

AGENDA

OVERSIGHT BOARD MEETING

FONTANA REDEVELOPMENT SUCCESSOR AGENCY

FRIDAY, MAY 30, 2014
8:30 A.M.

Fontana City Hall
Executive Conference Room
8353 Sierra Avenue
Fontana, CA 92335

EVELYNE SSENKOLOTO, Chair
City of Fontana
Employee Appointment

ACQUANETTA WARREN, Vice-Chair
City of Fontana
Mayor Appointment

SUSAN KILLIAN
Fontana Unified School District
County Superintendent of Education Appointment

DR. ERIC BISHOP
Chaffey College District
Chaffey College Appointment

LAURA A. MANCHA
County of San Bernardino
Board of Supervisors Appointment
Public Member Appointment

KATHRYN BRANN
County of San Bernardino
Board of Supervisors Appointment

JOHN B. ROBERTS
City of Fontana
Fontana Fire Protection District Appointment

In compliance with the Americans with Disabilities Act, the City of Fontana is wheelchair accessible. If other special Assistance is required, please contact the Fontana City Clerk's Office (909-350-7602) 48 hours prior to the scheduled meeting so the Oversight Board can make reasonable arrangements.

AGENDA
OVERSIGHT BOARD MEETING
FONTANA REDEVELOPMENT SUCCESSOR AGENCY
FRIDAY, MAY 30, 2014
8:30 A.M.

This meeting will take place in the Fontana City Hall – Executive Conference Room located at 8353 Sierra Avenue, Fontana, CA 92335

Welcome to a meeting of the Oversight Board – Fontana Redevelopment Successor Agency. A complete agenda packet is located on the table in the Executive Conference Room. To address the Board, please fill out a card located at the entrance indicating your desire to speak on either a specific agenda item or under Public Communications and give it to the Recording Secretary. Your name will be called when it is your turn to speak. In compliance with Americans with Disabilities Act, the Executive Conference Room is wheel chair accessible.

Traducción en Español disponible a petición. Favor de notificar al Departamento "City Clerk". Para mayor información, favor de marcar el número (909) 350-7602.

CALL TO ORDER/ROLL CALL:

PUBLIC COMMUNICATIONS:

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

ITEMS (A-C):

- A. (1) Adopt Resolution Approving a Purchase and Sale Agreement between the Fontana Oversight Board and Sierra Hotel Group;
(2) Determine that this action is exempt from the California Environmental Quality Act and direct staff to file a Notice of Exemption.
- B. (1) Adopt Resolution Approving a Purchase and Sale Agreement between the Fontana Oversight Board and NYMA Properties, LLC;
(2) Determine that this action is exempt from the California Environmental Quality Act and direct staff to file a Notice of Exemption.
- C. Staff/Board Member Communication

ADJOURNMENT:

Next Meeting: The next Oversight Board meeting is scheduled for Friday, September 19, 2014, at 9:00 a.m. in the Fontana City Hall, Executive Conference Room located at 8353 Sierra Avenue, Fontana, CA 92335.

**OVERSIGHT BOARD ACTION REPORT
FONTANA REDEVELOPMENT SUCCESSOR AGENCY
May 30, 2014**

FROM: Housing and Business Development

SUBJECT: Purchase & Sale Agreement – Sierra Hotel Group, LLC

RECOMMENDATION:

- 1) Adopt Resolution No. _____ Approving a Purchase and Sale Agreement with Sierra Hotel Group for the Property Located on the South-East Corner of Slover and Sierra Avenues - Adjacent to the Hilton Garden Inn Hotel - to Facilitate Development of the Property and Authorize the City Manager to Execute any Documents Necessary or Appropriate to Implement said Agreement.
- 2) Determine that this action is exempt from the California Environmental Quality Act and direct staff to file a Notice of Exemption.

DISCUSSION:

As required by AB 1484 the Successor Agency to the Fontana Redevelopment Agency prepared a Long-Range Property Management Plan (LRPMP). The LRPMP addresses the disposition and intended future use of all real property owned by the former Fontana Redevelopment Agency (pursuant to § 34191.5(a)).

On May 16th, 2014 the Fontana Oversight Board authorized a change to the LRPMP, involving the following property;

- **LRPMP Property #99 – APN #019437124
Hilton Garden Inn Restaurant Parcel**

At the request of the Department of Finance (DOF) the Fontana Oversight Board changed the LRPMP designation for this property from "Enforceable Obligation" to "For Sale". This change to the LRPMP was submitted to DOF on Friday, May 16th.

In order to facilitate the sale of this property, staff has prepared a Purchase & Sale Agreement, which includes the following proposed deal-points;

- Sierra Hotel Group would purchase APN #019437124 (located on the South-East corner of Slover and Sierra Avenues) from the Successor Agency to the Fontana Redevelopment Agency.

Oversight Board Action Report
May 30, 2014

- As established within the LRPMP (and approved by the Successor Agency and Fontana Oversight Board), the purchase price shall be \$200,000.
- All of the terms and conditions contained within the Amended and Restated Disposition and Development Agreement (for the Hilton Garden Inn Development), dated June 1, 2007, and as amended for the purchase, sale and development of this property - shall remain in effect.
- At the close of escrow, the Successor Agency shall transmit any/all net sale proceeds (minus the transaction costs) to the County of San Bernardino Auditor-Controller for distribution to the various taxing entities.
- Sierra Hotel Group intends to construct a restaurant building on the property, to accommodate the following proposed uses; Chipotle, Jersey Mike's, Yogurt land and Pizza Studio.

Adoption of the attached Resolution and approval of the Purchase & Sale Agreement with Sierra Hotel Group by the Fontana Oversight Board will facilitate development of the restaurant pad at the Hilton Garden Inn Hotel.

FISCAL IMPACT:

None.

MOTION:

Approve staff's recommendation.

