec. 30-968 - Types of Bonuses Allowed.

A. Density Bonus. The density bonus allowed by this Chapter shall consist of those density increases specified in Section 30-967 above the maximum residential density applicable to the site as of the date of the project land use permit application.

B. Mixed use zoning allows the Housing Development to include nonresidential uses. Approval of mixed-use activities in conjunction with the No Net Loss program is permissible if authorized elsewhere under the Fontana Municipal Code and subject to those requirements. A density bonus will be granted only for the residential portion of a mixed use development.

Sec. 30-969 - Development Standards.

All development standards for the base zone and/or overlay district shall be met. Granting of a density bonus does not constitute approval of or grounds for modification or waiver of any development standard or other requirement of the Fontana Municipal Code.

Sec. 30-970 - Processing of No Net Loss Program Requests.

An Application which proposes to change a land use designation or zoning ordinance to a less intensive use may request concurrent approval by the City Council to transfer the unit reduction to a No Net Loss Density Bonus Bank for the purpose of complying with SB330.

An Application which proposes to utilize units available in the No Net Loss Density Bonus Bank shall submit a density bonus transfer application in conjunction with the permit and entitlement application submittal package required for the project. A density bonus transfer application pursuant to this Chapter shall be processed along with the application for development. The process for obtaining preliminary approval of the Density Bonus Transfer Agreement, shall be as follows:

- a. Filing. An applicant proposing a Housing Development pursuant to this chapter shall submit a concurrent application for a Density Bonus Transfer Agreement as part of the submittal of any formal request for approval of a Housing Development. The application, whether a pre-application or a formal application, shall include:
 - b. A general description of the proposed project, general plan description, applicable zoning, maximum possible density permitted under the current zoning and general plan description and such other information as is necessary.
 - c. A calculation of the density bonus allowed pursuant to this division.
 - d. A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and general plan description.
 - e. City review of and action on the applicant's proposal for a density bonus shall occur concurrently with the processing of any other required entitlements, if any. The fact that another required entitlement might be subject to discretionary approval does not subject the application for a density bonus/transfer under this section to discretionary approval; they will merely be processed at the same time.

Sec. 30-971 - No Net Loss Program Density Bonus Agreement.

A. The terms of the draft density bonus/transfer agreement (Agreement) shall be reviewed and revised as appropriate by the Director of Planning and the City Attorney for final approval.

B. At a minimum, the Agreement shall include the following:

1. The total number of units, both permitted and available through the density bonus/transfer, proposed within the Housing Development;
2. A schedule for completion and occupancy of the units; and
3. A description of remedies for breach of the Agreement by either party.

Sec. 30-972 - Implementation.

A. The provisions of this Chapter shall be administered by the Planning Department.

B. Projects requesting density bonus/transfer through this No Net Loss Program are subject to processing through the requirements in this Chapter.

Section 77. Amendments to the Municipal Code, Chapter 33, Section 30-7 “Maximum Number of Commercial Cannabis Businesses Authorized and Designated Locations; Application Process”, is hereby restated and amended as follows:

Sec. 33.-7– Maximum Number of Commercial Cannabis Businesses Authorized and Designated Locations; Application Process.

1. The maximum number of Commercial Cannabis Permits that may be issued in the City is three (3). One may be issued for the North Area, one may be issued for the Central Area and one may be issued for the South Area based on the boundaries of the Commercial Cannabis Map approved by the City Council concurrently with the adoption of this Chapter. An Applicant will be approved for no more than one (1) Commercial Cannabis Permit within the City.
1. The process for issuing Commercial Cannabis Permits to qualified cannabis businesses is meant to result in qualified businesses that

will operate in accordance with state and local law, be successful, contribute positively to the community and local economy, and avoid secondary adverse impacts. Toward that objective, the application process includes these ~~five~~four phases:

- (1) PHASE ONE: Application submittal. This includes submitted complete information, completed Livescan and background check information (state and federal database) of all Responsible Persons, processing fees, conceptual renderings and location identification.
- (2) PHASE TWO: Initial scoring of application by a qualified third party.
- (3) PHASE THREE: Interview process.
- (4) PHASE FOUR: Final scoring, and, if permits available, permit issuance.

Section 78. Amendments to the Municipal Code, Chapter 33, Section 30-8 “Initial Commercial Cannabis Permit Application and Scoring”, is hereby restated and amended as follows:

Sec. 33.-8– Initial Commercial Cannabis Permit Application and Scoring

(a) The City Manager may establish additional submittal requirements for an application for a Commercial Cannabis Permit. The intent of this Chapter is to create a merit-based, competitive evaluation system. Applications submitted by legal representatives, consultants, partners or investors will not be accepted. The following information shall be included in any application for a Commercial Cannabis Permit:

- (1.) Name of Applicant
- (2.) Business Trade Name (if applicable) of the applicant
- (3.) Identification of Owner(s) (full name, primary phone number, social security number or individual taxpayer identification number, date and place of birth, email address, and mailing address for the primary owner submitting the Application)

(4.) For each person that is an “owner” of the Applicant,

- (i.) Percentage of interest held in the Applicant entity by each owner;
- (ii.) Whether the owner has an ownership or financial interest, as defined in section 5003 of the Regulations, in any other Commercial Cannabis Business licensed under the AUMA or MAUCRSA;
- (iii.) A copy of each Responsible Person’s government-issued identification, acceptable forms are a document issued by a federal, state, county, or municipal government that includes the name, date of birth, physical description, and picture of the owner, such as a driver’s license;
- (iv.) A detailed description of the owner’s criminal convictions, if applicable. A conviction for this purpose means a plea or guilty verdict of guilty or a conviction following a plea of nolo contendere. Convictions dismissed under Penal Code section 1203.4 or equivalent non-California law must be disclosed. Convictions dismissed under Health & Safety Code section 11361.8 or equivalent non-California law must be disclosed. Juvenile Adjudications and traffic infractions under \$300 that did not involve alcohol, dangerous drugs, or controlled substances do not need to be included. For each conviction, provide: (1) the date of conviction; (2) dates of incarceration, if applicable; (3) dates of probation, if applicable; (4) dates of parole, if applicable; (5) a detailed description of the offense for which the owner was convicted; and (6) a statement of rehabilitation for each conviction written by the owner that demonstrates the owner’s fitness for consideration;
- (v.) If applicable, a detailed description of a commercial cannabis license, revocation of a

commercial cannabis license, or sanctions for unlicensed Commercial Cannabis Activity by a licensing authority or local agency against the Applicant or a business entity in which the Applicant was an owner or officer within the three (3) years immediately preceding the date of the application;

- (vi.) If applicable, a detailed description if the City issued the Applicant a notice or citation for unlicensed Commercial Cannabis Activity, or if the Applicant was a defendant in a civil or criminal proceeding filed by the City or the People of the State of California, for allowing, causing, or permitting unlicensed commercial cannabis activities within the City's jurisdiction;
- (vii.) An attestation of each owner as follows: "Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact or omission may be cause for rejection or denial of this application, or revocation of any Commercial Cannabis Permit or any permit, license or approval issued in reliance thereon."
- (viii.) Authorization letter. "Authorization Letter" is Proof of ownership, lease agreement, or a "Letter of Intent" to lease premises proposed by Applicant for operation of a Commercial Cannabis Business, executed with notarial acknowledgement, by owner of premises. If a "Letter of Intent" is furnished, no more than one (1) Applicant may have a Letter of Intent agreement with the landlord per address.
- (5) Primary Contact: The contact information for the Applicant's designated primary contact person, including the name, title, phone number, and email address of said individual.
- (6) Qualifications and Experience of Applicants and Owners: The application shall include information

concerning any special business or professional qualifications or licenses of the applicants and owners, and the years of relevant and related experience, that would add to the number or quality of services that facility would provide, or otherwise demonstrates the Applicants' and owners' capacity to operate a successful commercial cannabis facility in compliance with applicable laws and regulations.

- (7) Disclosure of Lobbying Activity: If Applicant contracted, employed or in any manner paid or will pay any person for influencing or attempting to influence an elected official, appointed official or any employee of the City, shall fully disclose the name of individuals and organization(s) performing lobbying services.
- (8) Description of Operating Procedures: Applications shall include a detailed description of the Applicant's proposed operating procedures for each commercial cannabis activity, including an explanation for how the business will comply with the operating regulations of this Code and state law. The application must include copies of any applicable policies or manuals of the Applicant and address each of the following, if applicable:
 - (i.) Transportation Procedures: A description of the procedure for transporting cannabis and cannabis products, including whether or not the Applicant will be transporting cannabis or cannabis products or contracting for transportation services.
 - (ii.) Inventory Procedures:
 - 1. A description of the Applicant's procedure for receiving shipments of inventory;
 - 2. Where the Applicant's inventory will be stored on the premises and how records of the inventory will be maintained; and

3. Procedure for performing inventory reconciliation and for ensuring that inventory records are accurate.

(iii.) Quality Control Procedures:

1. Procedures for preventing the deterioration of cannabis or cannabis products held by the Applicant;
2. Procedures for ensuring that cannabis and cannabis products are properly packaged and labeled; and
3. Procedure for ensuring that an independent licensed testing laboratory samples and analyzes cannabis and cannabis products held by the Applicant.

(iv.) Security Procedures: All Applicants shall propose sufficient security measures to deter and prevent the unauthorized access or entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the Commercial Cannabis Business (together a "Security Plan"). The proposed Security Plan will remain confidential and shall include, but shall not be limited to, all of the following:

1. Preventing individuals from remaining on the premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the permitted operations of the Commercial Cannabis Business.
2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.
3. How and where all cannabis and cannabis products will be stored in a secured and locked room, safe, or vault.

How all cannabis and cannabis products, will be kept in a manner as to prevent diversion, theft, and loss.

4. Procedures for installing 24-hour security surveillance cameras (CCTV) of at least HD-quality video with audio to monitor all entrances and exits to and from the premises, all interior spaces within the Commercial Cannabis Business which are open and accessible to the public, all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur. Procedures for how the Applicant will ensure that the security surveillance camera's footage is remotely accessible to law enforcement, and that it is compatible with the City's software and hardware. In addition, procedures on how remote and real-time, live access to the video footage from the cameras will be provided to law enforcement. Procedures for ensuring video recordings are maintained for a minimum of sixty (60) calendar days, and procedures to make them available to law enforcement upon request. Procedures to ensure video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the Commercial Cannabis Business.
5. A description of where sensors will be installed to detect entry and exit from all secure areas.
6. A description of procedures of installing panic buttons in the premises.
7. Description of having a professionally installed, maintained, and monitored

alarm system, with the required City alarm permit as required by this Fontana City Code Section 14-391, et seq.

8. A description of the physical security features and improvements that will be installed on the exterior and within the interior of the building, in full compliance with all applicable Building and Safety and Fire Code requirements and any applicable zoning requirements. Use of wrought iron on any exterior door, window or opening is prohibited.
9. Procedures on establishing a plan to have security personnel on-site 24 hours a day, or alternative security as authorized by the City. Description or documentation showing that the proposed security personnel are licensed by the State of California Bureau of Security and Investigative Services personnel. Procedure to submit to the City and the City's law enforcement agency the names and contact information of security personnel, with copies of state-issued licenses and permits, government-issued identification form, and photographs of uniforms and badges. Acknowledgement from Applicant indicating that it shall be responsible for providing this confirming information to law enforcement, with updating information within seven (7) calendar days of a change in security personnel, agents, or representatives.
10. Procedures on how each Applicant shall have the capability to remain secure during a power outage and ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

11. Identification of a designated security representative/liaison to the City, who shall be reasonably available to meet with City staff, as well as law enforcement regarding any security related measures or operational issues.
12. A storage and transportation plan, describing in detail the procedures for safely and securely receiving, storing and transporting all cannabis, cannabis products, including the use of child-safe cannabis containers, and any currency.
13. An affirmative commitment that the Applicant will cooperate with the City whenever the City Manager, or his or her designee, makes a request, upon reasonable notice, to inspect or audit the effectiveness of any Security Plan or of any other requirement of this subsection.
14. A description and plan of how the Applicant will notify law enforcement within 24 hours after discovering any of the following:
 - a. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by law enforcement.
 - b. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any agent or employee of the Commercial Cannabis Business.
 - c. The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or

employees or agents of the
Commercial Cannabis Business.

d. Any other breach of security.

- (9) All applicants shall submit a workforce plan that may include, but is neither limited to, nor required to include, a (1) commitment for local hires; (2) commitment to offer apprenticeships and/or compensation for continuing education in the field; (3) pay a living wage to its employees, and (4) draft collective bargaining agreement with labor organization that currently represents cannabis workers in the United States.
- (10) Seller's Permit: The Applicant shall provide a valid seller's permit number issued by the California Department of Tax and Fee Administration, if applicable. If the Applicant has not yet received a seller's permit, the applicant shall attest that the Applicant is or will before commencing operations, apply for a seller's permit.
- (11) Indemnification Agreement: To the fullest extent permitted by local, state and federal law, the City shall not assume any liability whatsoever with respect to having issued a Commercial Cannabis Permit or otherwise approving the operation of any Commercial Cannabis Business. As a condition to the approval of any Commercial Cannabis Permit, the Applicant is to execute a separate Indemnification Agreement prepared by the City that fully indemnifies the City for all liabilities associated with the Commercial Cannabis Permit, the Commercial Cannabis Permittee's Commercial Cannabis Activities, and any action taken by the Cannabis Permittee. The Indemnification Agreement shall include the defense of the City and reimbursement of all fees, costs and expenses incurred by the City related to any action arising from the Agreement.
- (12) Payment of Application Fee: Each Applicant shall pay the applicable fee(s) pursuant to this Chapter.

- (13) Each Applicant shall provide the City a Security deposit or bond for code compliance costs. The Security deposit or bond shall be in an amount established by the City Council and shall be provided with the application.
- (14) Site identification and conceptual renderings of the interior and exterior of the proposed premises, which shall not be less than 4,000 square feet. Site identification shall include, but not be limited to:
 - (i.) A complete and detailed site plan of the premises, interior and exterior elevations of the premises, and a map showing the premises' location within the City. The site plan and must comply with the following:
 - 1. Shows the boundaries of the property and the proposed premises to be utilized, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, bathrooms, windows, doorways, and common or common shared entryways, and a brief statement of the principal activity to be conducted therein;
 - 2. Map identifying any instruction in kindergarten or any grades 1 through 12, day care, park, Youth and Recreation Center facilities, City boundaries and any Commercial Cannabis Business located within 600 feet of the property lines of the proposed location. If the proposed location is not within 600 feet of any such uses, identify on the map the closest such use, and the distance in feet between that use and the property line of the proposed location;

3. Identifies all commercial cannabis activities that will take place in each area of the premises, and identification of limited access areas;
 4. The location of all proposed security cameras with a number assigned to each for identification purposes;
 5. The diagram shall be clear, legible, and to scale, and shall not include any highlighting; and
 6. If the proposed premises include only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remainder will be used for.
- (ii) The Commercial Cannabis Permit Application Evaluator may conduct a site inspection as part of the review.
- (b) Background Check. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorizes City authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every Applicant and Responsible Person of the Commercial Cannabis Business must submit fingerprints and other information deemed necessary by the Fontana Police Department, or the City's law enforcement agency, for a background check. No person shall be issued a permit to operate a Commercial Cannabis Business unless they have first cleared the background check, as determined by the City, Fontana Police Department, or the City's law enforcement agency as required by this section.

- (c) The City Manager may adopt any procedure(s) to supplement the initial application process. The City Manager is authorized to prepare the necessary applications, forms, adopt any necessary rules to the application, regulations and processes, and solicit applications.
- (d) Any Applicant whose 'ownership' includes a person with a past plea or verdict of guilty or a conviction following a plea of nolo contendere for operating a non-licensed cannabis business shall be disqualified from receiving a Commercial Cannabis Permit.

Section 79. Based on the foregoing, the City Council determines that this Ordinance qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA, that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.; therefore, a Notice of Exemption has been prepared.

Section 80. Based on the foregoing, the City Council of the City of Fontana hereby approves Municipal Code Amendment No. 22-007.

Section 81. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of the general circulation, published and circulation in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this October 11, 2022

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Germaine McClellan Key, 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 at a regular meeting on the 11th day of October 2022, and was finally passed and adopted not less than five days thereafter on the 25th day of October 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



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

Planning Commission

File #: 21-1699
Agenda #: PH-E

Agenda Date: 9/20/2022
Category: Public Hearing

FROM:

Planning Department

TITLE:

Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).

RECOMMENDATION:

Based on the information in the staff report staff recommends that the Planning Commission adopt Resolution PC No. 2022-____; and,

1. Determine that this Ordinance is categorically exempted pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA, in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment where it can be with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and,

2. Approve a resolution recommending that the City Council adopt an Ordinance for Municipal Code Amendment (MCA) No. 22-007 to amend Chapter 2, Chapter 9, Chapter 25, Chapter 26, Chapter 30, and Chapter 33 of the Municipal Code.

APPLICANT:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335

LOCATION:

Citywide

REQUEST:

A Municipal Code Amendment (MCA) No. 22-007 for amendments to: Chapter 2, 25, 26, and 30 to remove the Development Advisory Board (DAB) process; Chapter 9 to revise the definition of sensitive receptors; Chapter 30 to modify park/open space requirements within the Form Based Code, add language for density bonus/replacement units to address Senate Bill 330, and provide exemptions for City initiated projects; and Chapter 33 to include minor text modification to the Cannabis Business regulations.

PROJECT PLANNER:

Salvador Quintanilla, Senior Planner

BACKGROUND INFORMATION:

The City of Fontana Zoning and Development Code regulates the development of commercial, industrial, and residential projects. Staff has reviewed various chapters of the municipal code and determined that some of the language within the code sections need to be updated, clarified, and/or redefined to assist in streamlining the development process and create flexibility where appropriate. Therefore, staff is proposing the following modifications to these chapters.

ANALYSIS:

The City initiated Municipal Code Amendment No. 22-007 to update Chapter 2 (Administration), Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities) as summarized below; a detailed list of the proposed amendments is provided as part of Exhibit "A" of the Planning Commission Resolution (Attachment No. 1).

Revisions to Chapter 2, 25, and 26 and 30: This amendment includes the removal of all references to the Development Advisory Board (DAB) process. This will enable staff to facilitate the processing of development projects in a more timely manner and streamline the development process.

Revisions to Chapter 9, Section 9-71: With implementation of the recently-approved Sustainability Ordinance, staff has identified that requirements related to certain (generally nonconforming) residential properties, which are identified as sensitive receptors but which also contain industrial or commercial uses - including storage - operating on the same property as the residence, are resulting in undesirable design outcomes for proposed development adjacent to these properties. Commerce center docks and truck circulation routes must be sited away from sensitive receptors, which may require relocation to an area adjacent to the street right of way resulting in a less desirable visual aesthetic, while having little to no beneficial effect on a residence already surrounded by, or at least co-located with, industrial or similar uses. As a result, staff proposes amending the definition of sensitive receptors as identified.

Additional Revisions to Chapter 30: This amendment will add to or update various sections of the zoning and development code including establishing a program for residential replacement units to address SB 330, modifying regulations related to Form Based Code park/open space requirements, and adding language for city-initiated projects eliminating the need to comply with development standards and entitlement requirements.

Add Article XV (No Net Loss/Density Bonus Program) to Chapter 30:

The proposed Development Code Amendment would establish a "No Net Loss Program" to provide that concurrent with the approval of any change in zone from a residential use to a less intensive or non-residential use, replacement units in the form of a density bonus will become available to project applicants subsequently seeking to develop property for residential use within the City. In doing so, the proposed changes will ensure that there is no

net loss of residential capacity within the City as required by Senate Bill 330 ("SB 330").

