

**CITY OF FONTANA
REGULAR HOUSING AUTHORITY MEETING
July 28, 2020
AVAILABLE REMOTELY
7:00 PM**

Due to the evolving situation with the COVID-19 Novel Coronavirus and the health recommendations for social distancing from the Center for Disease Control (CDC)

**THE CITY OF FONTANA HOUSING AUTHORITY MEETING
SHALL BE AVAILABLE TO THE PUBLIC REMOTELY.**

The general public is encouraged to watch and participate from the safety of their home while practicing social distancing.

The meeting can be viewed:

On Local Cable: KFON Channel 3

Streaming Online: <https://LIVE.FONTANA.ORG>

**Members of the public can submit comments via e-mail at
Publiccomments@fontana.org**

Public comments must be received no later than 5:00 P.M. on the day of the meeting. Public comments of no more than three (3) minutes will be read into the record at the appropriate time during the meeting.

In the subject of your e-mail please indicate the item number. If it is a public hearing item indicate whether you are in favor or opposition of the project.

Alternatively, you can leave your pre-recorded comment by calling (909) 600-5502 and leave your comments in a voice mail message no later than 5:00 P.M. on the day of the meeting, to have it played during the meeting.

Welcome to the meeting of the Fontana Housing Authority. To address the Authority, please submit a written comment via e-mail to Publiccomments@fontana.org. Your comment will be read into the record at the appropriate time during the meeting. Public comments must be received no later than 5:00 P.M. on the day of the meeting. Public comments of no more than three (3) minutes will be read into the record at the appropriate time during the meeting. Comments received after the public comment period is closed shall not become part of the public record of the hearing and shall not be made available to the Authority. In compliance with Section 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 Clerks 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.

Traducción en Español disponible a petición. Favor de notificar al Departamento "City Clerk". Para mayor información, favor de marcar el número 350-7602.

CALL TO ORDER/ROLL CALL:

- A. 7:00 P.M. Call the Meeting to Order**

PUBLIC COMMUNICATIONS:

This is an opportunity for citizens to speak to the Authority for up to 3 minutes on items **not** on the Agenda, but within the Authority's jurisdiction. The Authority is prohibited by law from discussing or taking immediate action on non-agendized items.

- 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 Authority votes on them, unless a member of the Authority requests a specific item be removed from the Consent Calendar for discussion. **Does any member of the public wish to address the Authority regarding any item on the Consent Calendar before the vote is taken?**

- A. Approval of Minutes**

Approve the Minutes of the June 23, 2020 Regular Housing Authority Meeting.

Approve Consent Calendar Item(s).

NEW BUSINESS:

- A. Regulatory Agreement and Declaration of Restrictive Covenants with New Legacy Development Corporation Regarding the Affordability of Two Apartment Units Located at the Northwest Corner of Arrow Boulevard and Nuevo Avenue and the Accompanying Economic Opportunity Report**

Adopt **Resolution No. HA 2020-____**, a Resolution of the Fontana Housing Authority, approving a Regulatory Agreement and Declaration of Restrictive Covenants between the Fontana Housing Authority and New Legacy Development Corporation regarding the affordability of two apartment units located at the northwest corner of Arrow Boulevard and Nuevo Avenue in Fontana, California (APNs 0191-162-36, 37 &

38) and approving certain related actions.

ELECTED OFFICIALS COMMUNICATIONS/COMMITTEE REPORTS:

A. Elected Officials Communications/Reports

EXECUTIVE DIRECTOR'S COMMUNICATIONS:

A. Executive Director Communications

ADJOURNMENT:

A. Adjournment

**MINUTES OF THE CITY OF FONTANA
REGULAR HOUSING AUTHORITY MEETING
June 23, 2020
AVAILABLE REMOTELY**

CALL TO ORDER/ROLL CALL:

A. 7:00 P.M. Call the Meeting to Order

The Regular Meeting of the City of Fontana Housing Authority was held remotely on Tuesday, June 23, 2020. Chairperson Armendarez called the meeting to order at 9:02 p.m.

ROLL CALL:

Present: Chairperson Armendarez, Authority Members Warren, Roberts, Cothran and Sandoval.

Absent: None

PUBLIC COMMUNICATIONS:

A. Public Communications

There were no public communications received.

CONSENT CALENDAR:

ACTION: Motion was made by Authority Member Roberts, seconded by Authority Member Sandoval and passed by a vote of 5-0 to approve Consent Calendar Items "A-B" (AYES: Armendarez, Warren, Roberts, Sandoval and Cothran; NOES: None; ABSENT: None) as follows:

A. Approval of Minutes

Approve the Minutes of the May 12, 2020, Regular Housing Authority Meeting.

B. Fiscal Year 2019/20 Fourth Quarter Budget Status Report

Approve the recommended Fiscal Year 2019/20 Fourth Quarter Budget adjustments.

ELECTED OFFICIALS COMMUNICATIONS/COMMITTEE REPORTS:

A. Elected Officials Communications/Reports

Chairperson Armendarez wished his wife a Happy Anniversary.

Authority Member Sandoval wished his wife a Happy Anniversary.

EXECUTIVE DIRECTOR'S COMMUNICATIONS:

A. Executive Director Communications

There were no Executive Director communications received.

ADJOURNMENT:

The Fontana Housing Authority meeting was adjourned by consensus at 9:04 p.m.

Tonia Lewis
Authority Clerk

Jesse Armendarez
Chairperson

ACTION REPORT
July 28, 2020

FROM: Department of Community Development

SUBJECT: Regulatory Agreement and Declaration of Restrictive Covenants with New Legacy Development Corporation Regarding the Affordability of Two Apartment Units Located at the Northwest Corner of Arrow Boulevard and Nuevo Avenue and the Accompanying Economic Opportunity Report

RECOMMENDATION:

Adopt **Resolution No. HA 2020-____**, a Resolution of the Fontana Housing Authority, approving a Regulatory Agreement and Declaration of Restrictive Covenants between the Fontana Housing Authority and New Legacy Development Corporation regarding the affordability of two apartment units located at the northwest corner of Arrow Boulevard and Nuevo Avenue in Fontana, California (APNs 0191-162-36, 37 & 38) and approving certain related actions.

COMMITTEE GOALS:

* To promote affordable housing by construction of high-quality multi-family housing which also serves to address the affordability needs of this community.

DISCUSSION:

Background:

Pursuant to the Disposition and Development Agreement (“DDA”) and Density Bonus Agreement (“DBA”) by and between the City of Fontana and New Legacy Development Corporation (“Developer”), the Developer intends to improve certain real property generally located at northwest corner of Arrow Boulevard and Nuevo Avenue, City of Fontana (APNs 0191-162-36, 37 & 38) and more specifically described within Exhibit “A” to the attached Resolution (“Property”).

The DDA requires the development of a mixed-use development, including 2,910 square feet of commercial/retail uses and 29 residential units with no less than two (2) units restricted for affordable housing purposes (“Project”) as more particularly described in Developer’s April 2017 proposal.

Analysis:

In order to effectuate the affordable housing aspects of the DDA and DBA, it necessary for the Developer and the Fontana Housing Authority to enter into a Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”), a copy of which is attached to the Resolution. The Regulatory Agreement is a mechanism for ensuring that two (2) of the housing units at the

Project are reserved for very-low-income tenants at an affordable rent for 55 years.

To assure the fiscal operating viability of the Project in general and the two (2) units restricted for affordable housing purposes in particular, the Regulatory Agreement includes a one-time “Authority Contribution” (more particularly described within the Regulatory Agreement) to the Developer in the amount of \$150,000.00 to be tendered within thirty (30) calendar days following the Developer receipt of a Certificate of Occupancy for the Project from the City.

Pursuant to § 15060(c) of the California Environmental Quality Act (the “CEQA”) Guidelines (i.e., California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000-15387), approval of this Resolution is exempt from CEQA because the actions described herein are administrative and financial and will not result in a direct or reasonable foreseeable indirect physical change in the environment and the actions described herein are not a “Project”, as defined within § 15378 of the CEQA Guidelines. On January 15, 2019, the Fontana Planning Commission determined that the Project is categorically exempt from the CEQA and therefore, no further action is required.