SUBMITTED BY:



David R. Edgar
Deputy City Manager

APPROVED BY:



Kenneth R. Hunt
City Manager

ATTACHMENT:

- 1) Fontana Oversight Board Resolution
- 2) Purchase & Sale Agreement (Sierra Hotel Group)

RESOLUTION NO. _____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE FONTANA
REDEVELOPMENT AGENCY APPROVING A PURCHASE
AND SALE AGREEMENT BETWEEN THE SUCCESSOR
AGENCY TO THE FONTANA REDEVELOPMENT
AGENCY AND SIERRA HOTEL GROUP LLC**

WHEREAS, pursuant to Health and Safety Code section 34173(d), the City of Fontana (“Successor Agency”) is the successor agency to the former Fontana Redevelopment Agency (“Agency”); and

WHEREAS, pursuant to Health and Safety Code Section 34179(a), the Oversight Board is the Successor Agency’s oversight board; and

WHEREAS, prior to its dissolution the Agency entered into an Amended and Restated Disposition and Development Agreement (Hilton Garden Inn), dated June 1, 2007, as amended from time to time (“DDA”) with Sierra Hotel Group LLC, a California limited liability company (“Sierra”) for the purchase, sale and development of certain real property owned by the Agency and located in the City of Fontana, California, as more particularly described in the DDA as the “Property;” and

WHEREAS, upon the Agency’s dissolution the DDA and all related assets, including the Property, automatically transferred to the Successor Agency; and

WHEREAS, pursuant to Health and Safety Code section 34177(c), the Successor Agency is responsible for performing obligations required pursuant to any enforceable obligation of the former Agency, including the DDA; and

WHEREAS, pursuant to Health and Safety Code section 34191.5, the Property was listed on the Successor Agency’s Long Range Property Management Plan (“LRPMP”), which provided that the Property was to be transferred from the Successor Agency to Sierra in accordance with the DDA, and the LRPMP has been approved by the Oversight Board and the California Department of Finance; and

WHEREAS, in furtherance of the terms and conditions of the DDA, the Successor Agency and Sierra have negotiated a Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Hilton Garden Inn), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (“Agreement”), in which the Successor Agency agrees to sell to Sierra and Sierra agrees to purchase from the Successor Agency a portion of the Property defined in the Agreement as the “Premises;” and

WHEREAS, pursuant to Health and Safety Code section 34181, prior to considering the disposition of any Agency property, the Oversight Board must hold a public hearing after at least 10 days’ notice to the public of the specific proposed actions; and

WHEREAS, a public notice of the Oversight Board's consideration at a public hearing of the disposition of the Premises was published on May 19th, 2014; and

WHEREAS, the Oversight Board held a public hearing on May 30, 2014, regarding the proposed disposition of the Premises and received public comments; and

WHEREAS, the Oversight Board finds that the proposed disposition of the Premises is consistent with the approved LRPMP and the DDA.

NOW, THEREFORE, THE GOVERNING BOARD OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

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

Section 2. CEQA Compliance. The execution of the Agreement and disposition of the Premises by Successor Agency to Sierra through this Resolution does not commit the Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The Secretary to the Oversight Board is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

Section 3. Approval of Agreement. Pursuant to Health and Safety Code section 34181, the Oversight Board hereby approves the sale of the Premises pursuant to the Agreement. Based on the evidence contained in the staff report and presented at the public hearing, the Oversight Board finds that the disposition of the Premises is in accordance with the DDA, and that the DDA is an enforceable obligation of the Successor Agency.

Section 4. Implementation. The Oversight Board hereby authorizes and directs the Successor Agency to take any action necessary to carry out the purposes of this Resolution in compliance with applicable law, including taking any actions necessary to execute the Agreement and transfer the Premises to Sierra.

Section 5. 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 Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 6. Certification. The Secretary to the Oversight Board shall certify to the adoption of this Resolution.

Section 7. Effective Date. Pursuant to Health and Safety Code section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of

Finance, and, therefore, this Resolution shall not be effective for five (5) business days, pending a request for review by the State of California Department of Finance.

PASSED AND ADOPTED THIS 30th day of May, 2014.

Chairman

ATTEST:

City Clerk

EXHIBIT A

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Hilton Garden Inn)**

[Attached behind this page]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Hilton Garden Inn)**

by and between

**SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY
a public corporation**

and

**SIERRA HOTEL GROUP LLC
a California limited liability company**

DATED [TO BE DETERMINED]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Hilton Garden Inn)**

This REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is dated as of _____ (“Effective Date”), and is entered into by and between the SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY, a public corporation (“Seller”), and SIERRA HOTEL GROUP LLC, a California limited liability company (“Buyer”). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a “Recital”):

RECITALS

A. The Fontana Redevelopment Agency (“RDA”) and Buyer previously entered into that certain Amended and Restated Disposition and Development Agreement (Hilton Garden Inn), dated June 1, 2007, which has subsequently been amended from time to time (“DDA”) for the purchase, sale and development of certain real property located in the City of Fontana, California, as more particularly described in the DDA as the “Property;”

B. Assembly Bill 1X 26, enacted as part of the 2011-2012 State of California budget bill, and as modified by the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861, dissolved and set out procedures for the wind-down of all redevelopment agencies throughout the State effective February 1, 2012, and in June 2012, the California Legislature adopted Assembly Bill 1484 (AB 1484 and AB 1X 26 are collectively referred to as the “Dissolution Act”) further modifying some of the procedures set forth in AB 1X 26, and adding certain other procedures and requirements for the dissolution and wind-down of redevelopment agencies;

C. Seller is the successor entity to the former RDA and, pursuant to the Dissolution Act, upon the RDA’s dissolution the DDA and all related assets, including the Property, automatically transferred to Seller;

D. In accordance with Health and Safety Code section 34177(c), Seller is responsible for performing obligations required pursuant to any enforceable obligation of the former RDA;

E. In accordance with Health and Safety Code section 34191.5, the Property was listed on Seller’s Long Range Property Management Plan (“LRPMP”), which provided that the Property was to be transferred from Seller to Buyer in accordance with the DDA, and the LRPMP has been approved by the Oversight Board to the Successor Agency to the Fontana Redevelopment Agency and the Department of Finance;

F. This Agreement is intended by Seller and Buyer to be the definitive purchase and sale agreement for the transfer of a portion of the Property defined in Section 1.1 of this Agreement as the “Premises” from Seller to Buyer, as provided for in the DDA.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS OF SELLER AND BUYER SET FORTH IN THIS AGREEMENT AND

OTHER GOOD AND VALUABLE CONSIDERATION, SELLER AND BUYER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **Definitions.** The following words, terms and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.1.2 **Agreement.** This Real Property Purchase and Sale Agreement and Joint Escrow Instructions by and between Seller and Buyer, including all of the attached exhibits.

1.1.3 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization or similar matters.

1.1.4 **Business Day.** Monday through Friday, exclusive of Federal, State or City of Fontana holidays.

1.1.5 **Buyer.** Sierra Hotel Group LLC, a California limited liability company, and any assignee of or successor to the rights, powers or responsibilities of Sierra Hotel Group LLC allowed under this Agreement.

1.1.6 **Buyer Official Action.** A certification of limited liability company authority in substantially the form attached to this Agreement as **Exhibit "B"** signed by all of the members of Buyer.

1.1.7 **Buyer Title Policy.** A standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Premises vested in Buyer, subject only to Permitted Exceptions.

1.1.8 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.9 **Close of Escrow.** The first date on which the Escrow Agent files the Grant Deed with the County for recording in the official records of the County.

1.1.10 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.1.11 **County.** The County of San Bernardino, California.