This Development Code Amendment would create a No Net Loss/Density Bonus Program wherein "replacement units" - those units no longer available for residential development based on a change in zone from a residential use to a less intensive or non-residential use - are made available to developers of residential housing dwelling units within residentially zoned districts. This approach to meeting the requirements of SB 330 is more flexible and facilitative than simply rezoning an alternative property as it encourages additional housing development by those who are demonstrably ready, willing, and able to move forward with the development process as evidenced by submittal of entitlements for residential development whereas a rezoned property may or may not have a property owner that is ready, willing, and able to develop. Additionally, SB 330 specifically provides for alternative approaches beyond just rezoning property to ensure no net loss in residential capacity. Government Code 66300 Section (i)(1) states that "This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use *if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels* within the jurisdiction to ensure that there is no net loss in residential capacity" (*emphasis added*). The proposed ordinance would ensure that upon rezoning properties subject to SB 330, the development standards, policies, and conditions applicable to other parcels are concurrently changed to ensure no net loss in residential capacity. Multiple other cities have adopted similar ordinances to meet the requirements of SB 330.

Add language to Chapter 30, Section 30-4: Public Projects

Division 1 of Article I of the Development Code does not currently exclude "public projects"; proposed addition of language to the Development Code of Section 30-3.1 to Chapter 30 will improve the efficiency of public projects by eliminating the need to comply with specific development standards and the requirement for entitlements approvals following the City Council's direction to initiate public projects.

Add language to Chapter 30, Section 30-399 through 404: Public Open Space

Division 10 of Article 3 of the Development Code will be amended to allow developers to build common open space or public open space that includes amenities. Currently, developers are required to provide public open space for projects over two acres. The public open space is intended to be open to the public and constructed on private properties along street frontages. Planning staff has determined this can be a challenge for projects with narrower lots and interior amenities.

Revisions to Chapter 33: This section will update some language to the Cannabis Business and Activities ordinance. This amendment includes clarifying inconsistencies with the application process and permitted uses table.

In summary, the proposed amendments are proposed in order to provide flexibility in, and streamlining of, the City's Municipal Code.

MOTION:

Approve staff recommendation.

ATTACHMENTS:

1. Planning Commission Resolution/Exhibit A
2. Notice of Exemption
3. Notice of Public Hearing

RESOLUTION PC NO. 2022-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING CITY OF FONTANA CODE (“CODE”) AMENDMENT (MCA) NO. 22-007 AMENDING SECTIONS OF CHAPTERS 2, 25, 26, AND 30 TO ELIMINATE THE DEVELOPMENT ADVISORY BOARD (DAB); AMENDING CHAPTER 9 TO REVISE THE DEFINITION OF “SENSITIVE RECEPTORS”; AMENDING CHAPTER 30 TO EXEMPT THE CITY FROM CERTAIN ZONING REGULATIONS AND DESIGN GUIDELINES FOR CITY OWNED, CONTROLLED, OR LEASED PROPERTIES OR FACILITIES; AMENDING CHAPTER 30 TO ALLOW DEVELOPMENT PROJECTS OVER TWO ACRES TO DEVELOP FIVE PERCENT OF COMMON SPACE AS “COMMON OPEN SPACE”; ADDING ARTICLE XV TO CHAPTER 30 CREATING A NO NET LESS DENSITY BONUS/REPLACEMENT PROGRAM; AND AMENDING TABLE NOS. 30-489 AND 30-453 TO RENAME CANNABIS RETAIL STORES AND ADDING SECTION 33-8(4)(III) TO CHAPTER 33, TO REQUIRE AN AUTHORIZATION LETTER FOR PERMIT APPLICATIONS.

WHEREAS, pursuant to article XI, section 5 of the California Constitution and Government Code section 37100, the legislative body of a city may pass ordinances not in conflict with the Constitution and laws of the State or the United States;

WHEREAS, Government Code sections 50022.1 to 50022.10 authorize a city to codify its ordinances;

WHEREAS, Government Code section 50022.10 authorizes the recodification or recompilation of any adopted and fully published code;

WHEREAS, the amendments to the Code of the City of Fontana (“Code”) which are enacted by the adoption of this Ordinance are described in the planning agenda report accompanying this Resolution;

WHEREAS, the City desires to restate without substantive revision, amend, and recodify certain ordinances codified in the Code;

WHEREAS, the descriptions included in the planning staff report, and minutes contain the findings of the City Council in support of this Resolution and serve as evidence of the Planning Commission's intention in adopting this Resolution;

WHEREAS, the City seeks to amend various section of Chapters 2, 25, 26, and 30 to streamline the development project review process by eliminating the Development Advisory Board from the Code; and

WHEREAS, on February 8, 2022, the City Council adopted Industrial Center Sustainability Ordinance No. 1879, amending and renumbering Article V of Chapter 9 of the Code to add improvement and construction requirements to industrial commerce centers throughout the City, however the requirements for sensitive receptors (i.e., residential properties) are resulting in undesirable design outcomes because the definition of sensitive receptors includes residential properties that include industrial or commercial uses operating on the same property. This proposed Code amendment will change the definition of sensitive receptors in Section Sec. 9-71 to exclude residential properties with an existing industrial, commercial, unpermitted or non-conforming use; and

WHEREAS, Division 1 of Article I of the Zoning and Development Code does not currently exclude "public projects", and the proposed addition to the Development Code of Section 30-3.1 to Chapter 30 will improve the efficiency of public projects by eliminating the need to comply with specific development standards and the requirement for entitlements approvals for public projects, though will remain subject to discretionary review by City staff; and

WHEREAS, Division 10 of Article III of Chapter 30 the Development Code currently provides for public open space standards applicable to all proposed development within the Form-Based Code districts, and this proposed amendment would expand that requirement to allow for "common open spaces" defined in the proposed code amendment to include an amenity such as a tot lot, outdoor sports recreation area, bar-b-que with picnic tables, or equivalent and additional requirements in the restated, renumbered and amended Sections 30-399 to 30-404A; and

WHEREAS, Chapter 30 of the Development Code does not currently include a program to address SB 330, and this Code Amendment would establish a No Net Loss/Density Bonus/Replacement Program in order to provide for the concurrent approval of any change in zone from a residential use to a less intensive or non-residential use with the creation of "replacement units" in the form of a density bonus available to project applicants subsequently seeking to develop property for residential use within the City; and

WHEREAS, on July 12, 2022, City Council adopted Ordinance No. 1899 to add Chapter 33 (Cannabis Businesses and Activities) to the City Code, which provides for the issuance of Commercial Cannabis Permits within the City to operate retail and delivery cannabis operations. Permits will be issued pursuant to a merit-based, professional review process that includes an initial application. The initial application does not currently include a requirement for an Authorization Letter, though that term is defined in Section 33-5, to mean proof of ownership, lease agreement of a "Letter of Intent" to lease a

premises by the operation of a Commercial Cannabis Business. This proposed amendment would add a requirement for an Authorization Letter as part Phase One of the application process and include other minor clarifications; and

WHEREAS, a notice of the public hearing was published in the local newspaper on Friday, September 9, 2022 and posted at City Hall; and

WHEREAS, on September 20, 2022, the Planning Commission received public testimony on City Code Amendment (MCA) No. 22-007 and determined that this Ordinance qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA. This Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, the Planning Commission carefully considered all information pertaining to the proposed City Code Amendment, including the staff report, and all the information, evidence, and testimony presented at its public hearing on September 20, 2022; and

WHEREAS, the new General Plan includes policies and actions calling for numerous updates to the Municipal Code; and

WHEREAS, State law requires Zoning regulations to be consistent with the General Plan, and therefore updating the Municipal Code would contribute to consistency with the General Plan; and

WHEREAS, the Planning Commission finds that the proposed amendment to the City Code is consistent and compatible with the General Plan, and that the updates directly implement General Plan goals, policies, objectives, the Housing Element policies, and the Zoning and Development Code; and

WHEREAS, the Planning Commission finds that the proposed amendments to Chapter 2, 9, 25, 26, 30, and 33 of the City Code will be in conformity with good land use practice and is intended to facilitate ease of use and understanding, as well as to establish appropriate development standards for the land use designations; and

WHEREAS, the Planning Commission finds that the proposed amendment to the City Code (Exhibit "A") will not be detrimental to the public health, safety, and general welfare, and will not adversely affect the orderly development of property, and will better express the City's policies, and generally promote good land use planning and regulation.

NOW, THEREFORE, the Commission RESOLVES as follows:

Section 1. Recitals. The above recitals are incorporated herein by reference.

Section 2. Based on the foregoing, the Planning Commission hereby recommends that the City Council determine this Ordinance qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA, that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.; therefore, a Notice of Exemption has been prepared.

Section 3. That the Planning Commission hereby recommends that the City Council adopt an ordinance approving MCA No. 22-007 which amends the City Code as indicated in Exhibit "A" as referenced herein.

Section 4. 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 21081.6.

Section 5. The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED by the Planning Commission of the City of Fontana, California, at a regular meeting held on this 20th day of September, 2022.

City of Fontana

Cathline Fort, Chairperson

ATTEST:

I, Idilio Sanchez, 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 20th day of September, 2022, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Idilio Sanchez, Secretary

EXHIBIT A

AMENDMENTS TO CODE CHAPTERS 2, 9, 25, 26, 30, AND 33

CHAPTER 2 - ADMINISTRATION

1. Chapter 2, Article VIII. – Boards, Commissions and Committees, Footnote 6 of the Code is hereby restated and amended as follows:

Footnotes:

--- (6) ---

Cross reference— Historic preservation commission, § 5-353 et seq.; fly abatement and appeals board, § 13-98; parks and community services commission, § 19-31 et seq.; planning commission, § 21-51 et seq.; ~~development advisory board, § 30-1072.~~

CHAPTER 9 - ENVIRONMENTAL PROTECTION AND RESOURCE EXTRACTION

1. Chapter 9, Article V. – Industrial Commerce Centers Sustainability Standards of the Code is hereby restated and amended as follows:

Sec. 9-71. - Buffering and screening/adjacent uses.

- (a) For any warehouse building larger than 50,000 square feet in size, a ten-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. For any warehouse building larger than 400,000 square feet in size, a 20-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. The buffer area(s) shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. For any warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as ~~any residence including private homes, condominiums, apartments, and living quarters,~~ schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), prisons, dormitories, and any residence including; private homes, condominiums, apartments, and living quarters, where such residence is that are not located on a parcel with an existing industrial, commercial, unpermitted or non-conforming use.
- (b) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.
- (c) All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- (d) All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth
- (e) Trees shall be installed in automobile parking areas to provide at least 35 percent shade cover of parking areas within 15 years. Trees shall be planted that are capable of meeting this requirement.
- (f) Unless physically impossible, loading docks and truck entries shall be oriented away from abutting sensitive receptors. To the greatest extent

feasible, loading docks, truck entries, and truck drive aisles shall be located away from nearby sensitive receptors. In making feasibility decisions, the city must comply with existing laws and regulations and balance public safety and the site development's potential impacts to nearby sensitive receptors. Therefore, loading docks, truck entries, and drive aisles may be located nearby sensitive receptors at the discretion of the planning director, but any such site design shall include measures designed to minimize overall impacts to nearby sensitive receptors.

- (g) For any warehouse building larger than 400,000 square feet in size, the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest dock door which does not exclusively serve electric trucks using a direct straight-line method.

CHAPTER 25 - STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

1. Chapter 25 Streets, Sidewalks, and Other Public Ways, Article VII – Wireless Facilities in the Public Right-of-way is hereby amended as followings:

Sec. 25-252. Applications.

(a) *Preapplication (PAM) application and wireless facilities in the public right-of-way application are required for all new wireless facilities in the public right-of-way (collocation, small cell facility, and all other types of wireless facilities that are not modifications or eligible facilities requests).* An applicant proposing to install a new wireless facility on either an existing or new pole/infrastructure shall submit a PAM in conjunction with an application for wireless facilities in the public right-of-way (collocation, small cell facility, and all other types of wireless facilities that are not considered modifications or eligible facilities requests) and any required supplemental information to the planning division, at 8353 Sierra Avenue, Fontana Ca. 92335. Pre-applications will be reviewed by the Planning Department. ~~at a development advisory board conference meeting to discuss the proposed facility, the requirements of this article, and any potential impacts of the proposed facility.~~

(b) *Wireless facilities in the public right-of-way application is required for modifications/replacement of existing wireless facilities in the public right-of-way (including eligible facilities requests).* Applications to modify/replace existing wireless facilities on an existing pole/infrastructure in the public right-of-way and for projects qualifying as eligible facilities requests shall be filed with the engineering department, at 8353 Sierra Avenue, Fontana Ca. 92335. City staff will review the proposal along with the requirements of this article, and any potential impacts of the proposed facility.

(c) *Additional applicable permits.* In addition to the applications mentioned in subsections 25-252(a) and 25-252(b) above, the applicant is required to file applications for and obtain all applicable permits, such as, but not limited to, the following: Building permits, electrical permits, excavation permit and traffic control permit, landscaping plan check, certificate of appropriateness, and annual blanket permit for wireless facilities in the public right-of-way.

(d) *Fees.* Application fee(s) shall be submitted with any applications.

(e) *Incompleteness.* For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the city may notify the applicant in writing, and specifying the material omitted from the application.

(Ord. No. 1862 , § 5(Exh. A), 1-26-21)

CHAPTER 26 - SUBDIVISIONS

1. Chapter 26, Subdivisions, Article II. - Tract Maps - Division 1 is hereby restated and amended as follows:

Section 26-26. – Definitions.

“The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of building commissioners means the five-member board appointed by the mayor with the approval of the city council which hears matters pertaining to buildings and structures relative to the Uniform Building Code.

Circulation master plan means the plan for streets and thoroughfares which has been adopted and approved by the city council, together with any approved revisions or modifications thereof.

City attorney means the city attorney, acting either directly or through properly authorized agents acting within the scope of the particular duties entrusted to them.

City engineer means the city engineer, acting either directly or through properly authorized agents acting within the scope of the particular duties entrusted to them.

County means the County of San Bernardino, and when used to modify an officer, office or department shall mean that officer, office or department of the county and shall include properly authorized agents of that officer, office or department acting within the scope of the particular duties entrusted to them.

~~Development advisory board means a board composed of various city departments, county agencies and other autonomous agencies which reviews projects for consistency with adopted codes and standards and makes recommendations to the planning commission.”~~

General plan means the general plan of the city providing goals, objectives and policies for the longterm orderly development of the city.

Notice of official filing means a written notice issued by the planning department indicating that a project has received environmental clearance and is now considered as officially filed providing that all submittal requirements have been met.

Owner means the person having sufficient proprietary interest in the land to be subdivided to commence and maintain proceedings to subdivide the land under this article.

Public improvements includes streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, lighting facilities and traffic controls, including traffic control devices and traffic control signals.

Specific plan means a detailed plan which reviews economic, environmental and design impacts of development within a specific area and sets forth goals, objectives, policies and regulations for the development of that specific area.

Subdivider means any person commencing proceedings under this article to effect a subdivision of land under this article for himself or for another.

Subdivision means the division, by any subdivider, of any unit of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future, except for leases of agricultural land for agricultural purposes. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easements or railroad rights-of-way. The word "subdivision" includes a condominium project as defined in Civil Code § 1350, a community apartment project as defined in Business and Professions Code § 11004, or the conversion of five or more existing dwelling units to a stock cooperative as defined in Business and Professions Code § 11003.2.

Vesting tentative tract or parcel map means a tentative tract or parcel map which, if approved, allows development in substantial compliance with the ordinances, policies and standards in effect at the time a notice of official filing is issued by the planning department in conformance with the state Subdivision Act.

2. Chapter 26, Article II – Tract Maps - Division 2. – Tentative Tract Map Requirements, Section 26-52 – Application is hereby restated and amended as follows:

Sec. 26-52. - Application.

(a) All subdividers requesting approval of tentative tract maps shall file with the planning department a tentative tract map application in form, format and content as established by ordinance and resolution of the city council. The application shall be subject to the provisions of chapter 30, article XVI.

(b) At least one copy of the map shall be forwarded to each of the following agencies and departments, which shall have 21 calendar days after receipt thereof to comment or make recommendations with respect to the subdivision:

(1) Each government agency entitled by law to review and recommend thereon.

(2) The district engineer of the division of highways of the state, as provided by Business and Professions Code § 11528.1.

~~(3) The affected school districts which are not members of the development advisory board.~~

~~(4) Publicly and privately owned utilities serving the area.~~

~~(c) At least one copy of the map shall be forwarded to each of the following entities members of the development advisory board:~~

~~(1) The building and safety department.~~

~~(2) The Central Valley Fire District.~~

~~(3) The Fontana Unified School District.~~

~~(4) The parks and recreation department.~~

~~(5) The police department.~~

~~(6) The public works and engineering department.~~

~~The development advisory board shall review the map and forward a recommendation with appropriate conditions to the planning commission within the processing time limits prescribed by section 30-1365.~~

CHAPTER 30 - ZONING AND DEVELOPMENT CODE

1. Chapter 30, Zoning and Development Code, Article I. – Provisions and Definitions is hereby restated and amended as follows:

Sec. 30-1. Purpose.

This article establishes official land use zoning regulations and design guidelines. The zoning districts and regulations set forth in this article are consistent with the goals and policies of the general plan and are designed to:

- (1) Encourage the most appropriate use of land and ensure compatibility between uses;
- (2) Provide open space for light, air, and the preservation of resources;
- (3) Facilitate the timely provision of adequate infrastructure and community facilities;
- (4) Promote excellent architectural design; and
- (5) Promote health, safety, and general welfare of the residents and visitors of the City.

Sec. 30-2. Minimum requirements.

The interpretation and application of the provisions of this article shall be the minimum requirements for the promotion of public health, safety, and welfare. It is not the intent of this article to limit standards to minimums.

Sec. 30-3. Greater or conflicting provisions.

Where any provision of this article imposes more stringent requirements, regulations, restrictions, or limitations than are imposed or required by any other provisions of the Municipal Code, law, ordinance, restrictive covenant, or easement, this article shall govern.

Sec. 30-3.1 Public Projects.

Notwithstanding any other lawful exemptions to zoning regulations, the provisions of this title, shall not apply to any development standards or entitlement processes any buildings, improvements, lots, or premises, owned, leased, operated or controlled by the City or any City Project for public purpose by the City of Fontana. Such projects would still require discretionary review by the City.

2. Chapter 30, Article II. - Division 4. - Hearing Bodies and Notification is hereby restated and amended as follows:

Section 30-22. – Hearing bodies.

The following ~~three~~ hearing bodies shall make decisions on the various procedures provided for in this Development Code. All hearing bodies shall be responsible for the hearings indicated in Table No. 30-22.

Decisions of any “reviewing body” may be appealed to the City Council, except where State law limits such appeal to the City Engineer. If the Planning Commission is listed above as the “appeal body,” the Commission must first review an appeal before it may be forwarded to the City Council for consideration.

~~DAB—Development Advisory Board—Recommending body~~

DCD—Director of Community Development—Approval body

PC—Planning Commission—Approval body

CC—City Council—Approval body

PR—Parks, Community, and Human Services Commission—Recommending body

X- Indicates the reviewing and/or the approval body

a—Indicates that the reviewing body is to provide a recommendation to the City Council

b—Indicates that the reviewing body is to provide a recommendation to the Planning Commission

Table No. 30-22							
	Reviewing Bodies					Appeal Body	
Project Type	DAB	DCD	PR	PC	CC	PC	CC
Administrative Site Plan, Amendment	X	X				X	

Administrative Site Plan, Major	X	X				X	
Administrative Site Plan, Minor	X	X				X	
Administrative Site Plan, Modification	X	X				X	
Area Plan	X			Xa	X		
Certificate of Appropriateness					X		
Conditional Use Permit	X			X			X
Conditional Use Permit Amendment	X			X			X
Conditional Use Permit Modification	X			X			X
Density Bonus	X			Xa	X		
Design Review	X			X			X
Design Review, Amendment	X			X			X
Design Review, Modification	X			X			X
Design Review, Signs		X				X	
Director's Determination		X				X	
Development Agreements				Xa	X		

Development Agreements, Amendment				Xa	X		
General Plan Amendments	X			Xa	X		
Home Occupation Permit		X				X	
Lot Line Adjustment		X				X	
Minor Use Permit	X	X				X	
Minor Use Permit, Amendment	X	X				X	
Minor Use Permit, Modification	X	X				X	
Parcel Maps, Tentative	X	X				X	
Parcel Maps, Final		X				X	
Park Review	X		Xb	X			X
Specific Plan, Amendment	X			Xa	X		
Temporary Use		X		X			
Tract Maps, Tentative	X			X	X		
Tract Maps, Final					X		
Variances	X			X	X		
Variances, Administrative	X	X				X	

Time Extension, Parcel Map						X	
Time Extension, Tract Map				X			X
Time Extension, Projects	X	X				X	
Development Code and Zoning District Map, Amendment	X			Xa	X		

3. Chapter 30, Article II. Division 4. – Hearing Bodies and Notification is hereby restated and amended as follows:

Section 30-24. – Posting.