FISCAL IMPACT:

The Regulatory Agreement includes a one-time Authority Contribution to the Developer in the amount of \$150,000.00 to be tendered within thirty (30) calendar days following the Developer receipt of a Certificate of Occupancy for the Project from the City. The purpose of the Authority Contribution is to assure the fiscal operating viability of the Project in general and the two (2) units restricted for affordable housing purposes in particular. The Authority Contribution will be paid from resources solely available to the Fontana Housing Authority. Therefore, the Authority Contribution is not a source of development financing for the Project.

MOTION:

Approve staff recommendation.

SUBMITTED BY:

REVIEWED BY:



Zai AbuBakar
Director of Community Development



Chuck Hays
Deputy City Manager

APPROVED BY:



Mark Denny
City Manager

ATTACHMENTS:

Description:	Type:
Housing Authority Resolution	Backup Material
Regulatory Agreement	Backup Material
Economic Opportunity Report	Backup Material

ITEM: NB-A

RESOLUTION NO. FHA 2020-_____

A RESOLUTION OF THE FONTANA HOUSING AUTHORITY, APPROVING A REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS BETWEEN THE FONTANA HOUSING AUTHORITY AND NEW LEGACY DEVELOPMENT CORPORATION REGARDING THE AFFORDABILITY OF TWO APARTMENT UNITS LOCATED AT THE NORTHWEST CORNER OF ARROW BOULEVARD AND NUEVO AVENUE IN FONTANA, CALIFORNIA (APNS 0191-162-36, 37 & 38) AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, pursuant to the Disposition and Development Agreement (“DDA”) and Density Bonus Agreement (“DBA”) by and between the City of Fontana and New Legacy Development Corporation (“Developer”), the Developer intends to improve certain real property generally located at northwest corner of Arrow Boulevard and Nuevo Avenue, City of Fontana (APNs 0191-162-36, 37 & 38) and more specifically described in Exhibit “A” attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, the DDA requires the development of a mixed-use development, including 2,910 square feet of commercial/retail uses and 29 residential units with no less than two (2) units restricted for affordable housing purposes (“Project”) as more particularly described in Developer’s April 2017 proposal; and

WHEREAS, in order to effectuate the affordable housing aspects of the DDA and DBA, it necessary for the Developer and the Fontana Housing Authority to enter into a Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”), a copy of which is attached to this Resolution as Exhibit “B”; and

WHEREAS, the Regulatory Agreement is a mechanism for ensuring that two (2) of the housing units at the Project are reserved for very-low-income tenants at an affordable rent for 55 years; and

WHEREAS, to assure the fiscal operating viability of the Project in general and the two (2) units restricted for affordable housing purposes in particular, the Regulatory Agreement includes a one-time Authority Contribution (more particularly described within the Regulatory Agreement) to the Developer in the amount of \$150,000.00 to be tendered within thirty (30) calendar days following the Developer receipt of a Certificate of Occupancy for the Project from the City; and

WHEREAS, pursuant to § 15060(c) of the California Environmental Quality Act (the “CEQA”) Guidelines (i.e., California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000-15387), approval of this Resolution is exempt from CEQA because the actions described herein are administrative and financial and will not result in a direct or reasonable foreseeable indirect physical change in the environment and the actions described herein are not a “Project”, as defined within § 15378 of the CEQA Guidelines; and

WHEREAS, on January 15, 2019, the Fontana Planning Commission determined that the Project is categorically exempt from the CEQA and therefore, no further action is required; and

WHEREAS, all the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, THE FONTANA HOUSING AUTHORITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

Section 1. Recitals and Exhibits. The Recitals set forth above and Exhibits attached to this Resolution are true and correct and are incorporated into this Resolution by this reference.

Section 2. Findings. The Fontana Housing Authority finds that its approval of the Regulatory Agreement, based on the Recitals, Exhibits and all other information and testimony provided, is in the public interest and convenience to support such approval.

Section 3. CEQA. Pursuant to § 15060(c) of the California Environmental Quality Act (the “CEQA”) Guidelines (i.e., California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000-15387), approval of this Resolution is exempt from CEQA because the actions described herein are administrative and financial and will not result in a direct or reasonable foreseeable indirect physical change in the environment and the actions described herein are not a “Project”, as defined within § 15378 of the CEQA Guidelines. Further, on January 15, 2019, the Fontana Planning Commission determined that the Project is categorically exempt from the CEQA and, therefore, no further action is required.

Section 5. Approval of the Regulatory Agreement. The Fontana Housing Authority hereby approves the Regulatory Agreement, in substantially the form attached to this Resolution as Exhibit “B,” subject to any non-substantive revisions which do not modify the intent of the Regulatory Agreement and are approved by the City Attorney, and authorizes the City Manager to sign and enter into the Regulatory Agreement on behalf of the Fontana Housing Authority and directs the City Manager to perform the obligations of the Housing Authority under the Regulatory Agreement.

Section 8. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Fontana Housing Authority declares that it would have adopted this Resolution regardless of the invalidity of any particular portion of this Resolution.

Section 9. Effective Date. This Resolution shall become effective immediately upon its adoption.

APPROVED AN ADOPTED this ____ day of _____, 2020.

Chair, Fontana Housing Authority

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

ATTEST:

City Clerk

I, Tonia Lewis, City Clerk of the City of Fontana, California, and Ex-Officio Clerk of the Fontana Housing Authority, do hereby certify that the foregoing resolution is the actual resolution duly and regularly adopted by the Fontana Housing Authority at a regular meeting thereof, held on the ____ day of ____ 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

APN: 0191-162-36

Lot 44, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

APN: 0191-162-37

Lot 45, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

APN: 0191-162-38

Lot 46, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

EXHIBIT "B"

**REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
(Arrow & Nuevo)**

(see attachment)

EXHIBIT "C"

**DISPOSITION AND DEVELOPMENT AGREEMENT
(Arrow & Nuevo)**

(see attachment)

EXHIBIT "D"

**ECONOMIC OPPORTUNITY REPORT
FOR THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT
FOR THE SALE AND DEVELOPMENT OF REAL PROPERTY
LOCATED AT THE NORTHWEST CORNER OF
ARROW BOULEVARD AND NUEVO AVENUE
FONTANA, CALIFORNIA 92335
(APNS 0191-162-36, 37 & 38)
TO NEW LEGACY DEVELOPMENT CORPORATION, INC.
"GC § 52201 Economic Opportunity Report"**

(see attachment)

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(8480 Lofts)**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Fontana Housing Authority
8353 Sierra Avenue
Fontana, CA 92335
Attn: City Manager/Executive Director

This document is exempt from the payment
of a recording fee pursuant to Government
Code Section 27383

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(8480 Lofts)**

This Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is made and entered into as of July 14, 2020 (the “Effective Date”), by and between the Fontana Housing Authority, a public body corporate and politic (the “Authority”), and New Legacy Development Corporation, a California corporation (the “Developer”).

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580, *et seq.*, which sets forth the City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of rental housing affordable to very-low, low- and moderate-income households. In furtherance of the City’s affordable housing goals and activities, concurrently herewith City and Developer are entering into a Disposition, Development Agreement (8480 Lofts) (the “DDA”), pursuant to which the City agrees to convey the Property to the Developer, in consideration of development of the Project, which shall include no less than two (2) units restricted for affordable housing purposes consistent with the Density Bonus Agreement. and operation of an affordable housing project by Developer. The Property is more particularly described in Exhibit A.

C. Concurrently herewith and in furtherance of the DDA and the DBA, the Authority agrees to make the Authority Contribution to Developer to assure the fiscal operating viability associated with providing the Affordable Units within the Project. The covenants and

restrictions set forth herein are given in consideration of Developer's receipt of the Authority Contribution.

D. In consideration of receipt of the Authority Contribution, as more particularly described herein, the Developer has agreed to observe all the terms and conditions set forth herein.