1.1.12 **DDA.** The Amended and Restated Disposition and Development Agreement (Hilton Garden Inn), dated June 1, 2007, by and between the RDA and Buyer, and any subsequent amendments executed by the parties to the DDA.

1.1.13 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.14 **Dissolution Act.** Collectively, Assembly Bill 1X 26, effective June 28, 2011, as modified by the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861, and Assembly Bill 1484, effective June 27, 2012.

1.1.15 **Effective Date.** Defined in the initial paragraph of this Agreement.

1.1.16 **Equity Interest.** All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.1.17 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Premises from Seller to Buyer pursuant to this Agreement.

1.1.18 **Escrow Agent.** Chicago Title Company, 560 East Hospitality Lane, San Bernardino, California 92408, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.19 **Escrow Closing Date.** The earlier of: (a) on or before the thirtieth (30th) day after the Escrow Agent's receipt of written confirmation from both Seller and Buyer of the satisfaction or waiver of all other conditions precedent to the Close of Escrow; (b) [INSERT DATE]; or (c) another date mutually agreed upon in writing between the Parties for the Close of Escrow, in the Parties' respective sole and absolute discretion.

1.1.20 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent's estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.21 **Escrow Default.** The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.22 **Escr**ow **O**pening **D**ate. The first date on which a copy of this Agreement signed by both Seller and Buyer is deposited with the Escrow Agent, as provided in Section 2.1.

1.1.23 **E**vent **o**f **D**efault. The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid or the bond or surety not provided;

(b) *Escrow Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted to the Escrow Agent;

(c) *Bankruptcy or Insolvency.* Buyer admits in writing that Buyer is unable to pay Buyer's debts as they become due or Buyer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Buyer's assets or Buyer's interest in this Agreement or the Premises (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity, and vacated and discharged within ninety (90) days);

(d) *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 1.1.23(c), that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of Notice of such Default, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.24 **Federal.** The federal government of the United States of America.

1.1.25 **FIRPTA Affidavit.** A certification that Seller is not a "foreign person" within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

1.1.26 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.27 **Government.** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal or otherwise) whether now or later in existence.

1.1.28 **Grant Deed.** A deed conveying Seller's interest in the Premises from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit "C"** attached to this Agreement.

1.1.29 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical wastes, toxic substance or related material, explosive, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.30 Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Premises or during transportation of any Hazardous Substance to or from the Premises, or that arises at any time from any construction, installation, use or operation or other activities conducted at, on, under or from the Premises, whether or not caused by a Party.

1.1.31 Indemnify. Where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.1.32 Indemnitee. Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.33 Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.34 **Initial Deposit.** [INSERT AMOUNT].

1.1.35 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Premises, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Premises, or relating to any taxes, or otherwise relating to this Agreement or any Party's rights, obligations or remedies under this Agreement, or any transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.36 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to be reimbursed for its Legal Costs, including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.37 **LRPMP.** The long range property management plan prepared by Seller and approved by the Oversight Board to the Successor Agency to the Fontana Redevelopment Agency and the California Department of Finance, in accordance with Health and Safety Code section 34191.5.

1.1.38 **Monetary Default.** Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond or surety required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.39 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement by a Party.

1.1.40 **Notice.** Any consent, demand, designation, election, notice or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

1.1.41 **Notify.** To give a Notice.

1.1.42 **Parties.** Collectively, Seller and Buyer.

1.1.43 **Party.** Individually, either Seller or Buyer, as applicable.

1.1.44 **Permitted Exception.** All of the following: (a) all items shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Premises; (d) this Agreement; (e) any existing improvements on the Premises, if any; (f) any other document or encumbrance expressly required or allowed to be recorded against the Premises pursuant to the terms of this Agreement.

1.1.45 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.46 **Preliminary Report.** A preliminary report issued by the Title Company on [INSERT DATE] in contemplation of the issuance of the Buyer Title Policy, accompanied by copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.47 **Premises.** That certain real property specifically described in Exhibit "A" attached to this Agreement.

1.1.48 **Property.** That certain real property defined in the DDA as the "Property."

1.1.49 **Purchase Price.** Two Hundred Thousand Dollars and No Cents (\$200,000).

1.1.50 **RDA.** The former Fontana Redevelopment Agency, a public body corporate and politic, which was dissolved pursuant to the Dissolution Act on February 1, 2012.

1.1.51 **Real Estate Taxes.** All general and special real estate taxes (including taxes on fixtures and equipment, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed pursuant to a special taxing district, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever regarding the Premises that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises.

1.1.52 **Seller.** The Successor Agency to the Fontana Redevelopment Agency, a public corporation.

1.1.53 **State.** The State of California.

1.1.54 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.55 **Title Company.** Chicago Title Company, 560 East Hospitality Lane, San Bernardino, California 92408, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.56 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or

inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. PURCHASE AND SALE OF PREMISES

2.1 Escrow. Seller shall sell the Premises to Buyer and Buyer shall purchase the Premises from Seller, subject to the Permitted Exceptions, on the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Premises from Seller to Buyer and the purchase of the Premises by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open the Escrow with the Escrow Agent. Buyer shall cause the Escrow to be opened within two business (2) days following the Effective Date. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. The provisions of Section 3 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

2.2 Payment of Purchase Price. Buyer shall purchase the Premises from Seller for the Purchase Price, subject to the terms and conditions of this Agreement. Buyer shall pay the Purchase Price to Seller at the Close of Escrow in immediately available funds.

2.3 Initial Deposit. Buyer shall deliver the Initial Deposit to Escrow Agent on the Escrow Opening Date.

2.4 Delivery of Buyer Official Action. Within five (5) Business Days following the Effective Date, Buyer shall deliver to Seller the Buyer Official Action signed by all of the members of Buyer. Seller's receipt of the Buyer Official Action signed by all of the members of Buyer in accordance with this Section 2.4 is a condition precedent to Seller's obligations under this Agreement.

2.5 Buyer's Approval of Title to Premises. In accordance with Section 3.4 of the DDA, Buyer acknowledges and agrees that it has received the Preliminary Report for the Premises and has approved the status of title to the Premises.