(a) *City initiated projects.* If a notice of public hearing for a City initiated general plan amendment, specific plan, zone change, design review, and tentative tract or any other application affecting a specific property or properties exceeding 20 acres and/or would result in the mailing or delivering of more than 1,000 notices, the notice of public hearing shall also either be:

(1) Published in at least one newspaper of general circulation in the City no less than one time and no less than ten days prior to the date of the hearing; or

(2) Posted at least ten days prior to the hearing in at least three public places in the City, including one public place in the area directly affected by the proceeding.

(b) *Applicant initiated projects.* Notice of public hearing for applicant-initiated projects affecting a specific property shall also be made by a posting on the site (by the applicant) ~~in a conspicuous location no longer than ten days after the initial Development Advisory Board (DAB) review.~~

(1) A four-foot by eight-foot sign or signs shall be required to be posted at the project site. Daycare notification may be a two by two banner visible from the right-of-way. The purpose of the sign notice requirement is to notify the community and the neighbors in the affected area early in the review process, allowing the applicant and the City the benefit of citizens' comments during the initial stage of project review. A cash deposit to the City is required to ensure compliance with the notification requirements including removal of

the notification sign. The project application shall not be deemed complete until the large sign is installed.

(2) Sign criteria. In order to implement the signs as an effective form of public notification, the following rules and standards shall apply.

a. *Sign size and specification.* All sign(s) shall be four feet by eight feet in size and be constructed to the specifications determined by the Planning Division. The specific project information text on the sign shall be provided by the Planning Division.

b. *Location and installation standards.* All sign(s) shall be installed according to the specifications determined by the Planning Division. The signs shall be posted on each street frontage. Additional signs may be required as determined by the Planning Division.

c. *Sign removal and maintenance.* All sign(s) shall be maintained and remain in place until the final decision on the application has been made or the application has been withdrawn. All sign(s) shall be removed by the applicant after 15 days of the final decision or date of withdrawal. Failure to remove the sign(s) within the prescribed period may result in forfeiture of the cash deposit.

4. Chapter 30, Article II. Division 6 – General Plan Amendment is hereby restated and amended as follows:

Section 30-33 – Pre-application meeting.

Prior to the filing of an application for a general plan amendment, the applicant or the applicant's representative shall apply for a pre-application review by City Staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The Staff recommendations~~ should be incorporated into the project prior to filing the formal application.

5. Chapter 30, Article II. – Administrative Procedures - Division 4. – Hearing Bodies and Notification, Section 30-35 “Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Section 30-35 – Reserved.

6. Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision I. Area Plan is hereby restated, amended, and renumbered as follows:

Sec. 30-49. - Submission requirements.

A proposal for an area plan shall be processed upon the application of the property owner(s), subject to the following provisions:

~~(1) Submission of a preliminary application and area plan for review by the Development Advisory Board.~~

(1) Submission of a formal area plan and related material as required on the application form for review and recommendation by the Planning Commission and final decision by the City Council.

(2) Submission of a conditional use permit and design review applications.

7. Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision I. – Area Plan, Section 30-51 is hereby deleted in entirety and amended to read as follows:

Section 30-51. – Pre-application meeting for area plan.

Prior to the filing of an application for an area plan, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

8. Chapter 30, Article II. – Division 8. - Area Plan and Area Plan Amendment, Subdivision I. – Area, Section 30-54 “Development Advisory Board (DAB) Review” is hereby deleted and amended to read as follows:

Section 30-54 – Reserved.

9. Chapter 30, Article II. Division 8. - Area Plan and Area Plan Amendment, Subdivision II. – Area Plan Amendments, Section 30-60 – Pre-application meeting for area plan is hereby restated and amended as follows:

Section 30-60 – Pre-application meeting for area plan.

(a) Prior to the filing of an application for an area plan amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

(b) ~~Following the preliminary consultation of the applicant and City staff,~~
The Director of Community Development Planning will determine when the

conceptual project will be submitted to the Planning Commission for a workshop. The presentation to the Planning Commission shall be an informal presentation for informative purposes only and is only intended to obtain Planning Commission comments on the proposed project. The applicant shall not receive any rights or entitlements pursuant to this informal review procedure and the Planning Commission shall not be bound by their comments. The Planning Commission or City Council may request changes to the project when it is formally presented for their consideration even if those changes differ from the Planning Commission comments and requests made during the informal review procedure.

10. Chapter 30, Article II. – Administrative Procedures – Division 8. - Area Plan and Area Plan Amendment, Subdivision II. – Area Plan Amendments, Section 30-62 – Development Advisory Board (DAB) is hereby deleted and amended to read as follows:

Section 30-62 – Reserved.

11. Chapter 30, Article II. Division 9. – Specific Plan Amendment, Section 30-68. – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-68. - Pre-application meeting.

Prior to the filing of an application for an amendment to a specific plan, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

12. Chapter 30, Article II. Division 9. – Specific Plan Amendment, Section 30-70. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-70. – Reserved.

13. Chapter 30, Article II, Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision I. – Administrative Site Plan – Major, Section 30-76 – Authority is hereby restated and amended as follows:

Sec. 30-76. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny administrative site plan, major, minor, modifications and amendment review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be

limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

14. Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision I. – Administrative Site Plan – Major, Section 30-78 is hereby restated and amended to read as follows:

Sec. 30-78. – Pre-application meeting.

Prior to the filing of an application for an administrative site plan, major, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

15. Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision II. – Administrative Site Plan – Minor, Section 30-88. – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-88. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, minor, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

16. Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision II. – Administrative Site Plan – Minor, Section 30-90. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-90. – Reserved.

17. Chapter 30, Article II. Division 10. – Administrative Site Plan, Major, Minor, Amendment, and Modification, Subdivision III. – Administrative Site Plan – Amendment, Section 30-97 is hereby restated and amended as follows:

Sec. 30-97. - Authority.

The Director of Community Development Planning or designee is authorized to approve or deny administrative site plan, amendment review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion."

18. Chapter 30, Article II. Division 10, Subdivision III. Administrative Site Plan Amendment, Section 30-98 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-98. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

19. Chapter 30, Article II. Division 10. Subdivision III., Administrative Site Plan Amendment, 30-100. – "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-100 – Reserved.

20. Chapter 30, Article II. Division 10. Subdivision IV., Administrative Site Plan Modification, Section 30-107 "Authority", is hereby restated and amended as follows

Sec. 30-107. - Authority.

The Director of Community Development Planning or designee is authorized to approve or deny administrative site plan, modification review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of

vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.”

21. Chapter 30, Article II. Division 10. Subdivision IV. Administrative Site Plan Modification, Section 30-108 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-108. - Pre-application meeting.

Prior to the filing of an application for an administrative site plan, modification, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

22. Chapter 30, Article II. Division 10. Subdivision IV. Administrative Site Plan Modification, Section 30-110. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-110 – Reserved.

23. Chapter 30, Article II. Division 11. – Design, Review, Amendment, and Modification, Subdivision I. Design Review, Section 30-117 – Pre-application meeting is hereby restated and amended as follows:

Sec. 30-117. - Pre-application meeting.

Prior to the filing of an application for a design review, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

24. Chapter 30, Article II. Division 11, Subdivision I. Design Review, Section 30-119. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-119 – Reserved.

25. Chapter 30, Article II. Division 11, Subdivision II. Design Review Amendment, Section 30-126 is hereby restated and amended as follows:

Sec. 30-126. - Pre-application meeting.

Prior to the filing of an application for a design review, amendment, the applicant or the applicant's representative shall apply for a pre-application ~~review by City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

26. Chapter 30, Article II. Division 11. Subdivision II. Design Review Amendment, Pre-application meeting Section 30-128, "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-128 – Reserved.

27. Chapter 30, Article II. – Division 11. Subdivision II. – Design Review - Modification, Section 30-137. "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-137. - Pre-application meeting.

Prior to the filing of an application for a design review, modification, the applicant or the applicant's representative shall apply for pre-application ~~review by City staff. meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

28. Chapter 30, Article II. – Division 11. Subdivision II. – Design Review - Modification, 30-139. – "Development Advisory Board (DAB)" review are hereby deleted in their entirety is hereby deleted and amended to read as follows:

Sec. 30-139 – Reserved.

29. Chapter 30, Article II. Division 12. – Conditional Use Permit, Amendment, and Modification, Subdivision I. – Conditional Use Permit, Section 30-146 is hereby restated and amended as follows:

Sec. 30-146. - Authority.

The Planning Commission is authorized to approve or deny applications for conditional use permit, ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval.

30. Chapter 30, Article II. Division 12. Subdivision I. Conditional Use Permit, Section 30-147. "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-147. - Pre-application meeting.

Prior to the filing of an application for a conditional use permit, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development.~~

31. Chapter 30, Article II. Division 12. Subdivision I. – Conditional Use Permit, Section 30-149. “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-149 – Reserved.

32. Chapter 30, Article II. Division 12, Subdivision II. Conditional Use Permit - Amendment, Section 30-157 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-157 – Pre-application meeting.

Prior to the filing of an application for a conditional use permit amendment, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The Staff recommendations should be incorporated into the project prior to filing the formal application. Projects determined minor in nature may be waived of this process by the Director of Community Development Planning.~~

33. Chapter 30, Article II, Division 12, Subdivision II. Conditional Use Permit Amendment, Section 30-159, “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-159 – Reserved.

34. Chapter 30, Article II, Division 12, Subdivision III, Conditional Use Permit Modification, Section 30-166 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-166 – Pre-application meeting.

Prior to the filing of an application for a conditional use permit modification, the applicant or the applicant's representative shall apply for a pre-application review by City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be~~

~~incorporated into the project prior to filing the formal application.~~ Projects determined minor in nature may be waived of this process by the Director of Community Development.

35. Chapter 30, Article II, Division 12, Conditional Use Permit, Amendment, and Modification, Subdivision III, Conditional Use Permit, Section 30--168. "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-168 – Reserved.

36. Chapter 30, Article II, Division 13, Minor Use Permit, Section 30-175. "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-175 – Pre-application meeting.

Prior to the filing of an application for a minor use permit, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application ~~conference with the Development Advisory Board~~ review by City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

37. Chapter 30, Article II, Division 13 Minor Use Permit, Section 30-177, "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-177 – Reserved.

38. Chapter 30, Article II, Division 13, Subdivision II, Minor Use Permits Amendment, Section 30-186 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-186 – Pre-application meeting.

Prior to the filing of an application for a minor use permit amendment, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application ~~conference with the Development Advisory Board~~ review by City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

39. Chapter 30, Article II, Division 13, Subdivision II, Minor Use Permits Amendment, Section 30-188 "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-188 – Reserved.

40. Chapter 30, Article II. Division 13. – Minor Use Permits, Amendment, and Modification, Subdivision III. – Minor Use Permits Modification, Section 30-194 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-194. - Pre-application meeting.

Prior to the filing of an application for a minor use permit modification, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application conference with the ~~Development Advisory Board review by City staff~~. Projects determined minor in nature may be waived of this process by the Director of Community Development.

41. Chapter 30, Article II, Division 13, Subdivision III. Minor Use Permits Modification, Section 30-196 "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-196 – Reserved.

42. 30, Article II, Division 14, Subdivision I. Administrative Variance, Section 30-204 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-204. - Pre-application meeting.

Prior to the filing of an application for an administrative variance, the applicant or the applicant's representative shall ~~hold~~ apply for a pre-application conference with the ~~Development Advisory Board~~ City staff. Projects determined minor in nature may be waived of this process by the Director of Community Development.

43. Chapter 30, Article II. Division 14, Variance, Subdivision I. Administrative Variance, Section 30-207. "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-207 – Reserved.

44. Chapter 30, Article II. Division 14, Subdivision II. Variance, Major, Section 30-214 "Authority" is hereby restated and amended as follows:

Sec. 30-214. - Authority.

The Planning Commission is authorized to approve or deny applications for variance, major, ~~upon review of the Development Advisory Board comments~~, and to impose conditions upon such approval.

45. Chapter 30, Article II. Division 16. – Park Review, Section 30-231 – Authority, is hereby restated and amended as follows:

Sec. 30-231. - Authority.

The Parks, Community, and Human Services Commission (PCHSC) is authorized to review and provide comments for parks. The park review shall

be presented to the PCHSC at a regular meeting. ~~during the Development Advisory Board review.~~

The Planning Commission is authorized to approve or deny applications for park review upon review of the ~~Development Advisory Board and~~ PCHSC, and to impose conditions upon such approval.

46. Chapter 30, Article II, Division 16. Park Review, Section 30-232 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-232. - Pre-application meeting.

Prior to the filing of an application for a park review, the applicant or the applicant's representative shall ~~file~~ apply for a pre-application review meeting ~~application~~ in order to meet with the Director of Planning Community Development and the ~~Development Advisory Board~~ prior to submitted the formal application.

47. Chapter 30, Article II. Division 16. – Park Review, Section 30-234. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-234 – Reserved.

48. Chapter 30, Article II. Division 17. - California Redemption Value (CRV) Recycling Collection Facility, Section 30-241. – Authority, is hereby restated and amended as follows:

Sec. 30-241. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny California Redemption Value (CRV) Recycling Collection Facility through the process of minor use permit review applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for installation and maintenance of landscaping and erosion control measures; requirements for vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

49. Chapter 30, Article II. Division 17. - California Redemption Value (CRV) Recycling Collection Facility, Section 30-246. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-246 – Reserved.

50. Chapter 30, Article II. – Administrative Procedures – Division 18. – Temporary Use, Section 30-354. – Authority, is hereby restated and amended as follows:

Sec. 30-254. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny temporary use applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval. Conditions may include, but shall not be limited to, requirements for buffers and/or barriers; requirements for vehicular ingress, egress, and on-site traffic circulation; regulation of hours or other characteristics of operation; establishment of development schedules or time limits for performance or completion.

51. Chapter 30, Article II. Division 21. – Mapping, Tentative Parcel Map, Tentative Tract Map, and Lot Line Adjustment, Subdivision I – Tentative Parcel Map, Section 3-280 "Authority" is hereby restated and amended as follows:

Sec. 30-280. - Authority.

The Director of ~~Community Development~~ Planning or designee is authorized to approve or deny tentative parcel map applications, ~~upon review of the Development Advisory Board comments,~~ and to impose reasonable conditions upon such approval.

52. Chapter 30, Article II, Division 21, Subdivision I – Tentative Parcel Map, Section 30-281 "Pre-application meeting" is hereby restated and amended as follows:

Sec. 30-281. - Pre-application meeting.

Prior to the filing of an application for a tentative parcel map application the applicant or the applicant's representative shall apply for a pre-application ~~meeting application~~ review with City Staff. ~~The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application.~~

53. Chapter 30, Article II, Division 21, Subdivision I – Tentative Parcel Map, Section 30-283 "Development Advisory Board (DAB) review" is hereby deleted and amended to read as follows:

Sec. 30-283 – Reserved.

54. Chapter 30, Article II, Division 21. Subdivision II – Tentative Tract Map, Section 3-290. "Authority" is hereby restated and amended as follows:

Sec. 30-290. - Authority.

The Planning Commission is authorized to approve or deny applications for design review, ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulation of vehicular ingress, egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; requirements for maintenance of landscaping and other improvements; establishment of development schedules or time limits for performance or completion.

55. Chapter 30, Article II. Division 212. Subdivision II – Tentative Tract Map, Section 3-292, “Development Advisory Board (DAB) review” is hereby deleted and amended to read as follows:

Sec. 30-292 – Reserved.

56. Chapter 30, Article II. Division 22. – Time Extension, Mapping and Project, Subdivision II – Time Extension - Tentative Tract Maps, Section 3-310. “Authority”, is hereby restated and amended as follows:

Sec. 30-310. - Authority.

The Planning Commission is authorized to approve or deny applications for time extension for tentative tract maps ~~upon review of the Development Advisory Board comments,~~ and to impose conditions upon such approval.

57. Chapter 30, Article II, Division 24 Planned Unit Development (PUD), Section 30-328 “Pre-application meeting” is hereby restated and amended as follows:

Sec. 30-328. - Pre-application meeting.

Prior to the filing of an application for a planned unit development, the applicant or the applicant's representative shall apply for a pre-application review with City staff. ~~meeting application. The pre-application meeting is presented to the Development Advisory Board for recommendation for the project. The recommendation should be incorporated into the project prior to filing the formal application~~

58. Chapter 30, Article II. Division 24. – Planned Unit Development (PUD), Section 30-330. – Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-330 – Reserved.

59. Chapter 30, Article II. Division 25. – Density Bonus, Section 30-343, Development Advisory Board (DAB) review is hereby deleted and amended to read as follows:

Sec. 30-343 – Reserved.

60. Chapter 30, Article II, Division 27 Non-Conforming Structures, Section 30-353, “Special exemption to permit incremental improvements to nonconforming buildings, structures, and sites with administrative site plan approval” is hereby restated, renumbered, and amended as follows:

Sec. 30-353. - Special exemption to permit incremental improvements to nonconforming buildings, structures, and sites with administrative site plan approval.

- (a) Notwithstanding any other provisions of Division 10 of this article herein to the contrary, the Director of ~~Community Development~~ Planning may permit the following limited improvements to be made to an existing nonconforming building, structure or site without the requirement that the building, structure and/or site be improved to current Development Code standards:
 - (1) Additions to existing commercial and/or industrial buildings or structures that do not exceed ten percent of the total square footage of the existing building or structure, provided said additions meet the fire protection requirements of Chapter 11 of the City Code;
 - (2) Paving, repaving or realignment of parking lots and areas, provided that the number of parking spaces is not reduced to less than currently existing and provided that all applicable drainage, storm water (NPDES), and similar requirements are met;
 - (3) Alteration of the exterior of an existing building or structure;
 - (4) Installation of new landscaping or alteration of existing landscaping, provided that the amount of landscaping is not reduced to less than currently existing unless the Director of ~~Community Development~~ Planning further finds that other improvements approved under this section require a reduction in the landscaping. Any allowed reduction in landscaping shall be the minimum required to permit the improvements to be constructed.
- (b) Any person seeking a special exemption under this section shall submit a completed administrative site plan application to the ~~Community Development~~ Planning Department in a manner prescribed by the Director of ~~Community Development~~ Planning and shall pay any applicable fees.
- ~~(c) Applications under this section shall be processed as prescribed in Division 3 of Article III of Chapter 30 of this Code (administrative site plan review), except for the following:~~

- ~~(1) At the option of the Director of Community Development, the application may (but is not required to) be reviewed by the Development Advisory Board prior to a decision by the Director of Community Development;~~
- ~~(2) Notice required by Division 4 of this article shall be provided, however, it shall be sent ten calendar days prior to the decision by the Director of Community Development.~~
- (c) Notwithstanding Division 10 of this article herein, the Director of Community Development Planning shall make the following findings before granting approval of the exemption and the administrative site plan application:
 - (1) All of the existing building(s), structures(s) and uses on the site are pre-existing and legal nonconforming, and are not illegal or unpermitted;
 - (2) The improvement(s) subject to the exemption support(s) a pre-existing legal nonconforming building, structure and/or use already on the site;
 - (3) The exemption will provide an incremental improvement to the building, structure or use on the site in furtherance of the requirements of Chapter 30 of this Code;
 - (4) The improvement(s) subject to the exemption will not, physically, legally, or otherwise, preclude the building(s), structure(s) or the site to come into compliance with current Development Code standards at a future date;
 - (5) Granting the exemption will not substantially expand or intensify the existing or anticipated use of the building(s) and/or the site;
 - (6) Granting the exemption will not be contrary to the goals of the City's general plan or any applicable specific plan; and
 - (7) Granting the exemption will not otherwise be deleterious to the public health, safety and welfare.
- (d) The Director of Community Development Planning is authorized to impose such reasonable conditions upon an exemption in order to protect the health, safety and welfare of the surrounding area.
- (e) Except as expressly set forth herein, the benefits of this section shall not abrogate, extend, expand or otherwise alter the provisions of this Division 22 and shall not eliminate or extend pre-existing legal nonconforming rights, or create them where they do not otherwise exist.
- (f) The benefits of this section shall apply only to complete applications, as provided for in subsection (b), which have been submitted to the Community Development Planning Department within a period of two years following the effective date of this section. Any exemptions requested after said two-year period must be sought pursuant to Section 30-85.