E. To ensure that the Property will be used and operated in accordance with all applicable conditions and restrictions, the City and Developer wish to enter into this Agreement.

THEREFORE, the City and Developer (each a "Party", and, collectively, the "Parties") hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1. Capitalized terms not defined herein shall have the meaning set forth in the DDA.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Authority shall provide the Developer with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(d) "Affordable Units" mean two (2) of the units within the Project that are restricted for affordable housing purposes as further described herein.

(e) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants (8480 Lofts).

(f) "Assumed Household Size" shall have the meaning set forth in Section 2.2.

(g) "Authority Contribution" means the Authority's one-hundred and fifty-thousand dollars (\$150,000) payment to the Developer to be made within thirty (30) calendar days of Developer's receipt of a Certificate of Occupancy for the Project from the City.

(h) "City" shall mean the City of Fontana, a municipal corporation.

(i) "City and Authority Indemnitees" means the City and Authority and its officers, agents, employees, representatives, contractors, subcontractors, elected and appointed boards and officials.

- (j) “Closing” shall have the meaning set forth in the DDA.
- (k) “DDA” shall mean the Disposition, Development Agreement entered into between Developer and City of even date herewith, as may be amended or implemented from time to time, and incorporated herein by this reference.
- (l) “Density Bonus Agreement” means that certain Density Bonus Agreement (or “DBA”) entered into by and between the City and Developer whereby Developer commits to restrict not less than two (2) of the units being constructed for Very-Low-Income households at affordable rents pursuant to the terms and conditions of said Density Bonus Agreement.
- (m) “Developer” shall mean New Legacy Development Corporation, a California corporation, and its successors and assigns as permitted by this Agreement.
- (n) “HCD” shall mean the State of California Department of Housing and Community Development.
- (o) “Improvements” shall mean the improvements to be developed by the Developer on the Property, including the Units, and appurtenant landscaping and improvements.
- (p) “Very-Low-Income Household” shall mean a household with an Adjusted Income less than fifty percent (50%) of Median Income as determined in accordance with Health and Safety Code Section 50053 (b)(2), adjusted for Actual Household Size in accordance with Health and Safety Code Section 50052 (h).
- (q) “Very-Low-Income Rent” shall mean the maximum allowable rent for a Very-Low-Income Unit pursuant to Section 2.2 below.
- (r) “Management Agent” shall mean the professional property management company retained by the Developer, in accordance with this Agreement and the DDA, for the day-to-day operation of the Project.
- (s) “Median Income” shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size, as specified herein, in the County of San Bernardino, California, as published from time to time by HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Authority shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.
- (t) “8480 Lofts” means the twenty-nine (29) apartment units to be included within the Project.
- (u) “Operating Budget” is defined in Section 4.5.
- (v) “Operating Reserve” is defined in Section 4.10.

(w) “Property” shall mean the real property located at the Northwest Corner of Arrow Boulevard and Nuevo Avenue, City of Fontana (APNs 0191-162-36, 0191-162-37, 0191-162-38) and described in Exhibit A attached hereto and incorporated herein by this reference.

(x) “Project” means the construction and development of the Property as a multi-story mixed-use development, including 2,910 square feet of ground floor commercial/retail uses including, but not limited to, a sit down restaurant, and twenty-nine (29) above ground floor residential units with no less than two (2) units restricted for affordable housing purposes consistent with the Density Bonus Agreement, below ground floor podium on-site parking, all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in the DDA’s Scope of Development, and all to be developed in accordance with the Plans and Specifications to be approved by the City and any conditions imposed by the City in its approval of the Plans and Specifications.

(y) “Rent” shall mean the total of monthly payments by Tenants of Affordable Units for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all Tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the Tenant (as established by the Authority, or such other appropriate agency), including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Tenant.

(z) “Restricted Units” shall mean the two (2) Very-Low-Income Units restricted under this Agreement.

(aa) “Tenant” shall mean a household occupying a Unit.

(bb) “Term” shall mean the term of this Agreement, which shall commence on the Effective Date, and shall continue until the later of: (i) the fifty-fifth (55th) anniversary of the City’s recordation of a Notice of Completion for the construction of the Project; or (ii) December 31, 2077.

(cc) “Units” shall mean the one hundred twenty-nine (29) rental units, including one (1) manager unit, to be developed by the Developer on the Property.

(dd) “Very-Low-Income Household” shall mean a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income (Health and Safety Code Section 50053 (b)(2)), adjusted for Actual Household Size, as determined in accordance with Health and Safety Code Section 50052 (h).

(ee) “Very-Low-Income Rent” shall mean the maximum allowable rent for a Very-Low-Income Unit pursuant to Section 2.2 below.

ARTICLE 2.
AFFORDABILITY COVENANTS

2.1 Occupancy Requirements. In consideration of the Authority Contribution, Developer covenants and agrees, that at all times during the Term, the Restricted Units shall be rented to and occupied by or, if vacant, held available for occupancy by, Very-Low-Income Households, in a minimum of two (2) Units.

2.2 Allowable Rent. Monthly rent, including a reasonable utility allowance, shall not exceed the lesser of the maximum allowable rent to be charged by Developer pursuant to the following calculations:

(a) Very-Low-Income Rent. Subject to Section 2.3 below, the Rent charged to Tenants of Very-Low-Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size.

(b) Assumed Household Size. In calculating the Allowable Rent for the Restricted Units, the following Assumed Household Sizes shall be utilized:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
Studio	1
One	2
Two	3
Three	4

provided, however, the Developer may utilize the assumed household size, as permitted by Health & Safety Code Section 50052 (h).

(c) Authority Approval of Rents. Initial rents for all Restricted Units shall be approved by the Authority prior to occupancy. The Developer shall provide the Authority an annual written report setting forth the proposed annual rent increase, if any, for the subsequent year on such date mutually acceptable to the Parties. The Authority shall have fifteen (15) days following the receipt of such report to either approve or disapprove of such rent increase. The Authority shall approve such rent increase if such increase complies with the requirements of this Agreement. The Authority's failure to either approve or disapprove of such proposed rent increase within such fifteen (15) days shall be deemed approval.

2.3 Increased Income of Tenants.

(a) Above Very-Low-Income Household. If, upon recertification of a Tenant's income, the Developer determines that a former Very-Low-Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very-Low-Income Household set forth above, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Unit shall be considered a Unit occupied by a non-Very-Low-Income Low Household; and

(2) The Developer shall rent the next available Unit to a Very-Low-Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(b) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Affordable Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., a Very-Low-Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., a Very-Low-Income Household) shall be redetermined based on the Adjusted Income of the tenant, adjusted for Actual Household Size.

2.4 Tenant Selection.

(a) Marketing Plan. Before leasing any vacant Affordable Units in the Project, the Developer must provide the Authority for its review and approval the Developer's written marketing and Tenant selection plan.

(b) Nondiscrimination. Developer covenants and agrees for itself and any successors and assigns to the Developer or the Property that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Property or the construction or development thereof nor shall the Developer, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, contractors, subcontractors, or vendees of any Unit or the Property or in connection with the employment of persons for the construction, operation and management of the Property.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, subcontracts or contracts made or entered into by the Developer as to the Units, the Project or the Property or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,

in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

(3) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the

foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding on Developer and any successor in interest to Developer or the Property, or any part thereof, for the benefit and in favor of City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

(c) Source of Income. The Developer shall not discriminate on the basis of source of income or rent payment (for example, TANF or SSI) or poor credit history if a prospective Tenant's previous rent history of at least one (1) year provides evidence of Tenant's ability to pay the applicable Rent (ability to pay shall be demonstrated if the prospective Tenant can show that the Tenant has paid the same percentage or more of the Tenant's income for Rent as the Tenant would be required to pay for the Rent applicable to the Unit to be occupied).

(d) Section 8 Certificate Holders. The Developer will accept as Tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

(e) General Public. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Developer shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Restricted Units are required to be leased to a Very-Low-Income Household. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Project. All deeds, leases or contracts made or entered into by Developer as to the Units or the Project or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDA.