2.6 "AS-IS" Acquisition. Except for the representations and warranties set forth herein that expressly survive the Close of Escrow, the Close of Escrow shall evidence Buyer's unconditional and irrevocable acceptance of the Premises in the Premises' AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Premises (active, inactive or abandoned), the suitability of the Premises for Buyer's intended use or any other use or the existence or absence of Hazardous Substances affecting the Premises and with full knowledge of the physical condition of the Premises, the nature of Seller's interest in and use of the Premises, all laws applicable to the Premises and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Premises. The Close of Escrow shall further constitute Buyer's representation and warranty to Seller that: (a) Buyer has had ample opportunity to inspect and evaluate the Premises and the feasibility of the uses and activities Buyer is entitled to conduct on the Premises; (b) Buyer is experienced in real estate development; (c) Buyer is relying entirely

on Buyer's experience, expertise and Buyer's own inspection of the Premises in the Premises' current state in proceeding with acquisition of the Premises; (d) Buyer accepts the Premises in the Premises' condition as of the Close of Escrow; (e) to the extent that Buyer's own expertise with respect to any matter regarding the Premises is insufficient to enable Buyer to reach an informed conclusion regarding such matter, Buyer has engaged the services of Persons qualified to advise Buyer with respect to such matters; (f) Buyer has received assurances acceptable to Buyer by means independent of Seller or Seller's agents of the truth of all facts material to Buyer's acquisition of the Premises; and (g) the Premises is being acquired by Buyer as a result of Buyer's own knowledge, inspection and investigation of the Premises and not as a result of any representation made by Seller or Seller's agents relating to the condition of the Premises, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Premises other than those expressly set forth herein.

3. JOINT ESCROW INSTRUCTIONS

3.1 Escrow Instructions. This Section 3 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Premises, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

3.2 Escrow Agent Authority. Seller and Buyer authorize Escrow Agent to:

3.2.1 Charges. Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow;

3.2.2 Settlement/Closing Statements. Release each Party's Escrow Closing Statement to the other Party;

3.2.3 Document Recording. File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

3.2.4 Counterpart Documents. Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one original of the same document.

3.3 Buyer's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Premises from Seller on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions:

3.3.1 Title Policy. Title Company is committed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

3.3.2 **Seller Escrow Deposits.** Seller deposits all of the items into Escrow required by Section 3.6;

3.3.3 **Settlement/Closing Statement.** Buyer reasonably approves Buyer's Escrow Closing Statement;

3.3.4 **Seller Pre-Closing Obligations.** Seller performs all of the material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

3.4 **Seller's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Premises to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent to such sale on or before the Escrow Closing Date:

3.4.1 **Buyer Official Action.** Seller's receipt of the Buyer Official Action in accordance with Section 2.4;

3.4.2 **Buyer Escrow Deposits.** Buyer deposits all of the items into Escrow required by Section 3.5;

3.4.3 **Settlement/Closing Statement.** Seller reasonably approves Seller's Escrow Closing Statement; and

3.4.4 **Buyer Pre-Closing Obligations.** Buyer performs all of the material obligations required to be performed by Buyer pursuant to this Agreement prior to Close of Escrow.

3.5 **Buyer's Escrow Deposits.** Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least one (1) Business Day prior to the Escrow Closing Date:

3.5.1 **Closing Funds.** All monetary amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow, all in immediately available funds;

3.5.2 **Escrow Closing Statement.** Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer; and

3.5.3 **Other Reasonable Items.** Any other money or documents required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not previously been delivered by Buyer.

3.6 **Seller's Escrow Deposits.** Seller shall deposit the following items into Escrow and, concurrently, provide a copy of each document (excluding the Grant Deed) deposited into Escrow to Buyer, at least one (1) Business Day prior to the Escrow Closing Date:

3.6.1 **Grant Deed.** The Grant Deed signed by the authorized representative(s) of Seller in recordable form;

3.6.2 **Escrow Closing Statement.** Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

3.6.3 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form used by the Escrow Agent;

3.6.4 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

3.6.5 **Other Reasonable Items.** Any other money or documents required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not been previously delivered by Seller.

3.7 **Closing Procedure.** Upon Escrow Agent's receipt of written confirmation from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

3.7.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the following documents to be filed with the Recorder of the County for recording in the official records of the County regarding the Premises in the following order of priority at Close of Escrow: (a) the Grant Deed; and (b) any other documents to be recorded regarding the Premises through the Escrow upon the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed with the Recorder of the County for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each conformed copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 3.7.1 shall establish the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior to junior interests, in the order provided in this Section 3.7.1;

3.7.2 **Funds.** Distribute all funds held by the Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer, respectively;

3.7.3 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

3.7.4 **Form 593.** File the Form 593 with the California Franchise Tax Board; and

3.7.5 **Title Policy.** Obtain from the Title Company and deliver to Buyer the Buyer Title Policy issued by the Title Company.

3.8 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 3.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 3.8, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 3.8 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

3.9 Escrow Costs. Escrow Agent shall Notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Each party shall pay its own costs and expenses arising in connection with the Closing (including, without limitation, its own attorneys' and advisors' fees, charges, and disbursements), except the following costs (the "Closing Costs"), which shall be allocated between the parties as follows:

- (a) Escrow fees and costs shall be paid one-half by Seller and one-half by Buyer;
- (b) The cost of the Title Policy attributable to the standard coverage portion shall be paid by Seller;
- (c) The cost of the Title Policy attributable to the extended coverage portion shall be paid by Buyer; and
- (d) Buyer shall pay the cost of any documentary transfer taxes in connection with the recording of the Grant Deed;
- (e) All other closing fees and costs shall be charged to and paid by Seller and Buyer in accordance with customary practices in the County.

3.10 Allocation of Taxes. Real Estate Taxes relating to the Premises, if any, shall be prorated between Seller and Buyer as of Midnight on the date prior to the Close of Escrow.

3.11 Escrow Cancellation Charges. If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close for any reason other than the Default of either Buyer or Seller, Buyer and Seller shall each pay one-half (1/2) of any ordinary and

reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any.

3.12 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

3.12.1 Cancellation Instructions. The Parties shall, within seven (7) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

3.12.2 Return of Funds and Documents. Within seven (7) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within seven (7) Business days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Escrow; (c) Escrow Agent shall, unless otherwise provided in this Agreement, return to Buyer all funds deposited in Escrow by Buyer, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to Seller all funds deposited in Escrow by Seller, less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11.

3.13 Eminent Domain. If any portion of the Premises or any interest in any portion of the Premises becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended eminent domain action or proceedings in the nature of eminent domain, Seller shall give Buyer Notice of such occurrence and Buyer shall have the option, exercisable within ten (10) Business Days after receipt of such Notice from Seller, to either: (a) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 3.12; or (b) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer, at the Close of Escrow, any right of Seller to receive any eminent domain award attributable to the Premises acquired by Buyer pursuant to this Agreement.

4. REMEDIES

4.1 BUYER'S RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES.

4.1.1 ELECTION OF REMEDIES. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY SELLER UNDER THIS AGREEMENT PRIOR TO THE CLOSING, BUYER SHALL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER THE INITIAL DEPOSIT. UNDER NO CIRCUMSTANCES SHALL SELLER BE

LIABLE TO BUYER UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE AMOUNT SET FORTH IN THIS SECTION 4.1.1, ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY BUYER.