61. Chapter 30, Article IX. Division 5. – Auto Center Overlay District, Section 30-643. – Minimum development standards, is hereby restated, renumbered, and amended as follows:

Sec. 30-643. - Minimum development standards.

The minimum site development standards listed in this section shall only apply to the specific planning area within the overlay district.

(1) Planning area 1—Auto center development standards.

a. Building and parking setbacks.

1. All buildings and parking, except for vehicle display pads and allowed monument signs, shall be setback from all street property lines as follows:

Sierra Avenue: 25 Feet

Citrus Avenue: 20 Feet

South Highland Avenue: 15 Feet

Secondary Streets: 10 Feet

Collector Streets: 10 Feet

Local Streets: 10 Feet

2. Vehicle display pads shall have no required setback and shall be allowed to encroach into the landscape setback. Adequate site distance must be demonstrated at street intersections and driveway entrances for each vehicle display pad. Display pads shall not exceed 14 inches in height as measured from the sidewalk grade.

3. Monument signs are required to be set back a minimum of five feet from the street property line.

b. Building height.

1. Buildings and other structures shall not exceed a maximum of 60 feet in height as measured from the top of curb located adjacent to the street property line to the highest building ridge.

c. Lot coverage.

1. No more than 50 percent of the net lot area may be covered with buildings or other structures.

d. Off-street parking and circulation.

1.Required off-street parking spaces for vehicle dealerships shall be provided at the following ratios:

Show Room: One space per 300 square feet.

Service Area: One space per 300 square feet.

Outdoor Display: One space per 2,500 square feet.

Employees: One space per employee on the maximum shift.

Note: Service department parking/stacking is counted and included as required parking spaces.

2. Except for vehicle display pads, all parking spaces shall be a minimum of nine feet wide and 19 feet deep.

3. Drive aisle widths are required to be 26 feet wide, unless otherwise required by the San Bernardino County Fire Department.

4.Driveway approaches on South Highland Avenue are required to be 55 feet deep to allow for adequate stacking distance if entry gates are closed. Driveways must demonstrate adequate turning movement widths for car carrier trucks, per the City of Fontana Traffic Engineer.

e. Landscaping.

1. All vehicle dealerships shall have a minimum of 15 percent landscaping of the net project site (minus the dealership building footprint). A maximum of seven percent of the required landscape area can be provided as decorative hardscape, including vehicle display pads and driveway approaches.

2.Required setback areas shall be landscaped with trees, shrubs, plants, grasses and hardscape as set forth within the overlay district landscape design guidelines plant palette.

3.There shall be a five-foot landscape setback between abutting auto dealership display areas.

f. Lighting.

1.On-site lighting plans shall be submitted showing the design, intensity, layout and exact fixture mounting. ~~Lighting~~

~~plans shall be reviewed and approved through the required Development Advisory Board (DAB) process.~~

2. Lighting plans shall be consistent with the lighting design criteria and guidelines set forth within this overlay district.

3. Shielded fixtures shall direct all lighting downward, and shall illuminate areas used for parking and driveways.

4. All exterior areas shall have light standards no taller than 20 feet in height.

5. All lighting fixtures shall be properly shielded to prevent off-site glare. Spot fixtures shall only be downward directed, except at strategic areas such as monument signs and other landscape locations along the project's perimeter.

6. Strings of incandescent fixtures are not allowed in any exterior commercial area.

7. Strings of incandescent fixtures are not allowed in any exterior dealership area.

g. *Walls, fences and screening.* Walls and fences constructed on an interior lot line, at the rear of the required landscape setback area, or along the 210 Freeway right-of-way shall comply with the development standards set forth herein.

1. Walls shall not exceed eight feet in height, except that within the required building and parking landscaped setback, vehicle pad display areas, walls may not exceed three feet in height.

2. All perimeter walls and fences shall be designed to be consistent with the design guidelines set forth herein.

3. Chain link fencing and all types of barbed wire are prohibited, except that chain link fencing is allowed during construction for security purposes.

4. The Freeway edge treatment shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

5. Pilasters located within 90 feet of South Highland Avenue shall also be eight-foot tall at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters will

also be covered with flagstone that matches the monument sign flagstone required along South Highland Avenue, consistent with the design as set forth within the auto center design guidelines.

6. Solid eight-foot tall block walls located within the interior of auto dealerships are permitted, provided they are not visible from the public rights-of-way. Security walls that are visible from public rights-of-way shall consist of solid walls limited to three feet in height with pilasters on top that are limited to five feet in height (eight feet total height) and tubular or wrought iron fencing between pilasters.

7. All service, trash and employee parking areas shall be screened from view from all public streets by walls and approved fencing. No storage areas shall be visible from any public right-of-way, including the 210 Freeway.

8. Roof mounted mechanical equipment shall be screened and not be visible from any public rights-of-way, including the 210 Freeway. Roof mounted equipment screening techniques shall involve an integrated architectural design element which is compatible with the architectural design of the dealership building.

9. Solid block walls eight feet tall are required on the property line adjacent to A.B. Miller High School and Warren Ruble Middle School.

h. Sound attenuation.

1. All air compressor exhaust stacks shall contain noise-muffling devices.

2. Exterior loud speakers shall not be mounted higher than ten feet above finished grade, and shall be oriented toward the interior of each dealership.

(2) Planning area 2—Auto center supporting uses.

a. Building setbacks.

1. All buildings and parking areas, except for allowed monument signs, shall be setback from all street property lines as follows:

Sierra Avenue: 25 Feet

South Highland Avenue: 20 Feet

Mango Avenue: 15 Feet

210 Freeway Right-of-way: 5 Feet

2. Monument signs are required to be set back a minimum of five feet from the street property line, and must comply with site distance traffic standards at all street corners and driveway entrances.

b. Building height.

1. Buildings and other structures shall not exceed a maximum of 60 feet as measured from the top of curb located adjacent to the street property line to the highest building ridge.

c. Lot coverage:

1. No more than 50 percent of the net lot area may be covered with buildings or other structures.

d. Off-street parking and circulation.

1. Required off-street parking spaces for retail shall be provided at the ratio set forth in Chapter 30 of the Fontana Municipal Code.

2. All parking spaces shall be a minimum of nine feet wide and 19 feet deep.

3. Drive aisle widths are required to be 26 feet wide unless otherwise required by the San Bernardino County Fire Department.

e. Landscaping.

1. All retail commercial uses shall have a minimum of 15 percent landscaping of the net project site (minus the building footprint).

2. Required setback areas shall be landscaped with trees, shrubs, plants, grasses and hardscape as set forth within the overlay district landscape design guidelines plant palette.

3. For projects that are adjacent to the 210 Freeway right-of-way, there shall be a minimum five-foot wide landscape strip planted with trees and shrubs.

4. Solid block walls adjacent to the 210 Freeway right-of-way are prohibited. The Freeway edge treatment shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

f. *Lighting.*

1. On-site lighting plans shall be submitted showing the design, intensity, layout and exact fixture mounting. Lighting plans shall be reviewed and approved through the required Development Advisory Board (DAB) review process.

2. Lighting plans shall be consistent with the lighting design criteria and guidelines set forth within this overlay district.

3. Shielded fixtures shall direct all lighting downward, and shall illuminate areas used for parking and driveways.

4. All exterior areas shall have light standards no taller than 20 feet in height.

5. All lighting fixtures shall be properly shielded to prevent off-site glare. Spot fixtures shall only be downward directed, except at strategic areas such as monument signs and other landscape locations along the project's perimeter.

6. Strings of incandescent fixtures are not allowed in any exterior commercial area.

g. *Walls, fences and screening.* Walls and fences constructed on an interior lot line, at the rear of the required landscape setback area, or along the 210 Freeway right-of-way shall be in keeping with the development standards set forth herein.

1. Walls shall not exceed eight feet in height, except that within the required building and parking landscaped setback, walls may not exceed three feet in height.

2. All walls shall be constructed of split face or masonry material that is compatible with the building design.

3. Chain link fencing and all types of barbed wire are prohibited, except that chain link fencing is allowed during construction for security purposes.

4. All service and trash enclosure areas shall be screened from view from all public streets by walls and approved fencing, wherever feasible. No storage areas shall be visible from any public right-of-way, including the 210 Freeway.

5. Solid block walls are prohibited. Wall edge treatments shall consist of eight-foot tall pilasters at 30 feet on center with tubular or wrought iron fencing between pilasters. These pilasters shall be consistent with the design as set forth within the auto center design guidelines.

6. Roof mounted mechanical equipment shall be screened and not be visible from any public rights-of-way, including the 210 Freeway. Roof mounted equipment screening techniques shall involve an integrated architectural design element which is compatible with the architectural design of the commercial building.

h. Sound attenuation.

1. A drive-through lane is not permitted adjacent to any parcel of land that is zoned for residential use.

(3) Planning areas 3 and 4.

a. All minimum site development standards listed in planning areas 1 and 2 apply to planning areas 3 and 4.

62. Chapter 30, Article XII. Division 12. – Administration and Enforcement, Section 30-781. – Sign variances, is hereby restated, renumbered, and amended as follows:

Sec. 30-781. - Sign variances.

(a) *Purpose.* The purpose of a sign variance is to provide for deviations from the literal provisions of this article in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual sign under consideration, and to grant such variances only when it is demonstrated that such actions align with the applicability and the findings of this section.

(b) *Authority.* The Planning Commission is authorized to approve or deny sign variance applications.

(c) *Application.*

(1) Applications for a sign variance shall be filed with the Planning Division on forms, and accompanied by data, information, and fees as required by the ~~Community Development~~ Planning Department. No application shall be

considered by the Planning Commission until the application is determined to be complete and all required fees have been paid to the City.

(2) At a minimum, the application shall include:

- a. A statement that the applicant is the owner of the subject property or an agent thereof;
- b. The legal description of the property involved, the proposed use, and site plans;
- c. A reference to the specific provisions of this article that are applicable to the requested sign variance; and
- d. The specific use and standard for which the sign variance is being requested shall be described in detail.

~~(d) *Development Advisory Board Review.* All applications for sign variances shall be reviewed by the Development Advisory Board to provide recommendations for the sign. The recommendations should be incorporated into the sign prior to moving forward to the Planning Commission.~~

(d) *Limitation on variances.* In no case shall any sign variance be granted that would result in a sign that exceeds the height, size, or setback provisions of this article by 25 percent or that would increase the number of signs permitted by this article by more than 25 percent.

(e) *Findings.* The following findings are required to be made by the Planning Commission for approval of a sign variance application, with or without conditions:

- (1) Variances from the terms of this article shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the article deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.
- (2) The characteristics that make compliance with the requirements of this article difficult must be related to the premises for which the sign variance is sought, not some other location;
- (3) The characteristics that make compliance with the requirements of this article difficult must not have been created by the owner of the premises, a previous owner, or the applicant; and
- (4) The proposed sign variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase congestion in public streets, or increase the danger of fire or

endanger public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City.

- (f) *Consistency.* Any sign variance granted shall be subject to such conditions as will ensure that the adjustment thereby authorized shall not constitute a grant of a special privilege inconsistent with the limitations upon other properties.
- (g) *Noticing.* Notice of hearings for sign variances shall be as set forth in Chapter 30, Article II, Division 4.
- (h) *Hearing.* Upon receipt of a complete application for a sign variance, a time and place for the hearing before the Planning Commission shall be set.
- (i) *Appeal.* The decision of the Planning Commission shall be final unless an appeal is filed. An appeal could be made as set forth in Chapter 30, Article II, Division 5.
- (j) *Time limitations.* Each sign variance granted under the provisions of this article shall become null and void two years after the date of the action approving the sign variance unless:
 - (1) The construction authorized by the sign variance or permit has been commenced within two years after the granting of the sign variance and diligently advanced to completion;
 - (2) The decision approving a sign variance contains in its findings and conditions specific authority for extending the time limit defined; or
 - (3) The Director of ~~Community Development~~ Planning finds that circumstances beyond the control of the applicant have caused delays which do not permit compliance with the time limits established.

63. Chapter 30, Article XIII. Division 2. – Permit and Application Procedures, Section 30-941 “Processing and hearing procedure”, is hereby restated, renumbered, and amended as follows:

Sec. 30-941. - Processing and hearing procedure.

Upon submittal of a complete application for resource extraction permit and/or resource reclamation plan and filing of all environmental documents and all documents required by the Planning Manager, consideration of the resource extraction permit or resource reclamation plan for the proposed surface mining operation or exempt activity shall be completed pursuant to the following:

- (1) The Planning Division shall, within 30 days of receipt of such applications, certify the application requests with regard to completeness in accordance with California Government Code § 65920 et seq. (Permit Streamlining Act). The Planning Division shall process the application(s) in accordance with all requirements of the California Environmental

Quality Act (Public Resources Code § 21000 et seq.) and the City's environmental review guidelines.

- (2) Within 30 days of acceptance of an application for resource extraction permit and/or resource reclamation plan as complete, the Planning Division shall notify the State Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the flood insurance rate maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the Planning Division shall also notify the State Department of Transportation that the application(s) have been received.

~~(3) Development Advisory Board. Upon deeming the application complete and completing the environmental review procedures, the Planning Division shall forward the application(s) to the Development Advisory Board (DAB). The DAB shall review the plot plan, landscape plans, elevations and any environmental review documents for the intended operation. Upon completion of the review, the DAB shall forward its recommendation and recommended approval conditions to the Planning Commission.~~

- (3) Planning Commission review. The Planning Commission shall hold at least one noticed public hearing on the application for resource extraction permit and/or resource reclamation plan. The Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission. The staff report shall include, but not be limited to, recommendations concerning the following:

- a. A statement of the recommended intensity of use;
- b. Acceptable accessory uses;
- c. The suitability of the extraction and reclamation proposals; and
- d. Suggested conditions for approval to ensure that the resource extraction use and related accessory uses may be conducted and reclaimed without creating a public nuisance or otherwise adversely affecting the public welfare.

The staff report may recommend denial of the resource extraction permit and/or resource reclamation plan applications if it is determined that the intent of this article cannot be met by the proposed applications.

- (4) Planning Commission approvals.

- a. The Planning Commission shall take action approving, conditionally approving or denying the resource extraction permit. If a resource extraction permit is being processed concurrently with the resource reclamation plan, the Planning Commission may simultaneously also

conceptually approve the resource extraction permit. However, the Planning Commission may defer action on the resource extraction permit until taking final action on the resource reclamation plan and financial assurances.

- b. Prior to final approval of a resource reclamation plan, approval of financial assurances (as provided in this article), or any amendments to a resource reclamation plan or existing financial assurances, the Planning Commission shall:
 1. Certify to the State Department of Conservation that the resource reclamation plan and/or financial assurances comply with the applicable requirements of state law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. The Planning Commission may conceptually approve the resource reclamation plan and any financial assurances before submittal to the State Department of Conservation.
 2. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the resource extraction permit with a condition that the planning division shall not issue any required subsidiary permits for mining operations, including grading and/or building permits, until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the reclamation plan and financial assurances.
 3. Pursuant to Public Resources Code § 2774(d), the State Department of Conservation shall be given 30 days to review and comment on the reclamation plan and 45 days to review and comment on the financial assurances. The Planning Commission shall evaluate written comments received, if any, from the State Department of Conservation during the comment periods. Staff shall prepare a written response describing the disposition of the major issues raised by the state for the Planning Commission's approval. In particular, when the Planning Commission's position is at variance with the recommendations and objections raised in the state's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the operator/applicant.
- c. Once comments are received by the Department of Conservation, and within 30 days of receipt of such comments, the Planning Commission

shall then take action to approve, conditionally approve, or deny the resource extraction permit and/or reclamation plan, and to approve the financial assurances pursuant to Public Resources Code § 2770(d).

- d. The decisions of the Planning Commission shall become final unless appealed to the City Council within the time period indicated in Article II, Division 5 of the Fontana Municipal Code.
- e. The Planning Division shall forward a copy of each approved Resource extraction permit and/or approved reclamation plan, and a copy of the approved financial assurance to the State Department of Conservation. By July 1st of each year, the Planning Division shall submit to the State Department of Conservation for each active or idle mining operation a copy of any resource extraction permit or reclamation plan amendments, as applicable, or a statement that there have been no changes or amendments during the previous year.

64. Chapter 30, Article III, Division 10. – Public Open Spaces Standards, Sections 30.399 to 30.404 are hereby restated, renumbered, and amended as follows:

DIVISION 10. COMMON AND PUBLIC OPEN SPACE STANDARDS

Sec. 30-399. Purpose.

The purpose of this section is to provide common open spaces and a catalog of pre-approved public open space types that are appropriate to use within walkable urban environments.

Sec. 30-400. Applicability.

- (a) This section describes the guidelines for the development of common and public open spaces throughout the Form-Based Code areas.
- (b) The standards in this section shall apply to all proposed development within the Form-Based Code districts and shall be considered in combination with the standards for the applicable district.
- (c) Additional public open spaces can be integrated into this section as they are approved by the City of Fontana.

Sec. 30-401. Design objectives.

Common open spaces and public open spaces play an important role in place-making. Their standards must be considered alongside building form, building types, frontage types, and thoroughfares in creating urban

environments. The diverse palette of common open spaces, parks and other publicly accessible open spaces are assigned to one or more downtown zones.

Sec. 30-402. Common open space and public open space required.

Each application that involves at least two acres shall be required to provide a minimum of five percent of the project area as either common open space or public open space. The required open space shall be designed in compliance with the applicable requirements from Exhibit 678404.A.—Public Open Space Types.

For development projects that are two acres or more in size that propose only commercial development (no residential uses) or civic development, the Planning Commission shall have the authority to reduce or eliminate the requirements for open space size, type, and location if the following findings are made:

- (1) The proposed commercial use(s) is incompatible with a large open space area.
- (2) The Police Department recommends the elimination or reduction of the open space requirement.
- (3) Eliminating or reducing the open space requirement promotes public health and safety.

Subdividing or phasing the project to separate commercial and residential uses or to reduce lot size to less than two acres shall not eliminate the open space requirement.

















Sec. 30-403. Regulation.

- (a) Common open spaces shall be designed within private development projects for patrons of commercial development and residential communities with amenities as required in 30-404 below.
- (ab) Public open spaces shall be designed as one of the public open space types defined in Exhibit 30-404.A.
- (bc) Public open spaces shall include amenities such as seating, lighting, and landscaping.
- (ed) Public open spaces shall be built within the development area by developers as development occurs.
- (de) At the discretion of the ~~Community Development~~ Planning Director, required open space may be constructed off-site and/or as part of a larger public open space that will be provided by the City or other private developments. Sec. 30-404. General requirements.
- (f) Common open spaces shall include an amenity such as a tot lot, outdoor sports recreation area, bar-b-que with picnic tables, or equivalent. This requirement can include paseos connecting the amenity to the rest of the site.
- (fg) All public open spaces shall abut public right-of-way or be otherwise connected to public sidewalks and shall be open to the public 24 hours per day. At the discretion of the ~~Community Development~~ Planning Director, public access to a public open space may be restricted after dark.
- (gh) All public open spaces shall be visible from surrounding streets and masses of shrubs around edges shall be avoided.

Sec. 30-404. General requirements.

- (a) All public open spaces shall abut public right-of-way or be otherwise connected to public sidewalks and shall be open to the public 24 hours per day. At the discretion of the Community Development Director, public access to a public open space may be restricted after dark.
- (b) All public open spaces shall be visible from surrounding streets and masses of shrubs around edges shall be avoided.