(f) Minimum Household Size. The Developer shall not refuse to rent to any prospective Tenant on the basis of household size so long as such household size is not smaller than the minimum household size set forth below:

<u>Number of Bedrooms</u>	<u>Minimum Household Size</u>
One	1
Two	2
Three	4
Four	5

(g) To the maximum extent permitted by law and provided that the applicants meet standard applicant screening standards for the Project; (a) Developer shall also give a preference in the rental of any Restricted Units to residents of, or persons employed or that have been offered employment in the City of Fontana. The preferences stated in this Section apply to the rentals of Restricted Units throughout the Term. Notwithstanding anything to the contrary herein, nothing in this Section shall require that the preference be based on a minimum duration for residency or employment. To the extent the preferences required under this Section are in conflict with the requirements of applicable fair housing laws or Section 42 of the internal Revenue Code and implementing guidelines, the requirements of fair housing laws and Section 42 will supersede.

2.5 Tenant Protections.

(a) Lease Provisions. Developer shall include in leases for all Restricted Units provisions which authorize Developer to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Very-Low-Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits such household's Rent may be subject to increase.

(b) Rental Agreement/Lease. The Developer shall execute or cause to be executed a written rental agreement/lease with each Household occupying a Restricted Unit identifying by name all permitted occupants. The rental agreement/lease must be in a form approved by the Authority and must be for not less than one year. The standard rental agreement/lease shall state that occupation of the Restricted Units is subject to the income restrictions described herein. The standard lease agreement shall not be amended without prior Authority approval.

(c) Prohibited Rental Agreement/Lease Terms. The rental agreement/lease shall not contain any of the following provisions:

(1) Agreement to be Sued. Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;

(2) Treatment of Property. Agreement by Tenant that the Developer may take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the Unit after

the Tenant has moved out of the Unit. The Developer may dispose of this personal property in accordance with state law;

(3) Excusing Developer from Responsibility. Agreement by the Tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) Waiver of Notice. Agreement of the Tenant that the Developer may institute a lawsuit without notice to the Tenant;

(5) Waiver of Legal Proceedings. Agreement by the Tenant that the Developer may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Waiver of a Jury Trial. Agreement by the Tenant to waive any right to a trial by jury;

(7) Waiver of Right to Appeal Court Decision. Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the Tenant to pay attorneys' fees or other legal costs even if the Tenant wins in a court proceeding by the owner against the Tenant. The Tenant, however, may be obligated to pay attorneys' fees and other legal costs if the Tenant loses.

(d) Background Checks. In connection with its tenant selection process, Developer agrees to obtain criminal background checks on all applicants in accordance with all applicable Governmental Regulations. Developer shall determine, in accordance with all applicable Governmental Regulations, whether or not the applicant's arrest and/or conviction record, if any, warrants denial of such applicant's application. Developer shall maintain or destroy the results of such criminal background checks in accordance with all applicable Governmental Regulations.

2.6 Termination of Tenancy. Except as set forth above, any termination or refusal to renew must be preceded by not less than thirty (30) days written notice or such longer notice period as required by any applicable Governmental Regulations.

2.7 Condominium Conversion Prohibited. The Developer shall not convert the Project's Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

2.8 Relocation to Different Unit Based on Household Size. To ensure that the Units are not overcrowded or underutilized, the Developer shall maintain the minimum occupancy standards set forth in Section 2.4 (f) by obtaining an annual certification of each Tenant's household size to be included with the Tenant's income certification provided in accordance with Section 3.1. Upon such annual recertification the Developer shall require a Tenant to relocate to

a larger or smaller Unit, as applicable, depending on the increase or reduction in the Tenant's household size. The number of occupants of any Unit shall not exceed the maximum permitted by law.

2.9 Waiting List. The Developer shall maintain a separate waiting list of potential applicants for each income category and shall update the waiting list at least once per year.

ARTICLE 3.
INCOME CERTIFICATION AND REPORTING

3.1 Income Certification. The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income and household size certifications from each Tenant renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain three (3) pay stubs for the most recent pay periods; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain three (3) most recent bank statements for all savings and checking accounts; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the Authority upon request. Authority relies upon the information contained in such certifications to satisfy its reporting and record keeping requirements pursuant to applicable requirements of the law. In the event the Developer fails to submit to Authority all of the documentation required by this Agreement, upon receipt of written notice of failure to provide such documentation from Authority and failure by the Developer to cure such default within forty-five (45) days after written notice from Authority, Developer shall be in default of this Agreement and Authority may seek all available remedies as set forth in this Agreement.

3.2 Annual Reports to Authority. The Developer shall submit to the Authority (a) not later than June 30th of each calendar year for the previous calendar year, or such other dates as may be reasonably requested by the Authority, a statistical report, including income and rent data for all Restricted Units, and vacancy history, setting forth the information called for therein and verified by the signatures of appropriate officers of Developer, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the Authority.

3.3 Additional Information. Developer shall provide any additional information reasonably requested by the Authority. The Authority shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit.

3.4 Records. Developer shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the Authority to inspect records, including records pertaining to income and household size of Tenants during normal business hours upon no less than seventy-two (72) hours prior notice. All Tenant lists,

applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the Authority, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Authority upon no less than seventy-two (72) hours' prior notice. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Restricted Units for a period of at least ten (10) years, including:

- (a) Initial and annual Tenant income certifications;
- (b) Records which demonstrate compliance with the Tenant protections as specified in this Agreement;
- (c) Records which verify that the Project continues to meet Restricted Unit affordability requirements as provided herein; and
- (d) Any other records reasonably required by Authority to verify that Developer is in compliance with the provisions of this Agreement.

3.5 On-Site Inspection. The Authority shall have the right to perform an on-site inspection of the Project at least one time per year, during normal business hours upon ten (10) business days' notice. The Developer agrees to cooperate in such inspection, without charges or fees to the Authority, so long as Authority representatives comply with all safety rules, and so long as, upon Developer's request, representatives of Developer are permitted to accompany the Authority representative. In the event of an emergency, an Authority representative may immediately enter upon the Property.

ARTICLE 4. OPERATION OF THE PROJECT

4.1 Residential Use. The Project shall be used only for rental residential use. No part of the Project shall be used for transient housing.

4.2 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.3 No Nuisance. During the Term, Developer shall not maintain, cause to be maintained, and shall use commercially reasonable efforts to not allow to be maintained on or about the Property any public or private nuisance, including, without limitation, the conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health and Safety Code § 11570, *et seq.*) as currently exists or as may be

amended from time to time, or the Street Terrorism Enforcement and Prevention Act (Penal Code § 186.22, *et seq.*), as currently exists or as may be amended from time to time.

4.4 Hazardous Materials. During the Term, Developer shall comply with all provisions of the DDA related to Hazardous Materials.

4.5 Operating Budget. During the Term, Developer shall annually submit to Authority for its reasonable and timely approval an Operating Budget for the operation of the Project. The initial approved Operating Budget is included in the development proforma attached hereto as Exhibit B. The Operating Budget shall contain a line item for each component of gross income and operating expenses. Except as otherwise agreed to in writing by Authority, the Operating Budget submitted annually shall conform to the Operating Budget attached hereto. The fees and payments budgeted to be paid to Management Agent shall not exceed prevailing market rates for the services performed. During the calendar year covered by the approved Operating Budget, Developer shall not disburse any expenses of operating the Project (individually or in the aggregate) in excess of the Operating Expenses approved by Authority pursuant to the Operating Budget submitted by Developer pursuant to this Section, except in the case of emergency repairs. The annual Operating Budget shall have attached a schedule of proposed monthly rents for the coming year calculated in accordance with the Rents permitted under this Agreement. All subsequent rent schedules shall be submitted to Authority in substantially the form set forth in the Operating Budget. The Developer shall make available its books and records to the Authority for inspection and copying, upon reasonable advance notice during its normal hours of business.