4.1.2 WAIVER OF RIGHTS. SELLER AND BUYER EACH ACKNOWLEDGE AND AGREE THAT SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT IF SELLER WERE TO BE LIABLE TO BUYER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE AMOUNT SPECIFIED IN CLAUSE "(2)" OF SECTION 4.1.1. ACCORDINGLY, SELLER AND BUYER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 4.1.1 ARE REASONABLE AND SHALL BE BUYER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER. BUYER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES AGAINST SELLER ARISING FROM OR RELATING TO THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 4.1.1.

4.1.3 STATE CIVIL CODE SECTION 1542 WAIVER. BUYER ACKNOWLEDGES THE PROTECTIONS OF STATE CIVIL CODE SECTION 1542 REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4.1.4 ACKNOWLEDGMENT. BY INITIALING BELOW, BUYER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF STATE CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1.

Initials of Authorized
Buyer Representative(s)

4.1.5 STATEMENT OF INTENT. STATE CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF BUYER TO BE BOUND BY THE LIMITATIONS ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 4.1, AND BUYER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST SELLER FOR

MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO BUYER AS OF THE EFFECTIVE DATE.

4.2 LIQUIDATED DAMAGES TO SELLER. IF THE CLOSE OF ESCROW DOES NOT OCCUR ON OR BEFORE THE ESCROW CLOSING DATE DUE TO BUYER'S DEFAULT, THEN SELLER SHALL RETAIN THE INITIAL DEPOSIT, AS LIQUIDATED DAMAGES. THE AMOUNT OF THE INITIAL DEPOSIT IS THE REASONABLE ESTIMATE BY THE PARTIES OF THE DAMAGES SELLER WOULD SUFFER FROM SUCH DEFAULT, IT BEING AGREED THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE AND IMPRACTICABLE, TO FIX THE EXACT AMOUNT OF DAMAGE THAT WOULD BE INCURRED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER. UPON SUCH A DEFAULT BY BUYER, ESCROW SHALL BE CANCELED AND THE PARTIES SHALL PROCEED IN ACCORDANCE WITH SECTION **Error! Reference source not found.** IN ADDITION, IF ALL OR ANY PORTION OF THE INITIAL DEPOSIT HAS BEEN DEPOSITED INTO ESCROW BY BUYER, ESCROW AGENT IS HEREBY IRREVOCABLY INSTRUCTED BY BUYER AND SELLER TO DISBURSE THE INITIAL DEPOSIT TO SELLER AS LIQUIDATED DAMAGES FOR BUYER'S DEFAULT UNDER THIS AGREEMENT AND FAILURE TO COMPLETE THE PURCHASE OF THE PREMISES, PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, ET. SEQ.

4.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 4.1 or Section 4.2, as applicable.

4.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

5. GENERAL PROVISIONS

5.1 Notices, Demands and Communications Between the Parties. Any and all Notices submitted by one Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 5.1. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 5.1. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in

accordance with this Section 5.1. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Buyer:	Sierra Hotel Group LLC 1905 Park Avenue, Suite 220 San Jose, California 95126 Attention: John Della Penna
With a copy to:	Mark Carlquist 654 N. Santa Cruz Avenue, Suite E Los Gatos, California 95030
To Seller:	Successor Agency to the Fontana Redevelopment Agency 8492 Wheeler Avenue Fontana, California 92335 Attention: Executive Director
With a copy to:	Best Best & Krieger LLP 655 West Broadway, 15th Floor San Diego, CA 92101 Attn: Delmar Williams

5.2 Relationship of Parties. The Parties each intend and agree that Seller and Buyer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

5.3 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

5.4 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this

Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

5.5 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

5.6 Unavoidable Delay; Extension of Time of Performance.

5.6.1 Notice. Performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The extension of time for performance under this Agreement resulting from the occurrence of an Unavoidable Delay shall commence on the date of occurrence of the condition causing the Unavoidable Delay and shall in no event be longer than ninety (90) days after written notice is received by a Party from the other Party of the occurrence of such an Unavoidable Delay; provided, however, that failure to perform by a Party due to the occurrence of an Unavoidable Delay shall not constitute a breach or Default of this Agreement. Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

5.6.2 Assumption of Economic Risks. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE

OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized
Seller Representative(s)

Initials of Authorized
Buyer Representative(s)

5.7 Real Estate Commissions. Seller shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. Buyer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

5.8 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

5.9 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.10 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

5.11 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Premises. Notwithstanding the foregoing, this Agreement is intended by the Parties to implement the transfer of the Premises from Seller to Buyer in accordance with the DDA.

5.12 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

5.13 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable

judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

5.14 Counterparts. This Agreement may be signed in multiple counterpart originals each of which is deemed to be an original and all of which shall constitute one agreement. This Agreement includes nineteen (19) pages and three (3) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and agreement of the Parties regarding the subject matter of this Agreement.

5.15 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronically shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures on following page]

SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Hilton Garden Inn)

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

SELLER:

**SUCCESSOR AGENCY TO THE
FONTANA REDEVELOPMENT
AGENCY, a public corporation**

By: _____
Kenneth R. Hunt
Executive Director

BUYER:

**SIERRA HOTEL GROUP LLC, a
California limited liability company**

By: _____
John Della Penna
By: _____
Kelly Heil

Attest:

By: _____
Secretary to the Successor Agency

Approved as to form:

Best Best & Krieger LLP

By: _____
Successor Agency Counsel

EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Hilton Garden Inn)

Premises Legal Description

EXHIBIT A

16498.90000\8799691.1

SIERRA HOTEL GROUP

ASSESSOR PARCEL NUMBER 0194-371-24

PARCEL MAP 16997, PARCEL 2, BOOK 219, PAGE 3

EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Hilton Garden Inn)

Buyer Official Action

EXHIBIT B

16498.90000\8799691.1

**CERTIFICATION OF AUTHORITY
FOR
SIERRA HOTEL GROUP LLC**

The undersigned members of SIERRA HOTEL GROUP LLC, a California limited liability company ("LLC"), do hereby certify that we are all of the members of the LLC and that there are no other members.

We further certify that the following named person(s): John Della Penna and Kelly Heil

are authorized and empowered for and on behalf of and in the name of the LLC to sign, enter into, make, execute and deliver that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Hilton Garden Inn), dated _____, by and between the Successor Agency to the Fontana Redevelopment Agency, a public corporation, and the LLC ("Agreement"), and all other documents to be made or entered into by the LLC in connection with the transactions contemplated in the Agreement, pursuant to which the LLC may acquire title to that certain real property defined in the Agreement as the "Premises. The above-named person(s) are also authorized and empowered for and on behalf of and in the name of the LLC to perform the obligations of the LLC set forth in the Agreement and to take all actions that may be considered necessary or convenient to conclude the transactions contemplated in the Agreement and perform the obligations of the LLC pursuant to the Agreement.