Exhibit 404.A.—Public Open Space Types

Plaza	Pocket Park	Playground	Community Garden
			
			
			
			
<p>Plazas are open spaces available for civic purposes and commercial activities. Building frontages should define these spaces. Plazas are typically hardscaped.</p> <p>½ acre to 2½ acres</p> <p>2 streets</p> <p>Passive recreation, accessory structure, drinking fountains, and paths.</p>	<p>An open space available for informal activities in close proximity to neighborhood residences.</p> <p>4,000 sf to ½ acre</p> <p>1 street</p> <p>Passive recreation, accessory structure, drinking fountains, and paths.</p>	<p>An open space designed for the recreation of children and interspersed in residential areas. May be included in other open spaces.</p> <p>No min. or max. size</p> <p>1 street</p> <p>Accessory structures, drinking fountains, and paths.</p>	<p>An open space designed as a grouping of plots for nearby residents for small-scale cultivation. May be included within other open spaces.</p> <p>No min. or max. size</p> <p>1 street</p> <p>Accessory structures, drinking fountains, and paths.</p>

65. Chapter 30, Article V, Division 4, Section 30-453 is hereby amended to replace “Medical marijuana dispensaries in Table No. 30-453 as follows:

Table No. 30-453			
Uses Permitted Within Mixed Use Development Projects			
C. Business and Professional Offices			R-4
R-5			
Medical — marijuana — dispensaries	Commercial	Retail	Cannabis
Businesses		—	—

66. Chapter 30, Article VI, Division 3, Section 30-489 “Uses Permitted” is hereby amended to restate and amend Table No. 30-489 as follows:

Table No. 30-489			
Allowed Uses within Commercial Zoning Districts			
Use	C-1	C-2	RMU
Retail Sales			
Adult Businesses	P*	P*	—
Antique Shop	P	P	P
Automobile Sales Agency with or without Incidental Repair and Sales Display Area	—	C	C
Automobile Supply Store (no machine shop)	P	P	P
Bakery Goods Store	P	P	P
Bar, Cocktail Lounge	C	C	C
Bicycle Shop	P	P	P
Boat Sales with Incidental Repair and Sales Display Area	—	C	C
Book Store	P	P	P
Building Materials, Retail Sale of (if contained within a completely enclosed building)	—	P	P
Building Materials with Outdoor Storage	—	P*	P*
Blueprinting Establishment	—	P	P
Commercial Cannabis Retailer, Storefront Business (with City Permit)	P*	P*	—
Caterer	P	P	P
Clothing Store	P	P	P
Computer Store	P	P	P
Convenience Store	P	P	P
Cyber Cafés	C	C	C
Department Store	—	P	P
Discount Store	P	P	P
Drugstore	P	P	P

Electrical Supply Store	P	P	P
Feed Store	C	M	—
Florist Shop	P	P	P
Furniture Store	P	P	P
Garden Furniture and Supplies Store	P*	P*	P*
Glass or Mirror Store	P	P	P
Grocery, Fruit, Vegetable, Meat, Fish, Poultry, or Delicatessen Store,	P	P	C
Hardware Store	P*	P*	P*
Hobby Supplies Store	P	P	P
Home Furnishing Store	P	P	P
Household Appliance Store	P	P	P
Ice Cream Store	P	P	P
Ice Storage Locker (if not more than five-ton capacity)	P	P	P
Interior Decorating Shop	P	P	P
Jewelry and Coin Store	P	P	P
Liquor Store	C	C	C
Micro-Brewery	—	C	C
Newsstand	P	P	P
Novelties Store	P	P	P
Nursery, Plant (includes statuary sales)	P*	P*	P*
Paint and Wallpaper Shop	P	P	P
Pawn Shop	—	C	C
Pet Boarding	—	M	—
Pet Shop	P	P	P
Plumbing Supply Store	—	P	P
Radio, Television, and Small Electrical Appliance Shop (including repair when incidental to retail sales)	P	P	P
Restaurant and Café, Excluding Those Having Dancing and/or Floorshows. Alcoholic Beverages are not Permitted.	P*	P*	P*
Restaurant and Café with Entertainment and/or Dancing. Alcoholic Beverages Permitted.	C*	C*	C*
Restaurant and Café Without Entertainment and/or Dancing. Alcoholic Beverages Permitted. (See Section 30-492 For Alcoholic Beverage Sales)	C	C	C
Restaurant, Drive-Thru and Take Out	P*	P*	P*
Secondhand Store	—	P	P
Shoe Store	P	P	P
Smoke/Tobacco Shop and Vape Shop	C	C	C
Sporting Goods Store	P	P	P
Swap Meet (Indoor/outdoor)	—	—	—
Tattoo Establishments	P*	P*	P*

Trailer and Mobile Home Sales and Rental	—	P*	C
Wholesale Auto Sales (requires one stall)	C	C	—
Warehousing Sales, Retail	C	P*	P*
Warehousing Sales, Wholesale	—	C	P*
Business and Professional Offices	C-1	C-2	RMU
Administrative and Professional Offices Involving no Retail Trade	P	P	P
Art Gallery	P	P	P
Financial Institution	P	P	P
Clinic, Medical or Dental, Acupuncture	P	P	P
Convention Centers	—	—	P
Government Offices	P	P	P
Medical Laboratory	—	P	P
Optician	P	P	P
Pharmacy	P	P	P
Radio/Television Studio (with transmitter)	—	C	C
Studio (without transmitter)	P	P	P
Studios for Professional Work or Teaching of Any Form Of Fine Art	P	P	P
Service Establishments	C-1	C-2	RMU
Ambulance Service	P	P	P
Animal Hospital	M	P	C
Animal Hospital (w/ Boarding)		M	—
Assembly/Meeting Hall For, Private Clubs, Religious Services, or Similar Uses	C	C	C
Automobile Fueling Station	C	C	C
Automobile and Truck Rental, Two-Ton, Single Unit Maximum	—	C	C
Automobile/Vehicle Body and Fender Repair Shop	—	C	C
Automobile/Vehicle Repair	C	C	C
Automotive Custom Repair (includes lowering and lifting)	C	C	C
Automotive Stereo, Alarm and Upholstery Installation	C	M	M
Automobile Wash,	—	M	M
Barber Shop or Beauty Parlor	P	P	P
Chemical substance abuse facility	C	C	C
Cleaners	P*	P*	P*
Clothing and Costume Rental Establishment	P	P	P
Community Care Facility	C	C	C
Community Center	C	C	C
Construction Trailer (Temporary Use Permit)	P*	P*	P*
Convalescent Hospital	M	M	C
Copying, Packing and Mailing Services	P	P	P
Day Care—Commercial	M	M	M
Day Care—Commercial (24 hour)	—	C	C

Depot—Bus	—	P*	P*
Depot—Railway, Park-and-Ride	—	P	P
Dressmaker or Millinery Shop	P	P	P
Equipment Rental	—	P*	P*
Fortune-Telling	P	P	P
Hospitals	—	M	M
Hotels	—	C	C
Laundromat, Self Service	P	P	P
Locksmith	P	P	P
Machine Shop	—	C	C
Masseur or Masseuse, Day Spa, Acupressure	—	C	C
Self-Storage Facility	—	C	C
Mortuaries	—	C	C
Library	P	P	P
Museums	P	P	P
Motel	—	C	C
Music and Vocal Instruction	P	P	P
Nightclub	—	C	C
Nursing Home	M	M	C
Parks	P	P	P
Photographer	P	P	P
Pick-Up Truck Rated Over One Ton (carrying weight), Commercial Truck or Van, or Trailer Rental	—	C	C
Picture Framing Store	P	P	P
Post office	M	M	M
Printer, Blueprint Shop	—	P	P
Private Schools	C	C	C
Public Utility Structures and Facilities	M	M	M
Publishing Establishments	—	P	P
Repair Shop for Household Appliances	P	P	P
Schools Such as Business Colleges, Music Conservatories, Dancing Schools, and Other Schools That Offer Training In Non-Industrial Professions	P	P	P
Stenographic Services	P	P	P
Swimming Pool, Commercial	P	P	P
Sign Shop in Enclosed Structure	—	P	P
Tailor	P	P	P
Telephone Answering Service or Exchange	P	P	P
Ticket Agency, Travel Bureau	P	P	P
Tire Shop	—	C	C
Truck Repair Service	—	—	—

Truck Storage Yard	—	—	—
Upholstery Shop	—	P	P
Wedding Chapel	P	P	P
Amusement Establishments	C-1	C-2	RMU
Amusement Enterprise for Children Including Pony Rides (No Stables), Merry-Go-Round, and The Like When Incidental To A Permitted Use	P	P	P
Amusement Park	—	C	C
Arcades—Pinball, Video, and the Like	—	C	C
Archery Range	—	C	C
Baseball; Batting Range	—	C	C
Bowling Alley	C	C	C
Boxing Arena	—	C	C
Dance Hall	—	C	C
Entertainment Centers	C	C	C
Golf, Driving Range, Miniature, Pitch and Putt	—	C	C
Gymnasiums, Health Spas, or Physical Culture Establishments Under 4,000 Square Feet in Floor Area	P	P	P
Gymnasiums, Health Spas, or Physical Culture Establishments Over 4,000 Square Feet in Floor Area	C	C	C
Pool Hall, Billiard Center	C	C	C
Skating Rink, Roller or Ice	C	C	C
Smoking Lounge, Hookah Lounge, Vapor Lounge, E-Lounge (allowed only as a secondary use to a full-service restaurant)	C	C	C
Theater, Indoor	C	C	C
Indoor Playground/Recreation	P	P	P
Residential Uses	C-1	C-2	RMU
Senior Housing	M	M	M
Multiple-Family Dwellings with an Area Plan			C
Other Uses	C-1	C-2	RMU
Animal Kennel	—	C	C
Animals, Small—Keeping and Raising	P*	P*	P*
Antenna, Transmitting	C	C	C
Cemetery and Related Uses	—	M	C
Construction Trailer	P*	P*	P*
Home Occupation	P*	P*	P*
Homeless Shelters	—	—	—
Emergency Shelter Subject to the activation of an Emergency Operation Center	P	P	P
Metal Storage Containers (temporary storage only with a temporary use permit)	P*	P*	P*

Museum and Art Galleries	—	M	M
Parking Lots (not related to use on same property)	—	P	P
Parking Structures	—	P	P
Research and Development	—	P	P

67. Chapter 30 is hereby amended to add Article XV “No Net Loss Program” as follows:

ARTICLE XV - NO NET LOSS PROGRAM

Sec. 30-965 - Purpose and authority

The City desires to ensure its compliance with Senate Bill 330 (SB330) and establish a no Net Loss Density Bonus Program for certain residential projects. This Chapter provides, concurrent with the approval of any change in zone from a residential use to a less intensive or non-residential use, a density bonus will become available to project applicants subsequently seeking to develop property for residential use within the City. In doing so, the proposed Section will ensure that there is no net loss of residential capacity within the City as required by SB330.

On October 9, 2019, the California Legislature adopted SB330 which, among other things, adopted Government Code Section 66300, declared a housing crisis in the State of California and imposed certain requirements designed to streamline the construction of new housing, and prevent the loss of existing housing and land available for future residential use, unless the city concurrently changes the development standards, policies, and conditions applicable to other areas of the affected jurisdiction to ensure no net loss in residential capacity. SB330 became effective on January 1, 2020.

Sec. 30-966 - Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this Chapter shall have the following meanings:

Density Bonus. A density increase of up to those percentages above the otherwise maximum residential density as specified in this Chapter.

Density Bonus/Transfer Agreement. A legally binding agreement between a developer of a Housing Development and the City containing such terms and conditions as determined by the City Attorney, which ensures that the requirements of this Chapter are satisfied.

Density Bonus Units. Those residential units granted pursuant to the provisions of this Chapter, that exceed the maximum residential density for the development site and that are available in the Unit Bank.

Housing Development. Construction projects consisting of five or more residential units or Lots, including single-family and multifamily, that are proposed to be constructed pursuant to this Chapter.

Lot. (1) a Lot when shown as a delineated Lot of land with a number or other designation on a parcel map or tract map and not to be used for the common benefit of other Lots recorded in the Office of the County Recorder of San Bernardino County and legally created under the Subdivision Map Act ; (2) a Lot of land held under separate ownership from adjacent property that constitutes a legal lot under applicable Law.

Maximum Residential Density. The maximum number of residential units permitted by the City's General Plan Land Use Element and Zoning and Development Code, applicable to the subject property at the time an application for the construction of a Housing Development is deemed complete by the City, excluding the additional units permitted by this Chapter.

Director of Planning. The Director of Planning of the City of Fontana.

Unit Bank. The number of units available to the No Net Loss Program as a result of a change of zone from a residential use to a less intensive residential use or a non-residential use. The Director of Planning, or his or her designee, shall have the sole authority to administer and maintain the Unit Bank balances, credits and availability as he or she determines, which determination shall be final.

Sec. 30-967 - Requirements.

The City shall grant a density bonus through the No Net Loss Program to projects which meet the following criteria:

A. The project is on a parcel of at least one acre, or the applicant is processing an application concurrently with a parcel merger of two or more Lots or more which will create a Lot of not less than one-acre.

B. The project takes place in one of the following residential zones in the City:

a. Residential Estate (R-E)

b. Single-Family Residential (R-1)

- c. Medium-Density Residential (R-2)
- d. High-Density Residential (R-3)
- e. Multi-Family/Medium-High Residential (R-4)
- f. Multi-Family/High Residential (R-5)
- g. Residential Planned Community (R-PC)

C. In determining the number of Density Bonus Units to be granted (transferred) pursuant to this Section, the maximum allowable residential density for the site shall be calculated as follows:

a. Multiplying the maximum density allowed under the applicable zoning designation and multiplying the result by 1.2 for a 20 percent density bonus. If the result, including the density bonus, contains a fraction of a unit, the number of allowable units shall be determined by rounding down to the nearest whole number if the fraction is below 0.5. Calculations containing fractions of 0.5 or above shall be rounded up.

b. Density bonuses in the No Net Loss Program can be combined with other density bonus programs as established in Article II, Division 25 – Density Bonus of the Fontana Municipal Code.

- i. In no case shall the number of No Net Loss/Density Bonus Units awarded under the No Net Loss Program exceed the number of units in the Unit Bank.
- ii. In no case shall the number of No Net Loss/Density Bonus Units available in the Unit Bank exceed 2,200 units.

D. A Density Bonus/Transfer Agreement shall be required for any project seeking a density bonus as part of the No Net Loss Density Bonus Program.

E. The Planning Department shall publish the available number of units available in the Unit Bank on the Planning Department's page on the City's website. The number of units available is expected to change periodically and, as such, any information contained on the City's website or any other published source shall be considered draft for informational purposes only. Confirmation of the number of units available shall be made upon submittal of a development application, including the payment of appropriate fees

Sec. 30-968 - Types of Bonuses Allowed.

A. Density Bonus. The density bonus allowed by this Chapter shall consist of those density increases specified in Section 30-967 above the maximum residential density applicable to the site as of the date of the project land use permit application.

B. Mixed use zoning allows the Housing Development to include nonresidential uses. Approval of mixed-use activities in conjunction with the No Net Loss program is permissible if authorized elsewhere under the Fontana Municipal Code and subject to those requirements. A density bonus will be granted only for the residential portion of a mixed use development.

Sec. 30-969 - Development Standards.

All development standards for the base zone and/or overlay district shall be met. Granting of a density bonus does not constitute approval of or grounds for modification or waiver of any development standard or other requirement of the Fontana Municipal Code.

Sec. 30-970 - Processing of No Net Loss Program Requests.

An Application which proposes to change a land use designation or zoning ordinance to a less intensive use may request concurrent approval by the City Council to transfer the unit reduction to a No Net Loss Density Bonus Bank for the purpose of complying with SB330.

An Application which proposes to utilize units available in the No Net Loss Density Bonus Bank shall submit a density bonus transfer application in conjunction with the permit and entitlement application submittal package required for the project. A density bonus transfer application pursuant to this Chapter shall be processed along with the application for development. The process for obtaining preliminary approval of the Density Bonus Transfer Agreement, shall be as follows:

- a. Filing. An applicant proposing a Housing Development pursuant to this chapter shall submit a concurrent application for a Density Bonus Transfer Agreement as part of the submittal of any formal request for approval of a Housing Development. The application, whether a pre-application or a formal application, shall include:
 - b. A general description of the proposed project, general plan description, applicable zoning, maximum possible density permitted under the current zoning and general plan description and such other information as is necessary.

- c. A calculation of the density bonus allowed pursuant to this division.
- d. A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and general plan description.
- e. City review of and action on the applicant's proposal for a density bonus shall occur concurrently with the processing of any other required entitlements, if any. The fact that another required entitlement might be subject to discretionary approval does not subject the application for a density bonus/transfer under this section to discretionary approval; they will merely be processed at the same time.

Sec. 30-971 - No Net Loss Program Density Bonus Agreement.

A. The terms of the draft density bonus/transfer agreement (Agreement) shall be reviewed and revised as appropriate by the Director of Planning and the City Attorney for final approval.

B. At a minimum, the Agreement shall include the following:

- 1. The total number of units, both permitted and available through the density bonus/transfer, proposed within the Housing Development;
- 2. A schedule for completion and occupancy of the units; and
- 3. A description of remedies for breach of the Agreement by either party.

Sec. 30-972 - Implementation.

A. The provisions of this Chapter shall be administered by the Planning Department.

B. Projects requesting density bonus/transfer through this No Net Loss Program are subject to processing through the requirements in this Chapter.

CHAPTER 33 – CANNABIS BUSINESS AND ACTIVITIES

1. Chapter 33, Section 30-7 “Maximum Number of Commercial Cannabis Businesses Authorized and Designated Locations; Application Process”, is hereby restated and amended as follows:

Sec. 33.-7– Maximum Number of Commercial Cannabis Businesses Authorized and Designated Locations; Application Process.

1. The maximum number of Commercial Cannabis Permits that may be issued in the City is three (3). One may be issued for the North Area, one may be issued for the Central Area and one may be issued for the South Area based on the boundaries of the Commercial Cannabis Map approved by the City Council concurrently with the adoption of this Chapter. An Applicant will be approved for no more than one (1) Commercial Cannabis Permit within the City.
1. The process for issuing Commercial Cannabis Permits to qualified cannabis businesses is meant to result in qualified businesses that will operate in accordance with state and local law, be successful, contribute positively to the community and local economy, and avoid secondary adverse impacts. Toward that objective, the application process includes these ~~five~~four phases:
 - (1) PHASE ONE: Application submittal. This includes submitted complete information, completed Livescan and background check information (state and federal database) of all Responsible Persons, processing fees, conceptual renderings and location identification.
 - (2) PHASE TWO: Initial scoring of application by a qualified third party.
 - (3) PHASE THREE: Interview process.
 - (4) PHASE FOUR: Final scoring, and, if permits available, permit issuance.
2. Chapter 33, Section 30-8 “Initial Commercial Cannabis Permit Application and Scoring”, is hereby restated and amended as follows:

Sec. 33.-8– Initial Commercial Cannabis Permit Application and Scoring

(a) The City Manager may establish additional submittal requirements for an application for a Commercial Cannabis Permit. The intent of this Chapter is to create a merit-based, competitive evaluation system. Applications submitted by legal representatives, consultants, partners or investors will not be accepted. The following information shall be included in any application for a Commercial Cannabis Permit:

- (1.) Name of Applicant
- (2.) Business Trade Name (if applicable) of the applicant
- (3.) Identification of Owner(s) (full name, primary phone number, social security number or individual taxpayer identification number, date and place of birth, email address, and mailing address for the primary owner submitting the Application)
- (4.) For each person that is an “owner” of the Applicant,
 - (i.) Percentage of interest held in the Applicant entity by each owner;
 - (ii.) Whether the owner has an ownership or financial interest, as defined in section 5003 of the Regulations, in any other Commercial Cannabis Business licensed under the AUMA or MAUCRSA;
 - (iii.) A copy of each Responsible Person’s government-issued identification, acceptable forms are a document issued by a federal, state, county, or municipal government that includes the name, date of birth, physical description, and picture of the owner, such as a driver’s license;
 - (iv.) A detailed description of the owner’s criminal convictions, if applicable. A conviction for this purpose means a plea or guilty verdict of guilty or a conviction following a plea of nolo contendere. Convictions dismissed under Penal Code section 1203.4 or equivalent non-California law must be disclosed. Convictions dismissed under Health & Safety Code section 11361.8 or equivalent non-California law must be disclosed. Juvenile Adjudications and traffic infractions under \$300 that did not involve alcohol, dangerous drugs, or

controlled substances do not need to be included. For each conviction, provide: (1) the date of conviction; (2) dates of incarceration, if applicable; (3) dates of probation, if applicable; (4) dates of parole, if applicable; (5) a detailed description of the offense for which the owner was convicted; and (6) a statement of rehabilitation for each conviction written by the owner that demonstrates the owner's fitness for consideration;

- (v.) If applicable, a detailed description of a commercial cannabis license, revocation of a commercial cannabis license, or sanctions for unlicensed Commercial Cannabis Activity by a licensing authority or local agency against the Applicant or a business entity in which the Applicant was an owner or officer within the three (3) years immediately preceding the date of the application;
- (vi.) If applicable, a detailed description if the City issued the Applicant a notice or citation for unlicensed Commercial Cannabis Activity, or if the Applicant was a defendant in a civil or criminal proceeding filed by the City or the People of the State of California, for allowing, causing, or permitting unlicensed commercial cannabis activities within the City's jurisdiction;
- (vii.) An attestation of each owner as follows: "Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact or omission may be cause for rejection or denial of this application, or revocation of any Commercial Cannabis Permit or any permit, license or approval issued in reliance thereon."
- (viii.) Authorization letter. "Authorization Letter" is Proof of ownership, lease agreement, or a "Letter of Intent" to lease premises proposed by Applicant for operation of a Commercial Cannabis Business, executed with notarial acknowledgement, by owner of premises. If a "Letter of Intent" is furnished, no more than one (1)

Applicant may have a Letter of Intent agreement with the landlord per address.