4.6 Costs of Operations. All costs of operating the Project, including the Restricted Units, shall be the sole responsibility of Developer, including without limitation, the following costs and expenses:

(a) All costs in connection with utilities, real estate taxes and assessments, and liability, fire, and hazard insurance;

(b) Payments of interest and principal, fees and charges in accordance with construction or permanent financing evidenced by deeds of trust senior to the City Loan and any payments required thereby or any other loans made to Developer; and

(c) All other expenses and operating costs incurred, including without limitation estimated expenses and funding of reserves.

4.7 Financial Reports, Books and Records. The books and accounts of the Restricted Units shall be kept in conformity with modified accrual basis accounting principles consistently applied in multifamily apartment communities with Restricted Units. The fiscal year for the Restricted Units shall be from January 1 to December 31.

(a) Financial Statements; Organizational Documents. Unless otherwise agreed to in writing by Authority and Developer, during the Term, Developer shall annually prepare, and on or before June 30 of each year, shall submit to Authority copies of such entity's annual financial statements for the immediately preceding calendar year and revised

organizational and/or governing corporate documents if any changes to such documents were effected during the fiscal year.

(b) Other Reports. No later than June 30 of each calendar year, Developer shall file with Authority the following reports for the previous calendar year in a form satisfactory to Authority and verified by the signatures of appropriate officers of Developer:

(1) A statement of the fiscal condition of the Project, including a financial statement indicating surpluses or deficits in operating accounts, a listing of income and expenses, and amounts of any reserves;

(2) A report on the actual operating expenses for the prior year indicating, for each reserve account, the amount of any reserves disbursed, and the remaining balance;

(3) A certification, signed by the appropriate officers of Developer, that Developer is not in violation or default under this Agreement.

(c) Audit Rights of Authority. Developer shall maintain accurate records with respect to all operations of the Restricted Units in accordance with the terms of this Agreement. Authority may, upon no less than thirty (30) days prior written notice to Developer and not more than once each twelve (12) month period, cause an independent Certified Public Accountant to inspect the records of the Project during normal business hours reasonably related to the requirements of this Agreement. The fees and expenses charged by such Certified Public Accountant in connection with such inspection shall be paid by Authority unless the calculations made by Developer are determined to be less than ninety five percent (95%) of the amount reported to Authority on a report required to be prepared or a calculation required to be made pursuant to this Agreement in any consecutive twelve (12) month period, in which case the Developer shall be responsible for the payment of the reasonable fees and expenses for such inspection.

4.8 Damage and Destruction; Developer's Duty to Rebuild. If all or any portion of the Project is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer to rebuild, repair or construct said portion of the Project in a timely manner which will restore it to Fontana Municipal or Building Code compliance condition as approved by the Authority to the extent insurance proceeds are available and the Senior Lender and any Investor agree to such reconstruction.

In furtherance of the requirements of this Section, Developer shall keep the improvements on the Property insured by insurance carriers at all times as required by the DDA. In the event of loss, Developer shall give prompt notice to the insurance carrier and Authority.

Upon damage to the Property or the improvements thereon, the Developer shall be obligated to (i) proceed with all due diligence hereunder and commence reconstruction within six (6) months after the damage occurs and complete reconstruction with due diligence, or (ii) if appropriate, to demolish and vacate the Property, unless prevented by causes beyond its reasonable control.

4.9 Replacement Reserve Requirements. In the first year or portion thereof following conversion and each year thereafter, Developer shall deposit, or shall cause the Management Agent to, annually deposited into the Replacement Reserve an amount equal to not less than Ten Thousand Dollars (\$10,000). Funds in the Replacement Reserve shall be used for capital replacements to the Project, such as structural and equipment repairs and replacements for fixtures and equipment which are normally capitalized under generally accepted accounting principles, and shall exclude ordinary maintenance items such as interior paint. The non-availability of funds in the Replacement Reserve shall not in any manner relieve the Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to Authority an accounting for the Replacement Reserve.

4.10 Operating Reserve. Upon conversion to the permanent financing for the Project after completion of construction of the Project, Developer shall deposit, or shall cause the Management Agent to, deposit Ten Thousand Dollars (\$10,000) into a separate interest-bearing trust account as the Operating Reserve to be used solely for the operation of the Project. The non-availability of funds in the Operating Reserve does not in any manner relieve the Developer of the obligation to operate and maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to Authority an accounting for the Operating Reserve.

4.11 Reserve Fund Account Statements. The Replacement Reserve and Operating Reserve funds described in this Section shall be maintained in separate accounts in an FDIC-insured financial institution. The accounts maintained for the reserve funds shall accrue interest at the highest rate available for accounts of similar size, and the terms must allow for withdrawal of funds and accrued interest as required. All interest or other income earned by each of the reserve accounts shall be applied only to the purpose of that particular reserve account as specified herein. Developer shall maintain records for the reserve accounts in accordance with generally accepted accounting principles. All reserve fund account statements shall be reviewed annually by Authority and at such other times as the Authority may reasonably request.

4.12 Other Uses for Reserve Funds. If Developer and Authority mutually determine that any or all of the reserve funds are no longer required, and Developer obtains such determination from Authority in writing, Developer may cease to make deposits into the reserve fund accounts and may use the funds remaining in one or more of the reserve fund accounts as follows:

- (a) Payments for expenses for reasonable operating costs incurred, including maintenance and repair costs;
 - (b) Regularly scheduled debt service payments;
 - (c) Payment of accrued, but unpaid Authority-approved management fees;
- and
- (d) Payment to Developer upon the prior written consent of Authority.

Developer agrees to promptly resume deposits into the reserve fund accounts upon the written request of Authority.

4.13 Authority Monitoring Fees. Developer covenants and agrees that, commencing on the June 30 subsequent to the issuance of a Certificate of Occupancy for the Project, and each June 30 thereafter during the Term, Developer shall pay to Authority the Authority Monitoring Fees in an annual amount of Two-Hundred Dollars (\$200) per Restricted Unit for the previous calendar year or portion thereof, as such amount shall be increased by three percent (3.0%) per year. Such amount shall be submitted on June 30 of each year with submission of the various annual reports due on June 30 required to be submitted to Authority hereunder.

ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Developer shall be responsible for all management functions with respect to the Project, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Authority shall have no direct, or indirect, responsibility over management of the Project; however, the Developer shall operate the Project in accordance with this Agreement and the DDA in a manner acceptable to the Authority. At all times during the Term, the Developer shall retain the Management Agent approved by the Authority in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required in accordance with applicable law.

The Project shall at all times be managed by an experienced management agent reasonably acceptable to the Authority, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing. The Developer shall submit for the Authority's approval the identity of any replacement management agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the Authority to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the Authority shall approve the proposed management agent by notifying the Developer in writing. Unless the proposed management agent is disapproved by the Authority within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed management agent is disapproved by the Authority for failing to meet the standard for a qualified management agent set forth above, the Developer shall submit for the Authority's approval a new proposed management agent within thirty (30) days following the Authority's disapproval. The Developer shall continue to submit proposed management agents for Authority approval until the Authority approves a proposed management agent.

5.2 Periodic Performance Review. The Authority reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the Authority) review of the management practices and financial status of the Project (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to

enable the Authority to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the Authority in such reviews.

5.3 Replacement of Management Agent. If, as a result of a periodic review, the Authority determines, in its reasonable judgment, that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement and the DDA, the Authority shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Developer of such written notice, Authority staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Project. If after a reasonable period as determined by the Authority (not to exceed sixty (60) days), the Authority determines that the Developer is not operating and managing the Project in accordance with the material requirements and standards of this Agreement and the DDA, the Authority may require replacement of the Management Agent in accordance with the DDA and this Agreement.

If, after the above procedure, the Authority requires in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the replacement management agent a person or entity meeting the standards for a management agent set forth above and approved by the Authority, and in accordance with the DDA.

Any contract for the operation or management of the Project entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under this Agreement.