The authority conferred and certified to in this Certificate shall be considered retroactive and any and all acts authorized in this Certificate that were performed before the execution of this Certificate are approved and ratified. The authority conferred and certified to in this Certificate shall continue in full force and effect until the Successor Agency to the Fontana Redevelopment Agency has received notice in writing from all of the members of the LLC of the revocation of this Certificate.

We further certify that: (1) the activities covered by the authorities certified to in this Certificate and the foregoing certifications constitute duly authorized activities of the LLC; (2) these authorities and certifications are now in full force and effect; and (3) there is no provision in any document under which the LLC is organized and/or that governs the LLC's continued existence or operation limiting the power of the undersigned to grant such authority or make the certifications set forth in this Certificate, and that the same are in conformity with the provisions of all such documents.

LLC Members:

EXHIBIT B

EXHIBIT C
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Hilton Garden Inn)

Grant Deed

EXHIBIT C

16498.90000\8799691.1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Sierra Hotel Group LLC
1905 Park Avenue, Suite 220
San Jose, California 95126
Attention: John Della Penna

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Exempt from Recording Fees – Government Code section 27383

GRANT DEED

The undersigned declares:

Documentary Transfer Tax is:

County of San Bernardino; City of Fontana

Assessor's Parcel Nos.: **[SEE EXHIBIT "1"]**

computed on full value of interest or property conveyed, or
 computed on full value of liens or encumbrances remaining at time of sale.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Successor Agency to the Fontana Redevelopment Agency, a public corporation
("Grantor"),

hereby grants to

Sierra Hotel Group LLC, a California limited liability company ("Grantee"),

that certain real property legally described in Exhibit "I" attached to and by this reference
incorporated into this Grant Deed, subject to:

1. Real property taxes and assessments, not delinquent.
2. Covenants, conditions, restrictions, easements, exceptions, reservations, rights,
rights-of-way and other matters of record.

Dated: _____

SUCCESSOR AGENCY TO THE FONTANA
REDEVELOPMENT AGENCY, a public
corporation

By: _____

Kenneth R. Hunt
Executive Director

EXHIBIT C

EXHIBIT "1"
TO
GRANT DEED

Legal Description

EXHIBIT C

16498.90000\8799691.1

**OVERSIGHT BOARD ACTION REPORT
FONTANA REDEVELOPMENT SUCCESSOR AGENCY
May 30, 2014**

FROM: Housing and Business Development

SUBJECT: Purchase & Sale Agreement – NYMA Properties, LLC

RECOMMENDATION:

- 1) Adopt Resolution No. _____ Approving a Purchase and Sale Agreement with NYMA Properties for the Property Located Adjacent to Westech College on Sierra Avenue and Authorize the City Manager to Execute any Documents Necessary or Appropriate to Implement said Agreement.
- 2) Determine that this action is exempt from the California Environmental Quality Act and direct staff to file a Notice of Exemption.

DISCUSSION:

As required by AB 1484 the Successor Agency to the Fontana Redevelopment Agency prepared a Long-Range Property Management Plan (LRPMP). The LRPMP addresses the disposition and intended future use of all real property owned by the former Fontana Redevelopment Agency (pursuant to § 34191.5(a)).

On May 16th, 2014 the Fontana Oversight Board authorized a change to the LRPMP, involving the following property;

- **LRPMP Property #104 – APN #019323412
Westech College Expansion Parcel**

At the request of the Department of Finance (DOF) the Fontana Oversight Board changed the LRPMP designation for this property from “Enforceable Obligation” to “For Sale”. This change to the LRPMP was submitted to DOF on Friday, May 16th.

In order to facilitate the sale of this property, staff has prepared a Purchase & Sale Agreement, which includes the following proposed deal-points;

- NYMA Properties, LLC would purchase APN #019323412 (located on Sierra Avenue - adjacent to Westech College) from the Successor Agency to the Fontana Redevelopment Agency.
-

Oversight Board Action Report
May 30, 2014

- As established within the LRPMP (and approved by the Successor Agency and Fontana Oversight Board) the purchase price shall be \$48,300.
- All of the terms and conditions contained within the Disposition and Development Agreement (for the Westech College Development), dated April 24, 2011, and the Utility and Parking Easement Agreement, for the purchase and development of this property - shall remain in full effect.
- At the close of escrow, the Successor Agency shall transmit any/all net sale proceeds (minus the transaction costs) to the County of San Bernardino Auditor-Controller for distribution to the various taxing entities.
- Following acquisition, NYMA Properties, LLC intends to continue utilizing the property as a parking lot for the Westech College facility – Phases I and II (including both students and faculty).

Adoption of the attached Resolution and approval of the Purchase & Sale Agreement with NYMA Properties, LLC by the Fontana Oversight Board will ensure the continued utilization of this property for parking at Westech College (by students and faculty).

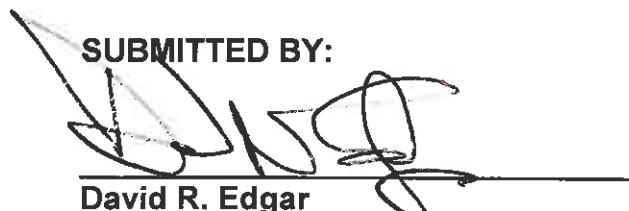
FISCAL IMPACT:

None.

MOTION:

Approve staff's recommendation.

SUBMITTED BY:



David R. Edgar
Deputy City Manager

APPROVED BY:



Kenneth R. Hunt
City Manager

ATTACHMENT:

1. Fontana Oversight Board Resolution
2. Purchase & Sale Agreement (Sierra Hotel Group)

RESOLUTION NO. _____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE FONTANA
REDEVELOPMENT AGENCY APPROVING A PURCHASE
AND SALE AGREEMENT BETWEEN THE SUCCESSOR
AGENCY TO THE FONTANA REDEVELOPMENT
AGENCY AND NYMA PROPERTIES, LLC**

WHEREAS, pursuant to Health and Safety Code section 34173(d), the City of Fontana (“Successor Agency”) is the successor agency to the former Fontana Redevelopment Agency (“Agency”); and

WHEREAS, pursuant to Health and Safety Code Section 34179(a), the Oversight Board is the Successor Agency’s oversight board; and

WHEREAS, the City of Fontana (“City”) and NYMA Properties, LLC, a California limited liability company (“NYMA Properties”) previously entered into that certain Disposition and Development Agreement (Dix Development, Inc.), dated April 24, 2012 (“DDA”), pursuant to which NYMA Properties is obligated to pursue and complete certain commercial development of that certain real property owned by NYMA Properties, which is more particularly described in the DDA as the “Property;” and