- (5) Primary Contact: The contact information for the Applicant's designated primary contact person, including the name, title, phone number, and email address of said individual.
- (6) Qualifications and Experience of Applicants and Owners: The application shall include information concerning any special business or professional qualifications or licenses of the applicants and owners, and the years of relevant and related experience, that would add to the number or quality of services that facility would provide, or otherwise demonstrates the Applicants' and owners' capacity to operate a successful commercial cannabis facility in compliance with applicable laws and regulations.
- (7) Disclosure of Lobbying Activity: If Applicant contracted, employed or in any manner paid or will pay any person for influencing or attempting to influence an elected official, appointed official or any employee of the City, shall fully disclose the name of individuals and organization(s) performing lobbying services.
- (8) Description of Operating Procedures: Applications shall include a detailed description of the Applicant's proposed operating procedures for each commercial cannabis activity, including an explanation for how the business will comply with the operating regulations of this Code and state law. The application must include copies of any applicable policies or manuals of the Applicant and address each of the following, if applicable:
 - (i.) Transportation Procedures: A description of the procedure for transporting cannabis and cannabis products, including whether or not the Applicant will be transporting cannabis or cannabis products or contracting for transportation services.
 - (ii.) Inventory Procedures:
 - 1. A description of the Applicant's procedure for receiving shipments of inventory;

2. Where the Applicant's inventory will be stored on the premises and how records of the inventory will be maintained; and
 3. Procedure for performing inventory reconciliation and for ensuring that inventory records are accurate.
- (iii.) Quality Control Procedures:
1. Procedures for preventing the deterioration of cannabis or cannabis products held by the Applicant;
 2. Procedures for ensuring that cannabis and cannabis products are properly packaged and labeled; and
 3. Procedure for ensuring that an independent licensed testing laboratory samples and analyzes cannabis and cannabis products held by the Applicant.
- (iv.) Security Procedures: All Applicants shall propose sufficient security measures to deter and prevent the unauthorized access or entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the Commercial Cannabis Business (together a "Security Plan"). The proposed Security Plan will remain confidential and shall include, but shall not be limited to, all of the following:
1. Preventing individuals from remaining on the premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the permitted operations of the Commercial Cannabis Business.
 2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.

3. How and where all cannabis and cannabis products will be stored in a secured and locked room, safe, or vault. How all cannabis and cannabis products, will be kept in a manner as to prevent diversion, theft, and loss.
4. Procedures for installing 24-hour security surveillance cameras (CCTV) of at least HD-quality video with audio to monitor all entrances and exits to and from the premises, all interior spaces within the Commercial Cannabis Business which are open and accessible to the public, all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur. Procedures for how the Applicant will ensure that the security surveillance camera's footage is remotely accessible to law enforcement, and that it is compatible with the City's software and hardware. In addition, procedures on how remote and real-time, live access to the video footage from the cameras will be provided to law enforcement. Procedures for ensuring video recordings are maintained for a minimum of sixty (60) calendar days, and procedures to make them available to law enforcement upon request. Procedures to ensure video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the Commercial Cannabis Business.
5. A description of where sensors will be installed to detect entry and exit from all secure areas.
6. A description of procedures of installing panic buttons in the premises.
7. Description of having a professionally installed, maintained, and monitored alarm system, with the required City alarm permit as

required by this Fontana City Code Section 14-391, et seq.

8. A description of the physical security features and improvements that will be installed on the exterior and within the interior of the building, in full compliance with all applicable Building and Safety and Fire Code requirements and any applicable zoning requirements. Use of wrought iron on any exterior door, window or opening is prohibited.
9. Procedures on establishing a plan to have security personnel on-site 24 hours a day, or alternative security as authorized by the City. Description or documentation showing that the proposed security personnel are licensed by the State of California Bureau of Security and Investigative Services personnel. Procedure to submit to the City and the City's law enforcement agency the names and contact information of security personnel, with copies of state-issued licenses and permits, government-issued identification form, and photographs of uniforms and badges. Acknowledgement from Applicant indicating that it shall be responsible for providing this confirming information to law enforcement, with updating information within seven (7) calendar days of a change in security personnel, agents, or representatives.
10. Procedures on how each Applicant shall have the capability to remain secure during a power outage and ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
11. Identification of a designated security representative/liaison to the City, who shall be reasonably available to meet with City staff, as well as law enforcement regarding any security related measures or operational issues.

12. A storage and transportation plan, describing in detail the procedures for safely and securely receiving, storing and transporting all cannabis, cannabis products, including the use of child-safe cannabis containers, and any currency.
 13. An affirmative commitment that the Applicant will cooperate with the City whenever the City Manager, or his or her designee, makes a request, upon reasonable notice, to inspect or audit the effectiveness of any Security Plan or of any other requirement of this subsection.
 14. A description and plan of how the Applicant will notify law enforcement within 24 hours after discovering any of the following:
 - a. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by law enforcement.
 - b. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any agent or employee of the Commercial Cannabis Business.
 - c. The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.
 - d. Any other breach of security.
- (9) All applicants shall submit a workforce plan that may include, but is neither limited to, nor required to include, a (1) commitment for local hires; (2) commitment to offer apprenticeships and/or compensation for continuing education in the field; (3) pay a living wage to its employees, and (4) draft collective bargaining agreement with labor

organization that currently represents cannabis workers in the United States.

- (10) Seller's Permit: The Applicant shall provide a valid seller's permit number issued by the California Department of Tax and Fee Administration, if applicable. If the Applicant has not yet received a seller's permit, the applicant shall attest that the Applicant is or will before commencing operations, apply for a seller's permit.
- (11) Indemnification Agreement: To the fullest extent permitted by local, state and federal law, the City shall not assume any liability whatsoever with respect to having issued a Commercial Cannabis Permit or otherwise approving the operation of any Commercial Cannabis Business. As a condition to the approval of any Commercial Cannabis Permit, the Applicant is to execute a separate Indemnification Agreement prepared by the City that fully indemnifies the City for all liabilities associated with the Commercial Cannabis Permit, the Commercial Cannabis Permittee's Commercial Cannabis Activities, and any action taken by the Cannabis Permittee. The Indemnification Agreement shall include the defense of the City and reimbursement of all fees, costs and expenses incurred by the City related to any action arising from the Agreement.
- (12) Payment of Application Fee: Each Applicant shall pay the applicable fee(s) pursuant to this Chapter.
- (13) Each Applicant shall provide the City a Security deposit or bond for code compliance costs. The Security deposit or bond shall be in an amount established by the City Council and shall be provided with the application.
- (14) Site identification and conceptual renderings of the interior and exterior of the proposed premises, which shall not be less than 4,000 square feet. Site identification shall include, but not be limited to:
 - (i.) A complete and detailed site plan of the premises, interior and exterior elevations of the premises, and a map showing the premises' location within the City. The site plan and must comply with the following:

1. Shows the boundaries of the property and the proposed premises to be utilized, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, bathrooms, windows, doorways, and common or common shared entryways, and a brief statement of the principal activity to be conducted therein;
2. Map identifying any instruction in kindergarten or any grades 1 through 12, day care, park, Youth and Recreation Center facilities, City boundaries and any Commercial Cannabis Business located within 600 feet of the property lines of the proposed location. If the proposed location is not within 600 feet of any such uses, identify on the map the closest such use, and the distance in feet between that use and the property line of the proposed location;
3. Identifies all commercial cannabis activities that will take place in each area of the premises, and identification of limited access areas;
4. The location of all proposed security cameras with a number assigned to each for identification purposes;
5. The diagram shall be clear, legible, and to scale, and shall not include any highlighting; and
6. If the proposed premises include only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remainder will be used for.

- (ii) The Commercial Cannabis Permit Application Evaluator may conduct a site inspection as part of the review.
- (b) Background Check. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorizes City authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every Applicant and Responsible Person of the Commercial Cannabis Business must submit fingerprints and other information deemed necessary by the Fontana Police Department, or the City's law enforcement agency, for a background check. No person shall be issued a permit to operate a Commercial Cannabis Business unless they have first cleared the background check, as determined by the City, Fontana Police Department, or the City's law enforcement agency as required by this section.
- (c) The City Manager may adopt any procedure(s) to supplement the initial application process. The City Manager is authorized to prepare the necessary applications, forms, adopt any necessary rules to the application, regulations and processes, and solicit applications.
- (d) Any Applicant whose 'ownership' includes a person with a past plea or verdict of guilty or a conviction following a plea of nolo contendere for operating a non-licensed cannabis business shall be disqualified from receiving a Commercial Cannabis Permit.

NOTICE OF EXEMPTION

TO: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

FROM:
City of Fontana
Planning Department
8353 Sierra Avenue
Fontana, CA 92335

Project Title: Master Case No. 22-0110
Municipal Code Amendment No. 22-007

Project Location - Specific: Citywide
(a) Project Location - City: Fontana, CA
(b) Project Location - County: San Bernardino

1. Description of nature, purpose, and beneficiaries of Project: Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), Chapters 9 (Environmental Protection and Resource Extraction), Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).
2. Name of Public Agency approving project: City of Fontana
3. Name of Person or Agency carrying out project: City of Fontana
4. Exempt status: (Check one)
 - (a) ☐ Ministerial project.
 - (b) ☐ Not a project.
 - (c) ☐ Emergency Project.
 - (d) ☒ Categorical Exemption. State type and class number: Exempt under guidelines section Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA.
 - (e) ☐ Declared Emergency.
 - (f) ☐ Statutory Exemption. State Code section number: _____
 - (g) ☐ Other. Explanation: _____
5. Reason why project was exempt: This project is a citywide code update to Chapter 2, 9, 25, 26, 30, and 33 of the Fontana Municipal Code. There is no associated development with this project.
6. Contact Person: Salvador Quintanilla, Senior Planner Telephone: (909) 350-6656

Date Received for Filing: _____

DiTanyon Johnson
Principal Planner

(Clerk Stamp Here)

ATTACHMENT NO. 2



NOTICE OF PUBLIC HEARING

Si desea información en Español referente a esta notificación o proyecto, favor de comunicarse al (909) 350-6728.

In compliance with Section No. 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof, the agenda will be made available in appropriate alternative formats to persons with a disability. Should you need special assistance to participate in this meeting, please contact the City Clerk's Department by calling (909) 350-7602. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting.

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE PLANNING COMMISSION
OF THE CITY OF FONTANA FOR THE FOLLOWING:

Master Case No. 22-110/Municipal Code Amendment No. 22-007: Update to the City of Fontana Municipal Code for amendments to Chapter 2 (Administration), Chapters 9 (Environmental Protection and Resource Extraction), Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities). Chapter 2, Chapter 25, Chapter 26, and Chapter 30 amendments will include removal of the Development Advisory Board (DAB) process. Chapter 9 amendments include a revision to the definition of sensitive receptors. Additional Chapter 30 amendments include establishment of a process for specific special event venues, modification of park requirements within the Form Based Code, addition of language for density/replacement units to address Senate Bill 330, and addition of language for the review of City initiated projects. Chapter 33 amendments will include minor text modifications to the Cannabis Business guidelines. The Planning Commission will review and forward a recommendation to the City Council for the proposed project.

Environmental Determination: This project qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA.

Location: Citywide

Date of Hearing: September 20, 2022

Place of Hearing: City Hall Council Chambers, 8353 Sierra Avenue, Fontana, CA, 92335

Time of Hearing: 6:00 pm

Should you have any questions concerning this project, please contact Salvador Quintanilla, Senior Planner, at (909) 350-6656 or squintanilla@fontana.org.

ANY INTERESTED PARTY MAY PROVIDE INFORMATION BY LETTER OR EMAIL WHICH MAY BE OF ASSISTANCE TO THE PLANNING COMMISSION. A COPY OF THE APPLICATION AND ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION. PLEASE CONTACT THE PLANNER LISTED ABOVE.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish:

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City of Fontana Planning Commission Minutes

Cathline Fort, Chair
Raj Sangha, Vice Chair
Idilio Sanchez, Secretary
Matthew Gordon, Commissioner
Ralph Thrasher, Commissioner

Tuesday, September 20, 2022 6:00 P.M. Grover W. Taylor Council Chambers

CALL TO ORDER/ROLL CALL:

A. Call to Order/Roll Call:

A regular meeting of the City of Fontana Planning Commission was held on Tuesday, September 20, 2022. Chair Fort called the meeting to order at 6:02 p.m.

Present: Chair Fort, Secretary Sanchez, and Commissioners Gordon

Absent: Vice Chair Sangha and Commissioner Thrasher

INVOCATION/PLEDGE OF ALLEGIANCE:

A. Invocation/Pledge of Allegiance:

Following the Invocation by Commissioner Gordon, the Pledge of Allegiance was led by Secretary Sanchez.

PUBLIC COMMUNICATIONS:

A. Public Communications:

None.

CONSENT CALENDAR:**A. Approval of Minutes:**

Approve the Regular Planning Commission Meeting Minutes of September 6, 2022.

ACTION: A Motion was made by Commissioner Gordon and seconded by Secretary Sanchez and passed by a vote of 3-0-2 to approve the Consent Calendar.

The motion carried by the following vote: **AYES: Fort, Sanchez, and Gordon; NOES: None; ABSTAIN: None; ABSENT: Sangha and Thrasher**

PUBLIC HEARINGS:

PH-A Master Case No. 22-068; General Plan Amendment No. 22-006 and Zone Change No. 22-008 - A request to amend the general plan land use map and zoning district map in order to provide consistency and cohesiveness for parcels 0241-051-02, -13, -16 and -32 and development sites in the immediate vicinity.

Staff requested that this item be continued to the October 4, 2022, Planning Commission Meeting.

ACTION: Motion was made by Commissioner Gordon, seconded by Secretary Sanchez, and passed by a vote of 3-0-2 to continue Public Hearing Item A to the next Regular Planning Commission meeting of Tuesday, October 4, 2022.

The motion carried by the following vote: **AYES: Fort, Sanchez, and Gordon; NOES: None; ABSTAIN: None; ABSENT: Sangha and Thrasher**

PH-B Master Case No. 22-034 and Conditional Use Permit 22-011- a request to operate a smoke, tobacco and vape shop in an approximate 1,500 square foot tenant space in the South Sierra shopping center.

Chair Fort opened Public Hearing.

George Velarde, Assistant Planner presented the staff report.

The commission and staff discussed the projects' condition of approval #13.

The applicant, Farid Elias, stated that he read and agreed to the Conditions of Approval.

No one spoke in favor or opposition of this item.

The Public Hearing was closed.

RECOMMENDATION:

Based on the information in the staff report and subject to the attached Findings and Conditions of Approval, staff recommends that the Planning Commission adopt Resolution PC No. 2022-037; and,

1. Determine that the proposed project is exempt pursuant to Section 15301 Class 1, (Existing Facilities) of the California Environmental Quality Act (CEQA) and Section 3.22 of the 2019 Local Guidelines for implementing CEQA, and direct staff to file a Notice of Exemption; and;
2. Approve Conditional Use Permit No. 22-011.

ACTION: Motion was made by Secretary Sanchez, seconded by Commissioner Gordon, and passed by a vote of 3-0-2 to adopt Resolution PC No. 2022-037 and approve Master Case No. 22-034 and Conditional Use Permit 22-011- A request to operate a smoke, tobacco and vape shop in an approximate 1,500 square foot tenant space in the South Sierra shopping center.

The motion carried by the following vote: **AYES:** Fort, Sanchez, Gordon; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Sangha and Thrasher

PH-C Master Case No. 21-127; Tentative Tract Map No. 20431 (TTM No. 21-011) - a proposal to consolidate four lots totaling approximately 4.4 adjusted gross acres into one parcel for condominium purpose, and Design Review No. 20-050 - a proposal to construct a new 82-unit condominium complex within 27 two-story buildings totaling approximately 128,000 square feet.

Chair Fort opened Public Hearing.

Jon S. Dille, Associate Planner presented the staff report.

The commission and staff discussed the main entrance and exits of the project; in addition, a discussion ensued regarding the amount of parking spaces per unit and the location of guest parking. The commission briefly discussed the location of the project's amenities.

The applicant, Mohammad Monshizadeh, commented on the acquisition of the parcels; parking requirements and some of the amenities of the project such as the walking path.

The applicant stated that he read and agreed to the Conditions of Approval and discussed adjustments and revisions to several conditions with Commission and staff. modifications included changes to:

- Page 10, condition of approval #5, add the word "overhead" before the word, "utilities".

- Page 12, change the last heading to add the word “offsite” before the words “construction permits”.
- Page 16, condition of approval #12, to add the word, “overhead”, before the word, “utilities”.
- Page 16, condition of approval #13, to add the words, “if required”, after the word, “security”.
- Page 16, condition of approval #18, to add the word, “a plan”, prior to “clustered or individual mailboxes”.
- Page 18, change to the heading would read, “prior to the issuance of building permits”, remove the word, “construction” from heading.

The following individuals spoke in opposition:

- Celeste Vorndran

The Public Hearing was closed.

The Commission and staff addressed several of the speakers concerns such as, rentals versus market rate, septic versus sewer and amount of traffic along Cherry Avenue, guest parking and Speedway controls.

RECOMMENDATION:

Based on the information contained within this staff report and subject to the attached findings, and conditions of approval, staff recommends that the Planning Commission adopt Resolution PC No. 2022 -038: and,

- 1. Determine that the project is Categorically Exempt pursuant to Section No. 15332, (Class No. 32, In-Fill) of the California Environmental Quality Act and Section No. 3-18 (Infill Projects) of the 2019 Local Guidelines for implementing the CEQA, and direct staff to file a Notice of Exemption; and,**
- 2. Approve Tentative Tract Map No. 20431 and Design Review No. 21-050.**

ACTION: Motion was made by Secretary Sanchez, seconded by Commissioner Gordon, and passed by a vote of 3-0-2 to adopt Resolution PC No. 2022-038 and approve Master Case No. 21-127; Tentative Tract Map No. 20431 (TTM No. 21-011) - a proposal to consolidate four lots totaling approximately 4.4 adjusted gross acres into one parcel for condominium purpose, and Design Review No. 20-050 - a proposal to construct a new 82-unit condominium complex within 27 two-story buildings totaling approximately 128,000 square feet with modifications to noted conditions of approvals.

The motion carried by the following vote: AYES: Fort, Sanchez, Gordon; NOES: None; ABSTAIN: None; ABSENT: Sangha and Thrasher

PH-D Master Case No. 22-109 and Design Review Sign No. 22-041 - a request to establish a sign program for the Northgate Plaza located on approximately 7.04 acres.

Chair Fort opened Public Hearing.

Alexia De La Torre, Assistant Planner presented the staff report.