5.4 Approval of Management Plans and Policies. Prior to the initial leasing of any of the Units at the Property, following the completion of the construction, and annually thereafter to the extent of any amendments thereto, the Developer shall submit its written management plan and policies with respect to the Project to the Authority for its review and approval (the "Management Plan"). If the Developer's proposed Management Plan sets forth the Developer's commitment and ability to operate the Project in accordance with this Agreement, the DDA and applicable laws, the Authority shall approve the proposed Management Plan by notifying the Developer in writing. Unless the proposed Management Plan is disapproved by the Authority within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Plan is disapproved by the Authority, the Developer shall submit for the Authority's approval a new proposed Management Plan, which addresses the inadequacies set forth in the Authority's notice, within thirty (30) days following the Authority's disapproval. The Developer's failure to obtain the Authority's approval of a Management Plan (which approval shall not be withheld unreasonably), within one hundred twenty (120) days from the date of the Developer's submission of the proposed Management Plan shall constitute a Developer Event of Default under this Agreement and the DDA.

5.5 Maintenance and Replacement. Developer shall maintain the Project, including the Restricted Units, in good condition and in compliance with the DDA and all applicable

Governmental Requirements, including without limitation, the City of Fontana Municipal Code, at its sole cost and expense, as follows:

(a) Interior Maintenance. Developer shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

(b) Exterior Building Maintenance. Developer shall maintain the Project in a clean and attractive condition at all times, including the immediately surrounding area to the curb line, and including keeping the Project and any balcony or patio adjacent to the Project free from graffiti and from an accumulation of belongings or of any debris or waste materials consistent with community standards, the DDA and all applicable Governmental Regulations.

(c) Landscaping. Developer shall maintain all landscaping within the Project in a good condition.

The Restricted Units shall be maintained in the same condition and manner as any other Units. All services made available to occupants of the Units included in their rental payments shall be made available to the Restricted Units at no additional cost to the occupants of the Restricted Units. Developer shall not permit any temporary structures to be constructed on the Property, except in connection with the construction of the Project.

Developer shall, at its sole cost and expense, from time to time make all necessary and proper repairs, renewals and replacements to keep the Units, common areas, walkways, driveways, parking areas and landscaping within the Project in good condition and in a safe, decent and sanitary condition. Developer shall manage and maintain the Project in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of Tenants.

5.6 Right To Enter To Cure. If at any time the Developer fails to maintain the Property in accordance with this Agreement and such condition is not corrected within (i) three (3) business days after written notice from Authority with respect to graffiti, debris, waste material, broken windows, and general maintenance, or (ii) thirty (30) days after written notice from Authority with respect to landscaping and building improvements, then Authority, in addition to whatever remedies it may have at law or at equity, shall have the right, but not the obligation, to enter upon the Project and perform, or cause to be performed, all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by Authority and/or costs of such cure, including a ten percent (10%) administrative charge, shall be a lien on the Property, which amount shall be promptly paid by the Developer upon demand. The Authority shall have the right to enforce its lien. The Parties further mutually understand and agree that the rights conferred upon the Authority under this Section 1.1.1 expressly include a grant by the Developer of a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and its successors under Section **Error! Reference source not found.** or Section

Error! Reference source not found., including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or covering or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

ARTICLE 6.
MISCELLANEOUS

6.1 Term. The provisions of this Agreement shall apply to the Property and the Project for the entire Term. This Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the Authority. The Authority makes the Authority Contribution on the condition, and in consideration of, this provision, and would not do so otherwise.

6.2 Insurance. During the development of the Project, Developer shall provide evidence to Authority of its maintenance of insurance in accordance with the requirements set forth in the DDA and incorporated by reference herein. Upon completion of the Project and annually throughout the Term, Developer shall provide evidence to the Authority of its maintenance of insurance in such amounts and of such nature as is required by the DDA.

6.3 Compliance with Other Programs. Developer, or any successor in interest, shall comply with all of the terms, conditions, obligations and other requirements of any other program from which funds used to finance the development, operation and maintenance of the Project.

6.4 Compliance with the DDA. The Developer's actions with respect to the Property shall at all times be in full conformity with all requirements of the DDA.

6.5 Covenants to Run With the Land. The Authority and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the Authority expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.6 Restrictions on Transfer. The identity and qualifications of Developer as an experienced developer and operator/manager of multifamily housing are of particular concern to Authority. It is because of this identity and these qualifications that Authority has entered into this Agreement with the Developer. Prior to the expiration of the Term, except as expressly set forth in the DDA, without the prior approval of Authority, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement by assignment, change of control, operation of law or otherwise, nor shall Developer make any total or partial

sale, transfer, conveyance, encumbrance to secure financing (including, without limitation, the grant of a deed of trust to secure funds necessary for construction and permanent financing of the Project), distribution, assignment or lease of the whole or any part of the Property (except residential leases in accordance with the terms of this Agreement) or any material change in the management or control of Developer (including, without limitation, a change in the identity of the Developer, or a change in the management or control of Developer). Any purported transfer, voluntary or by operation of law, in violation of this Section shall constitute a default hereunder and shall be void and Authority shall have the cumulative options to seek all remedies available at law or equity.

All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the permitted successors and assigns of Developer.

6.7 Developer Default; Enforcement by the Authority. If Developer fails to perform any obligation under this Agreement, and fails to cure the default within forty-five (45) days after the Authority has notified the Developer in writing of the default or, if the default cannot be cured within forty-five (45) days, failed to commence to cure within forty-five (45) days and thereafter diligently pursue such cure (in no event to exceed one hundred twenty (120) days from the date of the Authority's initial notice), the Authority shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The Authority may bring an action at law or in equity to compel Developer's performance of its obligations under this Agreement, and/or for damages.

(b) Remedies Provided Under the DDA. The Authority may exercise any other remedy provided under the DDA.

6.8 Recording and Filing. The Authority and Developer shall cause this Agreement to be recorded against the Property in the Official Records of the County of San Bernardino on the same date as the recording of the DBA.

6.9 Rights of the Authority. This Agreement does not in any way infringe on the right or duties of the Authority to enforce any of the provisions of the Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the Authority shall have the right, through its agents and employees, to enter upon any part of the Property for the purpose of enforcing the Vehicle Code, and the ordinances and other regulations of the Authority, and for maintenance and/or repair of any or all publicly owned utilities.

6.10 Hold Harmless. Developer agrees to defend, indemnify and hold the Authority harmless from liability for damage or claims for any type of damage including, but not limited to, personal injury and claims for property damage, which may arise from or in connection with the activities of Developer or those of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf in connection with the development and/or construction of the Project, which is not the subject of this Agreement, including without limitation any performance of or failure to perform the obligations of Developer set forth in this

Agreement. Notwithstanding the foregoing, Developer shall not be required to indemnify Authority for active negligence or misconduct by Authority.

6.11 Third Party Beneficiaries. Except for the City, which is expressly made third party beneficiary hereof as provided herein below, this Agreement is made and entered into for the sole protection and benefit of Authority, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon. Notwithstanding the foregoing, City and its respective successors and assigns are expressly made third party beneficiaries to this Agreement and the conditions, covenants and restrictions contained herein governing the use, operation and maintenance of the Restricted Units within the Property as affordable housing. The City shall have the right to enforce all of the provisions of this Agreement and any amendment to this Agreement. Except as expressly set forth herein, no other person or persons shall have any right of action on this Agreement.

6.12 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.13 Attorneys' Fees. In any action to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees and costs. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by Authority or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

6.14 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of the County of San Bernardino.

6.15 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

AUTHORITY: Fontana Housing Authority
 8353 Sierra Avenue
 Fontana, CA 92335
 (T) 909-350-7653
 Attention: City Manager/Executive Director

COPY TO: Best Best & Krieger, LLP
 18191 Von Karman Avenue, Ste. 1000

Irvine, CA 92614
Attention: Elizabeth Wagner Hull
(T) 949-263-2600

DEVELOPER: New Legacy Development Corporation
P.O. Box 1917
Rancho Cucamonga, CA 91729
Attention: Jose Carcelen, President

Any of the Parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.16 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.17 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

6.18 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of San Bernardino.