WHEREAS, the Successor Agency and NYMA Properties subsequently entered into that certain Utility and Parking Easement Agreement (Westech College), dated _____ (“Easement Agreement”), in which the Successor Agency conveyed to NYMA Properties a limited non-exclusive easement over that certain real property of the former Agency located in the City of Fontana, California, that is adjacent to the Property and is more particularly described in the Easement Agreement (“Premises”) for the construction, installation, use and operation of certain utility and parking improvements; and

WHEREAS, pursuant to Health and Safety Code section 34177(e), the Successor Agency is responsible for disposing of the assets and properties of the Agency, as directed by the Oversight Board, expeditiously and in a manner aimed at maximizing value; and

WHEREAS, pursuant to Health and Safety Code section 34181(a), the Oversight Board is required to direct the Successor Agency to dispose of all assets and properties of the Agency expeditiously and in a manner aimed at maximizing value; and

WHEREAS, pursuant to Health and Safety Code section 34191.5, the Premises was listed on the Successor Agency’s Long Range Property Management Plan (“LRPMP”), which provided that the Premises is to be transferred from the Successor Agency to NYMA Properties at fair market value, and the LRPMP has been approved by the Oversight Board and the California Department of Finance;

WHEREAS, in order to dispose of the Premises expeditiously and in a manner aimed at maximizing value, the Successor Agency and NYMA Properties have negotiated a Real Property

Purchase and Sale Agreement and Joint Escrow Instructions (NYMA Properties, LLC), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (“Agreement”), in which the Successor Agency agrees to sell to NYMA Properties and NYMA Properties agrees to purchase from the Successor Agency the Premises; and

WHEREAS, pursuant to Health and Safety Code section 34181, prior to considering the disposition of any Agency property, the Oversight Board must hold a public hearing after at least 10 days’ notice to the public of the specific proposed actions; and

WHEREAS, a public notice of the Oversight Board’s consideration at a public hearing of the disposition of the Premises was published on May 19th, 2014; and

WHEREAS, the Oversight Board held a public hearing on May 30, 2014, regarding the proposed disposition of the Premises and received public comments; and

WHEREAS, the Oversight Board finds that the proposed disposition of the Premises is consistent with the approved LRPMP and Health and Safety Code section 34181(a).

NOW, THEREFORE, THE GOVERNING BOARD OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

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

Section 2. CEQA Compliance. The execution of the Agreement and disposition of the Premises by Successor Agency to NYMA Properties through this Resolution does not commit the Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The Secretary to the Oversight Board is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

Section 3. Approval of Agreement. Pursuant to Health and Safety Code section 34181, the Oversight Board hereby approves the sale of the Premises pursuant to the Agreement. Based on the evidence contained in the staff report and presented at the public hearing, the Oversight Board finds that the disposition of the Premises to NYMA Properties will allow for the disposition of the Premises expeditiously and in a manner aimed at maximizing value.

Section 4. Implementation. The Oversight Board hereby authorizes and directs the Successor Agency to take any action necessary to carry out the purposes of this Resolution in compliance with applicable law, including taking any actions necessary to execute the Agreement and transfer the Premises to NYMA Properties.

Section 5. 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

Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 6. Certification. The Secretary to the Oversight Board shall certify to the adoption of this Resolution.

Section 7. Effective Date. Pursuant to Health and Safety Code section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of Finance, and, therefore, this Resolution shall not be effective for five (5) business days, pending a request for review by the State of California Department of Finance.

PASSED AND ADOPTED THIS 30th day of May, 2014.

Chairman

ATTEST:

City Clerk

EXHIBIT A

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(NYMA Properties, LLC)**

[Attached behind this page]

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
CITY OF FONTANA)

I, _____, City Clerk of the City of Fontana, acting ex officio as the Secretary of the Oversight Board of the Successor Agency to the Fontana Redevelopment Agency, do hereby certify that the foregoing Resolution No. _____ was duly and regularly adopted by the Oversight Board of the Successor Agency to the Fontana Redevelopment Agency, at a regular meeting thereof on the 30th day of May, 2014 and that the same was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

, City Clerk

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(NYMA Properties, LLC)**

by and between

**SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY
a public corporation**

and

**NYMA PROPERTIES, LLC
a California limited liability company**

DATED [TO BE DETERMINED]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(NYMA Properties, LLC)**

This REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is dated as of _____ (“Effective Date”), and is entered into by and between the SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY, a public corporation (“Seller”), and NYMA PROPERTIES, LLC, a California limited liability company (“Buyer”). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a “Recital”):

RECITALS

- A. The City of Fontana (“City”) and Buyer previously entered into that certain Disposition and Development Agreement (Dix Development, Inc.), dated April 24, 2012 (“DDA”), pursuant to which Buyer is obligated to pursue and complete certain commercial development of that certain real property owned by Buyer, which is more particularly described in the DDA as the “Property;”
- B. Seller owns certain real property located in the City of Fontana, California, as further described in Exhibit “A” attached to this Agreement (“Premises”), which is adjacent to the Property;
- C. Pursuant to that certain Utility and Parking Easement Agreement (Westech College), dated _____ (“Easement Agreement”), Seller conveyed to Buyer a limited non-exclusive easement over the Premises for the construction, installation, use and operation of certain utility and parking improvements, as further described in the Easement Agreement;
- D. In accordance with Health and Safety Code section 34191.5, the Premises was listed on Seller’s Long Range Property Management Plan (“LRPMP”), which provided that the Premises is to be transferred from Seller to Buyer at fair market value, and the LRPMP has been approved by the Oversight Board to the Successor Agency to the Fontana Redevelopment Agency and the Department of Finance;
- E. This Agreement is intended by Seller and Buyer to be the definitive purchase and sale agreement for the transfer of the Premises from Seller to Buyer.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS OF SELLER AND BUYER SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, SELLER AND BUYER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **Definitions.** The following words, terms and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.1.2 **Agreement.** This Real Property Purchase and Sale Agreement and Joint Escrow Instructions by and between Seller and Buyer, including all of the attached exhibits.

1.1.3 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization or similar matters.

1.1.4 **Business Day.** Monday through Friday, exclusive of Federal, State or City holidays.

1.1.5 **Buyer.** NYMA Properties, LLC, a California limited liability company, and any assignee of or successor to the rights, powers or responsibilities of NYMA Properties, LLC allowed under this Agreement.

1.1.6 **Buyer Official Action.** A certification of limited liability company authority in substantially the form attached to this Agreement as **Exhibit “B”** signed by all of the members of Buyer.

1.1.7 **Buyer Title Policy.** A standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Premises vested in Buyer, subject only to Permitted Exceptions.

1.1.8 **City.** The City of Fontana, a California municipal corporation.

1.1.9 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.10 **Close of Escrow.** The first date on which the Escrow Agent files the Grant Deed with the County for recording in the official records of the County.