The applicant Tom Hunt, on behalf of Promotional Signs, Inc., stated that he read and agreed to the Conditions of Approval.

No one spoke in favor or opposition of this item.

The Public Hearing was closed.

RECOMMENDATION:

Based on the information in the staff report and subject to the attached Findings and Conditions of Approval, staff recommends that the Planning Commission adopt Resolution PC No. 2022-039; and,

- 1. Determine that the proposed project is exempt pursuant to Section 15301 (Class No. 1, Existing Facilities) of the California Environmental Quality Act (CEQA) and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, and direct staff to file a Notice of Exemption; and**
- 2. Approve Design Review Sign No. 22-041.**

ACTION: Motion was made by Commissioner Gordon, seconded by Secretary Sanchez, and passed by a vote of 3-0-2 to adopt Resolution PC No. 2022-039 and approve Master Case No. 22-109 and Design Review Sign No. 22-041 - a request to establish a sign program for the Northgate Plaza located on approximately 7.04 acres.

The motion carried by the following vote: AYES: Fort, Sanchez, Gordon; NOES: None; ABSTAIN: None; ABSENT: Sangha and Thrasher

Planning Commission adjourned meeting to a recess at 7:03 p.m.

Planning Commission reconvened meeting at 7:10 p.m.

PH-E Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).

Chair Fort opened Public Hearing.

Salvador Quintanilla, Senior Planner presented the staff report.

The Commission and staff discussed timing issues and streamlining the process of the Development Advisory Board Meetings; staff clarified the proposed process would remain the same but would cut down on time. In addition, staff also commented on internal city projects and their streamlined development process.

The Commission and staff also discussed modifications and current requirements for the improvement of public open space. Further discussion also took place regarding applicants and their request for a Development Advisory Board hearing and the streamline process. The Commission expressed concerns regarding applicants and their options should they wish to still meet.

Chair Fort noted the memo regarding the posting Ordinance. Chair Fort also expressed disappointment regarding the established Cannabis Business activity ordinance and commented on the adequate distances.

The Commission commented on requirements for owners including background checks to ensure reputable owners who are applying for business activities. Commission suggested staff consider some type of encouragement as it relates to hiring practices.

Patty Nevins, Director of Planning, clarified that city projects amendment was written broadly, and would allow modification of development standards and entitlement processes.

Commissioner Gordon and Deputy City Manager, Phillip Burum, discussed current Development Advisory Board Hearing processes.

No one spoke in favor or opposition of this item.

The Public Hearing was closed.

RECOMMENDATION:

Based on the information in the staff report staff recommends that the Planning Commission adopt Resolution PC No. 2022-040; and,

- 1. Determine that this Ordinance is categorically exempted pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA, in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment where it can be with certainty that there is no possibility that the activity in question may**

have a significant effect on the environment, the activity is not subject to CEQA; and,

2. Approve a resolution recommending that the City Council adopt an Ordinance for Municipal Code Amendment (MCA) No. 22-007 to amend Chapter 2, Chapter 9, Chapter 25, Chapter 26, Chapter 30, and Chapter 33 of the Municipal Code.

ACTION: Motion was made by Commissioner Gordon, seconded by Secretary Sanchez, and passed by a vote of 3-0-2 to adopt Resolution PC No. 2022-040; and, approve Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction) Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).

The motion carried by the following vote: **AYES:** Fort, Sanchez, Gordon; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Sangha and Thrasher

DIRECTOR COMMUNICATIONS:

- A. Director Communications: None

COMMISSION COMMENTS:

- A. Public Communication Commission Comments:

Commissioner Gordon thanked all staff for their efforts in working with the applicants; he also thanked Director of Planning Patty Nevins for her assistance and expertise regarding a citizen request.

Secretary Sanchez commented on his appreciation of staff and attorneys' improvement and involvement and noted that he agrees with the streamlined process and mentioned that the city is headed towards the right direction.

Chair Fort agreed with the comments regarding the Planning team, and thanked staff for their hard work. Chair Fort also commented on the Cannabis ordinance and echoed her previous comments.. Chair Fort closed by thanking city and the public for the opportunity to serve.

ADJOURNMENT:

By consensus, the meeting adjourned at 7:44 p.m. to the next Regular Planning Commission Meeting on Tuesday, October 4, 2022, at 6:00 p.m. in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.

Susana Gallardo
Administrative Assistant

**THE FOREGOING MINUTES WERE APPROVED BY THE PLANNING COMMISSION
ON THE 4th DAY OF OCTOBER 2022.**

Idilio Sanchez
Secretary

DRAFT

NOTICE OF EXEMPTION

TO: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

FROM: City of Fontana
Planning Department
8353 Sierra Avenue
Fontana, CA 92335

Project Title: Master Case No. 22-0110
Municipal Code Amendment No. 22-007

Project Location - Specific: Citywide
(a) Project Location - City: Fontana, CA
(b) Project Location - County: San Bernardino

1. Description of nature, purpose, and beneficiaries of Project: Master Case No. 22-110 and Municipal Code Amendment No. 22-007 - Fontana Municipal Code amendment to Chapter 2 (Administration), (Chapters 9 (Environmental Protection and Resource Extraction), Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities).
2. Name of Public Agency approving project: City of Fontana
3. Name of Person or Agency carrying out project: City of Fontana
4. Exempt status: (Check one)
 - (a) ☐ Ministerial project.
 - (b) ☐ Not a project.
 - (c) ☐ Emergency Project.
 - (d) ☒ Categorical Exemption. State type and class number: Exempt under guidelines section Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA.
 - (e) ☐ Declared Emergency.
 - (f) ☐ Statutory Exemption. State Code section number: _____
 - (g) ☐ Other. Explanation: _____
5. Reason why project was exempt: This project is a citywide code update to Chapter 2, 9, 25, 26, 30, and 33 of the Fontana Municipal Code. There is no associated development with this project.
6. Contact Person: Salvador Quintanilla, Senior Planner Telephone: (909) 350-6656

Date Received for Filing: _____

DiTanyon Johnson
Principal Planner

(Clerk Stamp Here)

ATTACHMENT NO. 5



NOTICE OF PUBLIC HEARING

Si desea información en Español referente a esta notificación o proyecto, favor de comunicarse al (909) 350-6728.

In compliance with Section No. 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof, the agenda will be made available in appropriate alternative formats to persons with a disability. Should you need special assistance to participate in this meeting, please contact the City Clerk's Department by calling (909) 350-7602. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting.

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE CITY COUNCIL OF THE CITY OF FONTANA FOR THE FOLLOWING:

Master Case No. 22-110/Municipal Code Amendment No. 22-007: Update to the City of Fontana Municipal Code for amendments to Chapter 2 (Administration), Chapters 9 (Environmental Protection and Resource Extraction), Chapter 25 (Streets, Sidewalk, and Other Public Ways), Chapter 26 (Subdivisions), Chapter 30 (Zoning and Development Code), and Chapter 33 (Cannabis Businesses and Activities). Chapter 2, Chapter 25, Chapter 26, and Chapter 30 amendments will include removal of the Development Advisory Board (DAB) process. Chapter 9 amendments include a revision to the definition of sensitive receptors. Additional Chapter 30 amendments include modification of the park requirements within the Form Based Code, addition of language for density/replacement units to address Senate Bill 330, and addition of language for the review of City initiated projects. Chapter 33 amendments will include minor text modifications to the Cannabis Business guidelines.

Environmental Determination:

This project qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c), 15061(B)(3) (the common-sense exemption), and 15378 and Sections No. 3.01, 3.22, and 10.59 of the 2019 Local Guidelines for Implementing CEQA.

Location:

Citywide

Date of Hearing:

October 11, 2022

Place of Hearing:

City Hall Council Chambers, 8353 Sierra Avenue, Fontana, CA, 92335

Time of Hearing: 7:00 pm

Should you have any questions concerning this project, please contact Salvador Quintanilla, Senior Planner, at (909) 350-6656 or squintanilla@fontana.org.

ANY INTERESTED PARTY MAY PROVIDE INFORMATION BY LETTER OR EMAIL WHICH MAY BE OF ASSISTANCE TO THE CITY COUNCIL. A COPY OF THE APPLICATION AND ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION. PLEASE CONTACT THE PLANNER LISTED ABOVE.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish:

¼ Page



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1753

Agenda #: A.

Agenda Date: 10/11/2022

Category: New Business

FROM:

Building & Safety

SUBJECT:

First Reading and Set Public Hearing for the Adoption of the 2022 Edition of the California Building Standards Code and Corresponding Base Model Codes

RECOMMENDATION:

- (1) Determine that the adoption of the ordinance of the City of Fontana adding, amending and deleting certain articles, sections and subsections of Chapter 5 of the Code of the City of Fontana, California pertaining to the construction and maintenance of buildings, and adopting the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code is exempt from further environmental review under Section 15061(b)(3) of the State CEQA guidelines, projects with no possibility of significant effects upon the environment, and direct staff to file a notice of exemption.
- (2) Waive further reading of and introduce **Ordinance No. 1907**, an ordinance of the City of Fontana adding, amending and deleting certain articles, sections and subsections of Chapter 5 of the Code of the City of Fontana, California pertaining to the construction and maintenance of buildings, and the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code; and that the reading of the title constitute the first reading thereof.
- (3) Set Public Hearing for October 25, 2022 and deem the Notice of Hearing sufficient to give interested persons notice of the purpose of the ordinance and subject matter thereof.

COUNCIL GOALS:

- To improve public safety by incorporating current technologies in the construction and maintenance of buildings, housing and fire prevention into the City's building codes.
- To promote economic development by being business friendly through the reduction of local amendments to the adopted codes.

DISCUSSION:

The California Health and Safety Code requires the City to update its codes, laws, and ordinances regulating building construction to keep up with the latest edition of the California Building Standards Code, known as the California Code of Regulations, Title-24. The 2022 California Building Standards Code - based on the 2021 editions of the model codes - was adopted by the California Building Standards Code with an effective date of January 1, 2023. The proposed Ordinance will adopt the 2022 Edition of the California Building Standards Code, which consists of the California Building Code, California Plumbing Code, California Electrical Code, California Mechanical Code, California Existing Building Code, California Green Building Standards Code, and California Residential Code. The adoption of these codes will be consistent with State law, and incorporate current technologies in the construction and maintenance of buildings, housing and fire prevention into the City's building codes.

There are no new or increased fees being proposed with this ordinance.

The proposed Ordinance is substantially the same as the previous editions of the California Building Standards Code update except for the adoption of the International Property Maintenance Code.

It should be noted that the wind provisions of the 2022 Edition of the California Residential Code and the 2022 Edition of the California Building Code have been adjusted to reflect the wind speeds as determined by the American Society of Civil Engineers.

The City Attorney has reviewed and approved the content of the proposed Ordinance.

Copies of the Codes that are being considered for adoption are filed in the Clerk's Office of the City and are open to public inspection as required by Government Code Section 50022.6.

The required Notice of Hearing has been prepared pursuant to Government Code Section 50022.3.

FISCAL IMPACT:

None.

MOTION:

Approve staff recommendation.

ORDINANCE NO. 1907

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA ADDING, AMENDING AND DELETING CERTAIN ARTICLES, SECTIONS AND SUBSECTIONS OF CHAPTER 5 OF THE CODE OF THE CITY OF FONTANA PERTAINING TO THE CONSTRUCTION AND MAINTENANCE OF BUILDINGS, AND ADOPTING BY REFERENCE THE 2022 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE, KNOWN AS THE CALIFORNIA CODE OF REGULATIONS, TITLE 24, CONSISTING OF THE CALIFORNIA BUILDING CODE, VOLUMES 1 & 2, BASED ON THE 2021 INTERNATIONAL BUILDING CODE; THE CALIFORNIA PLUMBING CODE, BASED ON THE 2021 UNIFORM PLUMBING CODE; THE CALIFORNIA ELECTRICAL CODE, BASED ON THE 2020 NATIONAL ELECTRICAL CODE; THE CALIFORNIA MECHANICAL CODE, BASED ON THE 2021 UNIFORM MECHANICAL CODE; THE CALIFORNIA EXISTING BUILDING CODE, BASED ON THE 2021 INTERNATIONAL EXISTING BUILDING CODE; THE CALIFORNIA GREEN BUILDING STANDARDS CODE; THE CALIFORNIA RESIDENTIAL CODE, BASED ON THE 2021 INTERNATIONAL RESIDENTIAL CODE; AND THE 2021 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE

WHEREAS, the City of Fontana, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in December 2021 and January 2022, the State Building Standards Commission reviewed and approved the 2022 edition of the California Building Standards Code (Title 24 of the California Code of Regulations); and

WHEREAS, Health and Safety Code Sections 18938 and 17958 make the California Building Standards Code applicable to all cities and counties throughout California, including the City of Fontana, 180 days after publication by the State Building Standards Commission or upon a later date established by the Building Standards Commission, which here is January 1, 2023, and

WHEREAS, Health and Safety Code Section 18941.5 provides that a City may establish more restrictive building standards if they are reasonably necessary due to local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities to make modifications to the requirements contained in the California Building Standards Code if such modifications are found to be reasonably necessary because of local climatic, geographic, or topographic conditions, and Health and Safety Code Section 17958.7 requires that the City Council, before making modifications to such requirements, make an express finding that such modifications are reasonably necessary because of local climatic, geographic, or topographic conditions; and

WHEREAS, the City Council of the City of Fontana hereby finds that it is

reasonably necessary to amend certain portions of the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, to meet the particular climatic, geological, and topographical conditions existing in the City; and

WHEREAS, the City Council further finds that some changes and modifications are of an administrative or procedural nature, or concern themselves with subjects not covered by the Code, or are reasonably necessary to safeguard life and property within the City; and

WHEREAS, the City Council conducted a duly noticed public hearing to consider and review the California Building Standards Codes and local amendments, at which time hearing testimony and evidence was presented to and considered by the City Council.

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

Section 1. The City Council of the City of Fontana ("City") is informed and finds that it is reasonably necessary to amend certain portions of the 2022 Edition of The California Building Standards Code, known as the California Code of Regulations, Title 24, to meet the particular climatic, geological, and topographical conditions existing in the City. The City Council further finds that some changes and modifications are of an administrative or procedural nature or concern themselves with subjects not covered by the Code, or are reasonably necessary to safeguard life and property within the City. The City Council hereby adopts the following (climatic, geological, and topographical, where applicable) findings to support the proposed amendments to the 2022 California Building Standards Code made herein in this Ordinance:

- (a) The City is subject to relatively low amounts of precipitation, very low humidity levels, and extremely high temperatures. These climatic conditions are conducive to the spread of fire. For example, during July, August, and September, temperatures often exceed 100 degrees Fahrenheit. During the same months, humidity is usually less than 40%, and humidity measurements less than 10% are not uncommon. These conditions contribute to an increased likelihood of fire. Moreover, minor fires have a greater tendency of spreading rapidly due to such conditions.

(Finding applicable to Amendments to California Building Code Sections 903.2 and 1505.5; and California Residential Code Section R313.)

- (b) The City is subject to extremely strong winds, commonly referred to as "Santa Ana Winds," which reach speeds in excess of 90 miles per hour. Extensive damage often occurs during such winds, including: fallen trees; blown sand and debris; downed utility poles, utility circuits, and utility service lines; and structural damage to buildings. These adverse conditions can cause: (1) fires; (2) impairment of emergency apparatus access; (3) delays in response times of emergency apparatus; and (4) the depletion of apparatus readily available for fire suppression activities. These windstorms commonly last from three to seven days.

(Finding applicable to Amendments to California Building Code Sections 502.1, 903.2, 1609.3, 1609.4.3, Table 1504.8, Table 1507.2.7.1(1), Table 1507.2.7.1(2) and I105.2; and California Electric Code Section 225.1; and California Residential Code Sections R301.2.1.4, R313, R319.1, Table R301.2, and AH105.2.)

- (c) The City's neighboring foothills create a unique fire hazard. This is because fire service is provided to the City by the San Bernardino County Fire Department and fire units from the City are often sent to assist in the extinguishment of fast moving, wind-assisted fires in the neighboring foothills which destroy or damage many structures, and as such, these units are then unavailable for fire suppression in the City.

(Finding applicable to Amendments to California Building Code Sections 502.1, 903.2, and 1505.5; and California Residential Code Sections R313 and R319.1.)

- (d) Development has occurred in the City and continues to occur in the City and such development has resulted in severe traffic congestion during peak business hours, weekends, and holidays, thus decreasing response time, particularly on the following streets and highways: Sierra Avenue, Valley Boulevard, Cherry Avenue, Foothill Boulevard, Base Line Road, Highland Avenue, Citrus Avenue, Slover Avenue, Jurupa Avenue, Arrow Route, San Bernardino Avenue, the I-15 Freeway and the I-10 Freeway. Such traffic and circulation congestion is an artificially created, obstructive topographical condition creating a situation which places fire department response time to fire occurrences at risk, and makes it necessary to provide automatic on- site fire-extinguishing systems and other protection measures to protect occupants and property from fire hazards. Automatic fire protection systems are the single greatest means of reducing the severity of structural fires; fire loss in un-sprinklered buildings is four times greater than fire loss in sprinklered buildings. Numerous fires have occurred within the City in residential structures (houses, apartments, hotels, and motels) over the past several years that have automatic fire protection systems, and in all of these fires, the automatic fire protection systems have successfully controlled and/or suppressed the fire before the emergency response personnel have been able to arrive at the structure.

(Finding applicable to Amendments to California Building Code Sections 502.1 and 903.2; and California Residential Code Sections R313 and R319.1.)

- (e) An extreme and unusual fire hazard exists in the hillsides and other areas of the City south of Jurupa Avenue and north of the I-15 Freeway due to the presence of highly flammable vegetation, the region's dry climate, and frequent hot, dry Santa Ana winds.

(Finding applicable to Amendments to California Building Code Sections 903.2 and 1505.5; and California Residential Code Section R313.)

- (f) The City is located in Southern California, in an extremely active seismic region, with high levels of historic earthquake shaking in the recent past (earthquakes measuring larger than a magnitude 5 on the Richter Scale) and can be expected to experience significant strong ground shaking within the foreseeable future; and

The seismotectonic setting of the City is dominated by the Sierra Madre-Cucamonga fault, which traverses the Northern portion of the City, and the City's close proximity to the San Andreas fault--7 miles to the East, San Jacinto fault--3 miles to the East and Whittier-Elsinore Fault--19 miles to the Southwest; and

In the event of a severe earthquake, these faults present the potential for catastrophic damage, including fire, damage to roadways and other impairments of emergency apparatus. (This information is according to maps used by Cal Tech, Pasadena and provided by the U.S. Geological Survey). Existing and planned developments are at risk from structural damage from earthquake faults. Improved standards are necessary to ensure that maximum safety is provided to persons and property.

(Finding applicable to Amendments to California Building Code Sections 502.1 ; and California Electric Code Section 225.1; and California Residential Code Sections R319.1 and Table R301.2.)

- (g) Aluminum expands and shrinks at a much greater rate than other metals. This property becomes critical for smaller wires of aluminum conductors, which may break down at a termination point in a seismic event, causing a fire. As discussed above, the City is located in an extreme active seismic region.

(Finding applicable to Amendment to California Electric Code Section 110.5.)

- (h) Additional amendments and deletions to the California Building Standards Code, known as the California Code of Regulations, Title 24; the International Building Code; and the International Residential Code; are administrative or procedural in nature and reasonable and necessary to safeguard life and property within the City.

(Finding applicable to Amendments to the California Building Code Sections 1.8.8, 102.1, 105.2, 113, 202, 502.1, 3109.2, J103.2, and J104.1; and California Residential Code Sections 1.8.8, R322.1, Table R301.2, and Appendix AX.)

- (i) The topography of the City is mostly rocky with large boulders and stones below grade in much of the northern part of the City, which is rapidly being developed; and

Given the topography of the City, it is impractical and unreasonable to remove all rocks 12 inches or more in diameter from certain development areas or place these rocks at more than 10 feet below grade; and

Geotechnical, civil, and/or soil engineers have opined that due to the rocky topography of the City, the use of rocks with a maximum dimension larger than 12 inches and up to 24 inches as fill material at three feet or more below grade and rocks with a maximum dimension greater than 24 inches as fill material at ten feet or more below grade is safe and prudent.