6.19 Complete Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

6.20 Authority Approval. Whenever this Agreement calls for Authority approval, consent, or waiver, the written approval, consent, or waiver of the City Manager/Executive Director, or his or her designee as designated in writing, shall constitute the approval, consent, or waiver of the Authority, without further authorization required from the Authority's board of directors. The Authority board of directors hereby authorizes the City Manager/Executive Director, or his or her designee as designated in writing, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Authority. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager/Executive Director, or his or her designee as designated in writing, is also hereby authorized to approve, on behalf of the Authority, requests by the Developer for reasonable extensions of time deadlines set forth in this Agreement. The Authority shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Developer made in connection with this Agreement.

6.21 Developer Obligations Prior to Expiration of Term. At least six (6) months prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in the Restricted Units containing: (1) the anticipated date of the expiration of the Term, (2) any anticipated Rent increase upon the expiration of the Term, (3) a statement that a copy of such notice will be sent to the Authority, and (4) a statement that a public hearing may be held by the Authority on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer shall also file a copy of the above-described notice with the City Manager/Executive Director. In addition, Developer shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, to the extent applicable.

6.22 Multiple Originals; Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the Authority and Developer have executed this Agreement by duly authorized representatives as of the Effective Date.

AUTHORITY:
Fontana Housing Authority,
a public body corporate and politic

DEVELOPER:
New Legacy Development Corporation,
a California Corporation

By: _____
Mark Denny, City Manager/
Executive Director

By: _____
Jose L. Carcelen, President

ATTEST:

By: _____
Tonia Lewis, City Clerk

APPROVED AS TO LEGAL FORM:
Best Best & Krieger LLP

By: _____
Ruben Duran, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

Legal Description of the Property

APN: 0191-162-36

Lot 44, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

APN: 0191-162-37

Lot 45, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

APN: 0191-162-38

Lot 46, Block 22, Tract No. 2266, Fontana Townsite, in the City of Fontana, recorded in Map Book 32, Pages 43 through 53, inclusive, records of San Bernardino County, State of California

EXHIBIT B

OPERATING BUDGET

[TO BE INSERTED PRIOR TO RECORDING]

**ECONOMIC OPPORTUNITY REPORT
FOR THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT
FOR THE SALE AND DEVELOPMENT OF REAL PROPERTY
LOCATED AT THE NORTHWEST CORNER OF
ARROW BOULEVARD AND NUEVO AVENUE
FONTANA, CALIFORNIA 92335
(APNS 0191-162-36, 37 & 38)
NEW LEGACY DEVELOPMENT CORPORATION, INC.
“GC § 52201 Economic Opportunity Report”**

Introduction

This Economic Opportunity Report (the “Report”) was prepared for the City of Fontana (the “City”) pursuant to Section 52201 of the California Government Code (the “GC”) with respect to the sale and development of real property located at the northwest corner of Arrow Boulevard and Nuevo Avenue Fontana, California 92335 to New Legacy Development Corporation, Inc. (the “Developer”). The Site consists of three parcels (i.e., APNs 0191--191-36, 37 & 38) depicted on Exhibit “A”, attached hereto, that together equal 14,400 square feet of land area (the “Site”).

History

On January 21, 1983, the City purchased the Site from Jess C. Mancha for \$25,593. The Site was used as a parking lot; however, in recent times it has fallen into a state of disrepair inhibiting the possibility of its use for parking purposes without significant repairs. In addition, the City has determined that the Site is no longer needed for parking lot purposes and may be sold for development.

On September 17, 2017, the City and the Developer initiated exclusive negotiations regarding the purchase and development of the Property (“Exclusive Negotiations”), for a mixed-use development, including 2,910 square feet of commercial/retail uses and 29 residential units with no less than two (2) units restricted for affordable housing purposes as more particularly described in Developer’s April 2017 proposal (“Project”). Consistent with GC § 54234 (a)(1), the Exclusive Negotiations constitute an exclusive negotiating agreement or legally binding agreement to dispose of property and is exempt from the amendments to the Government Code relating to surplus land disposition that became effective on January 1, 2020 (per Assembly Bill 1486) provided that the disposition of the land subject to such negotiations is completed not later than December 31, 2022.

The City and Developer (the “Parties”) have negotiated a Disposition and Development Agreement (“DDA”) that binds Developer to purchase the Property and develop the Project. In addition, the Parties have also negotiated the Density Bonus Agreement between the City and Developer and the Regulatory Agreement and Declaration of Restrictive Covenants (the “RADRC”) between the Fontana Housing Authority and Developer, both of which are consistent with the DDA and will enhance the viability of the Project.

1. Cost of Project to City:

Based on the following, it is estimated that the City has incurred approximately \$27,000 of costs associated with the Site. As confirmed by official County of San Bernardino Office of the Assessor records, on January 21, 1983 the City purchased the Site from Jess C. Mancha for \$25,593. The City no longer has any acquisition-related records pertaining to the Site. Therefore, and other than the purchase price, the balance of the costs associated with the acquisition of the site are either unknown or, in one instance, estimated based on industry standards, as indicated below.

Regular Housing Authority Meeting - July 28, 2020
Based on the foregoing and consistent with the information provided below, the City has incurred \$25,593 of direct acquisition costs and approximately \$1,280 of closing-related costs, resulting in an overall estimated cost of the Site (i.e., the land portion of the Project) to the City of \$26, 873 (rounded to approximately \$27,000).

- a. **Land Acquisition Cost:** The Site was acquired by the City for an all cash payment of \$25,593.
- b. **Clearance Costs:** Unknown
- c. **Relocation Costs:** Unknown
- d. **Improvement Costs:** Unknown
- e. **Finance Costs:** None, as the purchase was for all cash.
- f. **Other Costs:** Five percent of the purchase price is a real estate industry standard for “estimating” closing costs including, but not limited to, escrow, title, recording, legal, etc. In the instant case, 5% of the purchase price equals \$1,280. Therefore, this estimate is considered to be a fair and reasonable estimate.

2. Estimated value of interest to be conveyed or leased, determined at highest and best use permitted by the general plan or zoning:

The Purchase Price is based upon a March 2019 Broker’s Opinion of Value (“BOV”) prepared by NAI Capital Commercial Real Estate Services, Irvine California. The BOV is on file with the City. Based upon their valuation analysis, it is NAI’s opinion that the estimated value of the Site at the highest and best use permitted by the general plan and zoning, as of March 2019, is One-Hundred Fifty-Eight Thousand Four-Hundred Dollars (\$158,400.00). Therefore, the NAI BOV valuation has been accepted by the Parties to be a fair and reasonable market rate price for the purchase and sale of the Site.

3. Estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants and development costs required by the sale or lease:

Pursuant to the NAI BOV, the estimated value of the interest to be conveyed to Developer at the use and with the conditions, covenants and development costs required by the sale is One-Hundred Fifty-Eight Thousand Four-Hundred Dollars (\$158,400).

4. The purchase price or sum of the lease payments which the lessor will be required to pay during the term of the lease:

The Site is proposed to be sold, not leased. Pursuant to the DDA, the Developer will purchase the Site for its fair and reasonable market rate price of \$158,400.

5. Explanation of the reason (if applicable) why the sales price or lease rate paid to the City may be less than market value of the property as determined at its highest and best use:

Not applicable. The sale price of the Site is at a fair and reasonable market rate price as confirmed by the BOV.