(Finding applicable to Amendment to California Building Code Section J107.4.)

Section 2. Article III of Chapter 5 of the Code of the City of Fontana is hereby amended by rewriting the article in its entirety to read as follows:

“Article III. California Building Code

Sec. 5-61. Adoption; copy on file.

The 2022 Edition of the California Building Code, known as the California Code of Regulations, Title 24, Part 2, Volumes 1 & 2, based on the 2021 Edition of the International Building Code, published by the International Code Council, including Chapter 1 and Appendices B, C, I, and J, are hereby adopted as the Building Code of the City and reference is hereby made to the copy now on file in the Clerk's Office of the City.

Sec. 5-62. Changes and Amendments.

(a) Section 105.2 Building Exemption 2 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended to read as follows:

2. Solid fences not over 3-1/2 feet high and open fences with an open surface area of not less than 90 percent (90%) not over 4 feet high.

(b) Section 105.2 Building Exemption 4 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended to read as follows:

4. Retaining walls which are not over 3 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a

surcharge or impounding flammable or combustible liquids.

- (c) Section 202 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by rewriting the definition for Swimming Pools to read as follows:

Swimming Pools. Any body of water or any structure that contains water over 18 inches (457 mm) deep. This includes without limitation all portable, moveable, collapsible, storable, and permanent in-ground, above-ground and on-ground swimming pools, garden ponds, spas, hot tubs, wading pools, and fountains.

- (d) Section 502.1 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by rewriting the section in its entirety to read as follows:

Sec. 502.1 Address identification. New and existing buildings, apartment units, condominium units, suites, tenant spaces, and similar other units or spaces shall be provided with approved address numbers or letters per Section 5-239 of the Fontana Municipal Code.

- (e) Section 903.2 of the California Building Code. Known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding thereto a paragraph after the first paragraph of the section to read as follows:

Notwithstanding the requirements of Sec. 903.2, an automatic fire-sprinkler system, approved by the Fire Prevention Division of the Fontana Fire Protection District, shall be installed, and maintained in new construction per the requirements of Article II of Chapter 11 of the Code of the City.

- (f) Section 1505.5 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by rewriting the section in its entirety to read as follows:

Sec. 1505.5 Non-classified roofing. Non-classified roofing is material that is not listed as a Class A, B, or C roof covering. Non-classified roofing is not approved for use within the City.

- (g) Section 1609.3 of the California Building Code, known as the California

Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding thereto a paragraph and table to the end of the section to read as follows:

Portions of the City are located within a special wind region. The basic design wind speed V in these special wind region areas shall be:

Risk Category	Basic Design Wind Speed, V
I	116 mph
II	129 mph
III & IV	135 mph

- (h) Section 1609.4.3 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding thereto a paragraph to the end of the section to read as follows:

Exposure C, as a minimum, shall apply in all cases unless the architect or engineer in general responsible charge can justify to the building official that the building site and surrounding terrain conform to the criteria for Exposure B.

- (i) Section 115922(a) of Section 3109.2 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code is hereby amended by rewriting the section in its entirety to read as follows:

(a) Except as provided in Section 115925, when a building permit is issued for the construction of a new swimming pool and/or spa or the remodeling of an existing pool or spa at a private single-family home, the respective swimming pool or spa shall be equipped with at least two drowning prevention safety features, one of which shall be an enclosure that meets the requirements of Section 115923 and isolates the swimming pool or spa from the private single-family home. Any walls of the residential structure or accessory structures used to complete the isolation enclosure must have door openings equipped with protection as required in 115922 (a)(4) or (5). Any such door protection device provided for this purpose may not be used to comply with the second drowning prevention feature requirement. In addition to the foregoing, the respective swimming pool or spa shall be equipped with at least one of the following four drowning prevention safety features:

(1) Removable mesh fencing that meets American Society for Testing and Materials (ASTM) Specifications F2286 standards in

conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

(2) An approved safety pool cover, as defined in subdivision (d) of Section 115921.

(3) An alarm that, when placed in a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. The alarm shall meet and be independently certified to the ASTM Standard F2208 "Standard Safety Specification for Residential Pool Alarms," which includes surface motion, pressure, sonar, laser and infrared type alarms. A swimming protection alarm feature designed for individual use, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water, is not a qualifying drowning prevention safety feature.

(4) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the features set forth above and has been independently verified by an approved testing laboratory as meeting standards for those features established by the ASTM or the American Society of Mechanical Engineers (ASME).

- (j) Section 115923 of Section 3109.2 of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code is hereby amended by adding the wording to the enclosure characteristics:

Where the barrier is composed of horizontal and vertical members and the distance between the top of the horizontal member is less than 45 inches the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall be not greater than 1 3/4 inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall be not greater than 1 3/4 inches in width.

- (k) Section I105.2 of Appendix I of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by rewriting the section in its entirety to read as follows:

Sec. I105.2 Footings. A patio cover may be supported on a concrete slab on grade without footings, provided all of the following conditions are met:

1. The supporting slab is not less than 3 1/2 inches thick; and

2. The supporting columns do not support live and dead loads in excess of 750 pounds per column; and

3. The patio cover is constructed solely out of aluminum and/or other similar light weight material, and has a current valid International Code Council Evaluation Report or Council of American Building Officials National Evaluation Report (or equal) clearly stating that: (a), a slab 3 1/2 inches thick is structurally adequate; (b), footings are not required; and (c), how the patio cover is to be anchored/held-down to resist uplift forces based on a minimum nominal design wind speed of 100 miles per hour.

- (l) Section J103.2, Exemption 1 of Appendix J of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by rewriting in its entirety to read as follows:

1. When approved by the building official, grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties.

- (m) Section J103.2, of Appendix J of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding the following 2 exemptions:

8. An excavation that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage course that is:

- a. less than 2 feet (610 mm) in depth; or
- b. does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in 1 1/2 units horizontal (66.7% slope).

9. A fill that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage course that is:

- a. less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope); or
- b. less than 3 feet (914 mm) in depth, not intended to support structures.

- (n) Section J104.1, of Appendix J of the California Building Code, known as the

California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding thereto a paragraph to the end of the section to read as follows:

All grading plans shall be prepared by a state licensed or registered design professional. Grading in excess of 5,000 cubic yards (3825 m³) shall be prepared by a state registered civil engineer.

- (o) Section J107.4 of Appendix J of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 and the International Building Code, is hereby amended by adding thereto the following Exception:

Exception: The building official may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement and approves the fill stability. The following conditions shall also apply:

1. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
2. Rock sizes greater than 12 inches (305 mm) and up to 24 inches (610 mm) in maximum dimension shall be three feet (914 mm) or more below grade, measured vertically. Rock sizes greater than 24 inches (610 mm) in maximum dimension shall be 10 feet (3048 mm) or more below grade, measured vertically.
3. Rocks shall be placed so as to assure filling of all voids with well-graded soils."

Section 3. Article IV of Chapter 5 of the Code of the City is hereby amended by rewriting the article in its entirety to read as follows:

"Article IV. California Plumbing Code

Sec. 5-86. Adoption; copy on file.

The 2022 Edition of the California Plumbing Code, known as the California Code of Regulations, Title 24, Part 5, based on the 2021 Edition of the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, including Appendices A, B, D, H, I, and K, are hereby adopted as the Plumbing Code of the City and reference is hereby made to the copy now on file in the Clerk's office of the City.

Sec. 5-87. Changes and Amendments.

The 2022 Edition of the California Plumbing Code is hereby adopted with no

amendments.”

Section 4. Article V of Chapter 5 of the Code of the City is hereby amended by rewriting the article in its entirety to read as follows:

“Article V. California Electrical Code

Sec. 5-111. Adoption; copy on file.

The 2022 Edition of the California Electrical Code, known as the California Code of regulations, Title 24, Part 3, based on the 2020 Edition of the National Electrical Code, published by the National Fire Protection Association is hereby adopted as the Electrical Code of the City and reference is hereby made to the copy now on file in the Clerk’s office of the City.

Sec. 5-112. Changes and Amendments.

(a) Section 110.5 of the California Electrical Code, known as the California Code of regulations, Title 24, Part 3 and the National Electrical Code is hereby amended by adding thereto the following:

Aluminum conductors of No. 6 or smaller shall require continuous inspection by an approved independent testing agency for proper torquing of connections at their termination point.

(b) Section 225.1 of the California Electrical Code, known as the California Code of regulations, Title 24, Part 3 and the National Electrical Code is hereby amended by adding thereto the following:

All new outside wiring on private property shall be underground.

EXCEPTION No. 1: Temporary wiring installed per Article 590.

EXCEPTION No. 2: Services as defined by Article 100 and installed per Article 230, subject to approval by the Administrative Authority.

EXCEPTION No. 3: Wiring in approved conduit and raceways directly attached to a building.”

Section 5. Article VI of Chapter 5 of the Code of the City is hereby amended by rewriting the article in its entirety to read as follows:

“Article VI. California Mechanical Code

Sec. 5-136. Adoption; copy on file.

The 2022 Edition of the California Mechanical Code, known as the California Code of Regulations, Title 24, Part 4, based on the 2021 Edition of the Uniform Mechanical Code, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted as the Mechanical Code of the City and reference is hereby made to the copy now on file in the Clerk's office of the City.

Sec. 5-137. Changes and Amendments.

The 2022 Edition of the California Mechanical Code is hereby adopted with no amendments.”

Section 6. Article VIII of Chapter 5 of the Code of the City is hereby amended by rewriting the article in its entirety to read as follows:

“Article VIII. California Existing Building Code

Sec. 5-186. Adoption; copy on file.

The 2022 Edition of the California Existing Building Code, known as the California Code of Regulations, Title 24, Part 10, based on the 2021 Edition of the International Existing Building Code, published by the International Code Council, is hereby adopted as the Existing Building Code for the City and reference is hereby made to the copy now on file in the Clerk's office of the City.

Sec. 5-187. Changes and Amendments.

The 2022 Edition of the California Existing Building Code is hereby adopted with no amendments.”

Section 7. Article XVIII of Chapter 5 of the Code of the City of Fontana is hereby amended by rewriting the Article in its entirety to read as follows:

“Article XVIII. California Green Building Standards Code

Sec. 5-550. Adoption; copy on file.

The 2022 Edition of the California Green Building Standards Code, known as the California Code of Regulations, Title 24, Part 11, is hereby adopted as the Green Building Standards Code of the City and reference is hereby made to the copy now on file in the Clerk's Office of the City.

Sec. 5-551. Changes and Amendments.

The 2022 Edition of the California Green Building Standards Code is hereby

adopted with no amendments.”

Section 8. Article XIX of Chapter 5 of the Code of the City of Fontana is hereby amended by rewriting the Article in its entirety to read follows:

“Article XIX. California Residential Code

Sec. 5-600. Adoption; copy on file.

The 2022 Edition of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5, based on the 2021 Edition of the International Residential Code, published by the International Code Council, including Appendix H and Appendix AX, is hereby adopted as the Residential Code of the City and reference is hereby made to the copy now on file in the Clerk's Office of the City.

Sec. 5-601. Changes and Amendments.

(a) Table R301.2, CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA, of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by filling in the blanks in the first row to read as follows:

<u>CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA</u>	
GROUND SNOW LOAD	Zero
WIND DESIGN:	
Speed- Special wind region...	129Vmph. Other areas... 96Vmph
Topographic effects	No
SEISMIC DESIGN CATEGORY	D2 or E
SUBJECT TO DAMAGE FROM:	
Weathering.....	Negligible
Frost line depth	12-24 inches
Termite.....	Very Heavy
WINTER DESIGN TEMP	43
ICE BARRIER UNDERLAYMENT REQUIRED.....	No
FLOOD HAZARDS:	
Date of adoption of first ordinance (Ord 881) regarding Flood Damage Prevention: June 6, 1987	
Date of latest update of the Flood Insurance Study: September 2, 2019	
Currently Effective Flood Insurance Rate Maps (FIRMS):	
<u>Panel Numbers:</u> 06071C7895J, 06071C7915H, 06071C8634J, 06071C8635J, 06071C8642J, 06071C8651H, 06071C8652H,	

06071C8653H, 06071C8654H, 06071C8658H, 06071C8666H

Dates: October 3, 2022, for all panels

AIR FREEZING INDEX.....0
MEAN ANNUAL TEMP 60

(b) Section R301.2.1.4 of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by adding thereto a paragraph to the end of the section to read as follows:

Exposure C, as a minimum, shall apply in all cases unless justification, to the satisfaction of the Building Official or his/her designee, is provided that the building site and surrounding terrain conform to the criteria for Exposure B.

(c) Section R313 of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by adding thereto the following Section:

Sec. R313.0 General. Notwithstanding the requirements of Section R313, an automatic fire-sprinkler system, approved by the Fire Prevention Division of the Fontana Fire Protection District, shall be installed, and maintained in all new construction per the requirements of Article II of Chapter 11 of the Code of the City.

(d) Section R319.1 of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by rewriting the section in its entirety to read as follows:

Sec. R319.1 Site Address. New and existing buildings, apartment units, condominium units, suites, and similar other units or spaces shall be provided with approved address numbers or letters per Section 5-239 of the Fontana Municipal Code.

(e) Section R322.1 of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by adding thereto a paragraph to the end of the section to read as follows:

Notwithstanding the requirements of Sec. R322, all construction within a flood hazard area shall comply with the requirements of Article II of Chapter 12 of the Code of the City.

(f) Section AH105.2 of Appendix Chapter H of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code, is hereby amended by rewriting the section in its entirety to read as follows:

Sec. AH105.2 Footings. A patio cover may be supported on a concrete slab on grade without footings, provided all of the following conditions are met:

1. The supporting slab is not less than 3 1/2 inches thick; and
2. The supporting columns do not support live and dead loads in excess of 750 pounds per column; and
3. The patio cover is constructed solely out of aluminum and/or other similar light weight material, and has a current valid International Code Council Evaluation Report or Council of American Building Officials National Evaluation Report (or equal) clearly stating that: (a), a slab 3 1/2 inches thick is structurally adequate; (b), footings are not required; and (c), how the patio cover is to be anchored/held-down to resist uplift forces based on a minimum nominal design wind speed, of 100 miles per hour.

(g) Section 115922(a) of Appendix AX of the California Residential Code, known as the California Code of Regulations, Title 24, Part 2.5 and the International Residential Code is hereby amended by rewriting the section in its entirety to read as follows:

(a) Except as provided in Section 115925, when a building permit is issued for the construction of a new swimming pool and/or spa or the remodeling of an existing pool or spa at a private single-family home, the respective swimming pool or spa shall be equipped with at least two drowning prevention safety features, one of which shall be an enclosure that meets the requirements of Section 115923 and isolates the swimming pool or spa from the private single-family home. Any walls of the residential structure or accessory structures used to complete the isolation enclosure must have door openings equipped with protection as required in 115922 (a)(4) or (5). Any such door protection device provided for this purpose may not be used to comply with the second drowning prevention feature requirement. In addition to the foregoing, the respective swimming pool or spa shall be equipped with at least one of the following four drowning prevention safety features:

- (1) Removable mesh fencing that meets American Society for Testing and Materials (ASTM) Specifications F2286 standards in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.
- (2) An approved safety pool cover, as defined in subdivision (d)

of Section 115921.

(3) An alarm that, when placed in a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. The alarm shall meet and be independently certified to the ASTM Standard F2208 “Standard Safety Specification for Residential Pool Alarms,” which includes surface motion, pressure, sonar, laser and infrared type alarms. A swimming protection alarm feature designed for individual use, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water, is not a qualifying drowning prevention safety feature.

(4) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the features set forth above and has been independently verified by an approved testing laboratory as meeting standards for those features established by the ASTM or the American Society of Mechanical Engineers (ASME).”

Section 9. Article II of Chapter 5 of the Code of the City of Fontana is hereby amended by renaming and rewriting the Article in its entirety to read follows:

“Article II. International Property Maintenance Code

Sec. 5-36. Adoption; copy on file.

The 2021 Edition of the International Property Maintenance Code, published by the International Code Council, is hereby adopted and reference is hereby made to the copy now on file in the clerk’s office of the city.

Sec. 5-37. Changes and Amendments.

- (a) Section 303.2 of the 2021 International Property Maintenance Code is hereby amended by rewriting the section in its entirety to read as follows:

Section 303.2 Enclosures must comply with Section 115922(a) of Appendix AX of the 2022 California Residential Code as amended by the City of Fontana.

- (b) Section 304.3 of the 2021 International Property Maintenance Code is hereby amended by rewriting the section in its entirety to read as follows:

Section 303.2 Site Address. New and existing buildings, apartment units, condominium units, suites, and similar other units or spaces shall be provided with approved address numbers or letters per Section 5-239 of the Fontana Municipal Code.

Section 10. Severability/Interpretation. If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance is held to be invalid or void by a court of competent jurisdiction, such invalidity or voidance shall not affect the other provisions or applications which can be given effect without the invalid provision or application; and to this end, the provisions of this Ordinance are required to be severable. This Ordinance shall be liberally construed to achieve the purposes of this Ordinance and to preserve its validity. If any provision of Chapter 5 of the Code of the City or the application thereof to any person or circumstance is determined to be in conflict with any other applicable code, law, or ordinance, the most restrictive requirements shall be deemed applicable and enforced.

Section 11. The adoption of the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code, and the 2021 International Property Maintenance Code, does not commit the City to any action that may have a significant effect on the environment, and as per Section 15378 of the State CEQA Guidelines, such action does not constitute a project subject to the requirements of CEQA. Staff is directed to file a Notice of Exemption.

Section 12. This ordinance shall take effect thirty (30) days after the date of its adoption.

Section 13. The City Clerk shall certify to the adoption of this Ordinance and shall cause a summary thereof to be published at least five (5) days prior to the meeting at which the proposed Ordinance is to be adopted in the Herald News, a newspaper of general circulation in the City, and shall post a certified copy of the proposed Ordinance in the office of the City Clerk, and within fifteen (15) days of its adoption, shall cause a summary of it to be published in the same manner as specified above, including the vote for and against the same, and shall post a certified copy of the adopted Ordinance in the office of the City Clerk, in accordance with California Government Code Section 36933.

APPROVED AND ADOPTED this [] day of [], 2022.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Germaine McClellan Key, 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 ___ day of _____, 2022, and was finally passed and adopted not less than five days thereafter on the ___ day of _____, 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk of the City of Fontana

Mayor of the City of Fontana

City Clerk

TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE:

PUBLICATION OF SUMMARY OF PROPOSED ORDINANCE NO. [REDACTED]

PUBLISH ONE TIME ONLY ON OR BEFORE ONE
AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF PROPOSED ORDINANCE NO. [REDACTED]

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on October 11, 2022 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, considered adoption of Ordinance No. [REDACTED], an ordinance of the City of Fontana, California adding, amending, and deleting certain articles, sections, and subsections of Chapter 5 of the Code of the City of Fontana pertaining to the construction and maintenance of buildings, and adopting by reference the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code; and that the reading of the title constitute the first reading thereof.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Germaine
McClellan Key
City Clerk

P.O. #800496

TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE:

PUBLICATION OF SUMMARY OF ADOPTED ORDINANCE NO. [REDACTED]

PUBLISH ONE TIME ONLY ON OR BEFORE ONE
AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF ADOPTED ORDINANCE NO. [REDACTED]

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on October 25, 2022 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, adopted Ordinance No. [REDACTED], an ordinance of the City of Fontana, California adding, amending, and deleting certain articles, sections, and subsections of Chapter 5 of the Code of the City of Fontana pertaining to the construction and maintenance of buildings, and adopting by reference the 2022 Edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, consisting of the California Building Code, Volumes 1 & 2, based on the 2021 International Building Code; the California Plumbing Code, based on the 2021 Uniform Plumbing Code; the California Electrical Code, based on the 2020 National Electrical Code; the California Mechanical Code, based on the 2021 Uniform Mechanical Code; the California Existing Building Code, based on the 2021 International Existing Building Code; the California Green Building Standards Code; the California Residential Code, based on the 2021 International Residential Code; and the 2021 Edition of the International Property Maintenance Code.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Germaine
McClellan Key
City Clerk

P.O. #800496