6. Explanation of why the sale or lease of the property will assist in the creation of economic opportunity with reference to all supporting facts and materials relied upon in making this explanation:

The Project consists of the construction and development of the Site as a multi-story mixed-use development, including 2,910 square feet of ground floor commercial/retail uses including, but not

limited to, a sit down restaurant and twenty-nine (29) above ground floor residential units with no less than two (2) units restricted for affordable housing purposes consistent with the Density Bonus Agreement, below ground floor podium on-site parking, all required or associated on-site and off-site improvements, all hardscape and all landscaping, and all to be developed in accordance with the Plans and Specifications to be approved by the City and any conditions imposed by the City in its approval of the Plans and Specifications, as more particularly described in: i) Developer's April 2017 proposal; ii) the DDA; iii) the Density Bonus Agreement; and iv) the RADRC; all four of which are on file with the City. In addition to the Project's economic benefits described below, the Developer has estimated that the commercial portion of the Project, once in operation, will provide employment opportunities for approximately ten (10) full-time equivalent employees and that the residential portion of the Project, once occupied, will generate approximately two (2) full-time equivalent employees. When combined, it is estimated that once in operation, the Project will generate approximately twelve (12) full-time equivalent job opportunities.

7. Economic benefits of the Project:

As further described below, it is estimated that when the Project has been completed and is fully occupied, it will generate approximately \$22,000 of property and sales tax revenues for the City during its first year of operations. Over its first ten years of operation, the Project is projected to generate approximately \$254,000 of property and sales tax revenues for the City (assuming the assessed value increases at a compounded rate of 2% per year and that taxable sales increases at a compounded rate of 5% per year).

Assessed Value and Property Tax Projections

The Developer has estimated that the Project will cost approximately \$6,304,850 to construct. Therefore, the construction costs estimate together with the purchase price equals approximately \$6.5 million (i.e., \$158,400 + \$6,304,850 = \$6,463,250 [rounded to \$6.5 million]), which is estimated to be the initial assessed value of the Site. The General Tax Levy (the "GTL") in California is equal to one percent (1%) of the assessed value of real property. In this analysis, the \$6.5 million estimated initial assessed value of the Site is the value subject to the following estimated GTL calculations. On a combined basis, the City and the Fontana Fire Protection District (the "FFPD") receive 21.79 basis points of the GTL (i.e., 21.79% of the 1% GTL). Of this amount, 18.55 basis points are attributable to the FFPD and 3.24 basis points are attributable to the City. Therefore, it is estimated that the GTL for the Site once completed, will be approximately \$65,000. The City's portion of the GTL generated by the Site (City and FFPD combined) will be approximately \$14,000.

Taxable Sales and Sale Tax Projections

The Developer anticipates that the 2,910 square foot retail component of the Project will upon occupancy generate sales that are subject to the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code Section 7200, et seq.). A portion of such sales tax revenues are attributable solely to the City of Fontana. In that regard, Developer anticipates that upon occupancy, the 2,910 square foot retail portion of the Project will generate approximately \$800,000 of taxable sales per year. Based on this gross amount, it is estimated that the City's portion of the sales taxes attributable to the Site, which the City receives from the California Board of Equalization, will be approximately \$8,000 during the Project's first year of operations.

Other Fees

The Developer has estimated that the Project will incur approximately \$960,000-worth of pre-development costs, of which a significant portion will fund City Development Impact Fees and Building and Safety Fees that are attributable to the City.

Regular Housing Authority Meeting: July 28, 2020

Certification: I certify that this information summary complies with the reporting requirements of GC § 52201. Further, I do not have a present or prospective interest in the Site, the Project or the parties involved in the proposed real estate transaction. My engagement to prepare this report was not contingent upon developing or reporting predetermined results. The statements of fact contained herein, and the substance of this report are based on public records, data provided by the City, reports provided or estimated by its consultants or as otherwise noted herein. This report reflects my personal, unbiased professional analyses, opinions and conclusions. If any of the underlying assumptions related to the contemplated real estate transaction change after the date provided below, then the undersigned reserves the professional privilege to modify the contents and/or conclusions of this report.

Respectfully Submitted,
TKE ENGINEERING, INC.



STEVEN H. DUKETT
Managing Director
Development Services

Dated: June 8, 2020

Attachment: Exhibit "A"

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

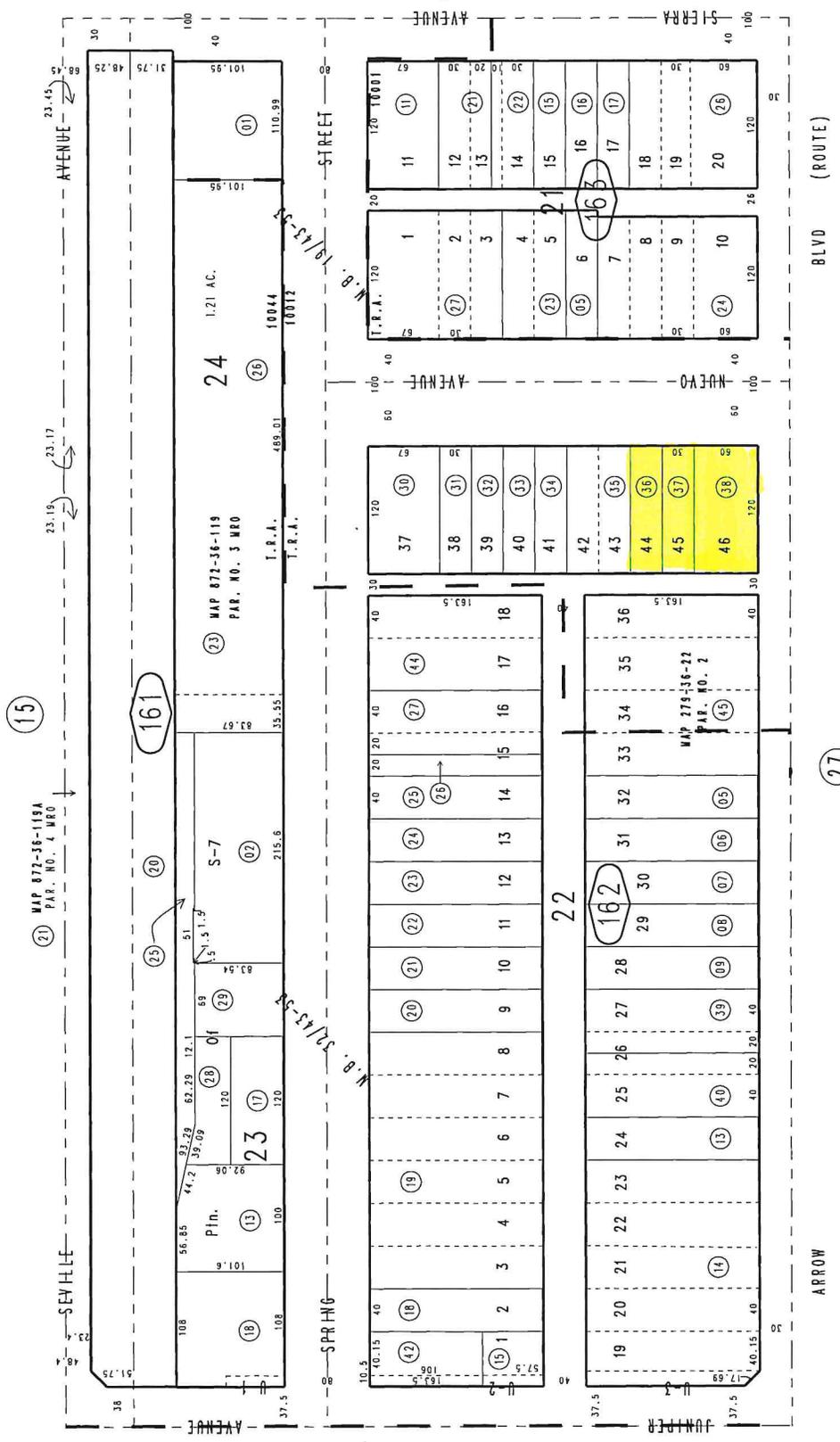
Ptn. Fontana Townsite. M.B. 19/53-54
Ptn. Tract No. 2266, Fontana Townsite. M.B. 32/43-53

City of Fontana
Tax Rate Area
10001 10012 10044

0191 - 16



1" = 100'



REVISED
09/27/13 RW-MC

Assessor's Map
Book 0191 Page 16
San Bernardino County

Ptn. N.E.1/4, Sec. 7
T.1S., R.5W.