1.1.11 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.1.12 **County.** The County of San Bernardino, California.

1.1.13 **DDA.** The Disposition and Development Agreement (NYMA Properties, LLC), dated April 24, 2012, by and between the City and Buyer, and any subsequent amendments executed by the parties to the DDA.

1.1.14 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.15 **Easement Agreement.** The Utility and Parking Easement Agreement (Westech College), dated April 24, 2012, by and between Seller and Buyer, and any subsequent amendments executed by the parties to the Easement Agreement.

1.1.16 **Effective Date.** Defined in the initial paragraph of this Agreement.

1.1.17 **Equity Interest.** All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.1.18 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Premises from Seller to Buyer pursuant to this Agreement.

1.1.19 **Escrow Agent.** Chicago Title Company, 560 East Hospitality Lane, San Bernardino, California 92408, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.20 **Escrow Closing Date.** The earlier of: (a) on or before the thirtieth (30th) day after the Escrow Agent's receipt of written confirmation from both Seller and Buyer of the satisfaction or waiver of all other conditions precedent to the Close of Escrow; (b) [INSERT DATE]; or (c) another date mutually agreed upon in writing between the Parties for the Close of Escrow, in the Parties' respective sole and absolute discretion.

1.1.21 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent's estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.22 **Escrow Default.** The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.23 **Escrow Opening Date.** The first date on which a copy of this Agreement signed by both Seller and Buyer is deposited with the Escrow Agent, as provided in Section 2.1.

1.1.24 **Event of Default.** The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid or the bond or surety not provided;

(b) *Escrow Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted to the Escrow Agent;

(c) *Bankruptcy or Insolvency.* Buyer admits in writing that Buyer is unable to pay Buyer's debts as they become due or Buyer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Buyer's assets or Buyer's interest in this Agreement or the Premises (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity, and vacated and discharged within ninety (90) days);

(d) *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 1.1.24(c), that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of Notice of such Default, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.25 **Federal.** The federal government of the United States of America.

1.1.26 **FIRPTA Affidavit.** A certification that Seller is not a "foreign person" within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

1.1.27 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.28 **Government.** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal or otherwise) whether now or later in existence.

1.1.29 **Grant Deed.** A deed conveying Seller's interest in the Premises from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit "C"** attached to this Agreement.

1.1.30 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical wastes, toxic substance or related material, explosive, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.31 Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Premises or during transportation of any Hazardous Substance to or from the Premises, or that arises at any time from any construction, installation, use or operation or other activities conducted at, on, under or from the Premises, whether or not caused by a Party.

1.1.32 Indemnify. Where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.1.33 Indemnitee. Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.34 Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.35 **Initial Deposit.** [INSERT AMOUNT].

1.1.36 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Premises, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Premises, or relating to any taxes, or otherwise relating to this Agreement or any Party's rights, obligations or remedies under this Agreement, or any transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.37 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to be reimbursed for its Legal Costs, including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.38 **LRPMP.** The long range property management plan prepared by Seller and approved by the Oversight Board to the Successor Agency to the Fontana Redevelopment Agency and the California Department of Finance, in accordance with Health and Safety Code section 34191.5.

1.1.39 **Monetary Default.** Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond or surety required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.40 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement by a Party.

1.1.41 **Notice.** Any consent, demand, designation, election, notice or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

1.1.42 **Notify.** To give a Notice.

1.1.43 **Parties.** Collectively, Seller and Buyer.

1.1.44 **Party.** Individually, either Seller or Buyer, as applicable.

1.1.45 **Permitted Exception.** All of the following: (a) all items shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Premises; (d) this Agreement; (e) any existing improvements on the Premises, if any; (f) any other document or encumbrance expressly required or allowed to be recorded against the Premises pursuant to the terms of this Agreement.

1.1.46 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.47 **Preliminary Report.** A preliminary report issued by the Title Company on [INSERT DATE] in contemplation of the issuance of the Buyer Title Policy, accompanied by copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.48 **Premises.** That certain real property specifically described in Exhibit "A" attached to this Agreement.

1.1.49 **Purchase Price.** [INSERT AMOUNT].

1.1.50 **Real Estate Taxes.** All general and special real estate taxes (including taxes on fixtures and equipment, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed pursuant to a special taxing district, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever regarding the Premises that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises.

1.1.51 **Seller.** The Successor Agency to the Fontana Redevelopment Agency, a public corporation.

1.1.52 **State.** The State of California.

1.1.53 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.54 **Title Company.** Chicago Title Company, 560 East Hospitality Lane, San Bernardino, California 92408, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.55 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. PURCHASE AND SALE OF PREMISES

2.1 **Escrow.** Seller shall sell the Premises to Buyer and Buyer shall purchase the Premises from Seller, subject to the Permitted Exceptions, on the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the

Premises from Seller to Buyer and the purchase of the Premises by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open the Escrow with the Escrow Agent. Buyer shall cause the Escrow to be opened within two business (2) days following the Effective Date. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. The provisions of Section 3 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

2.2 Payment of Purchase Price. Buyer shall purchase the Premises from Seller for the Purchase Price, subject to the terms and conditions of this Agreement. Buyer shall pay the Purchase Price to Seller at the Close of Escrow in immediately available funds.

2.3 Initial Deposit. Buyer shall deliver the Initial Deposit to Escrow Agent on the Escrow Opening Date.

2.4 Delivery of Buyer Official Action. Within five (5) Business Days following the Effective Date, Buyer shall deliver to Seller the Buyer Official Action signed by all of the members of Buyer. Seller's receipt of the Buyer Official Action signed by all of the members of Buyer in accordance with this Section 2.4 is a condition precedent to Seller's obligations under this Agreement.

2.5 Buyer's Approval of Title to Premises. Buyer acknowledges and agrees that it has received the Preliminary Report for the Premises and has approved the status of title to the Premises.

2.6 "AS-IS" Acquisition. Except for the representations and warranties set forth herein that expressly survive the Close of Escrow, the Close of Escrow shall evidence Buyer's unconditional and irrevocable acceptance of the Premises in the Premises' AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Premises (active, inactive or abandoned), the suitability of the Premises for Buyer's intended use or any other use or the existence or absence of Hazardous Substances affecting the Premises and with full knowledge of the physical condition of the Premises, the nature of Seller's interest in and use of the Premises, all laws applicable to the Premises and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Premises. The Close of Escrow shall further constitute Buyer's representation and warranty to Seller that: (a) Buyer has had ample opportunity to inspect and evaluate the Premises and the feasibility of the uses and activities Buyer is entitled to conduct on the Premises; (b) Buyer is experienced in real estate development; (c) Buyer is relying entirely on Buyer's experience, expertise and Buyer's own inspection of the Premises in the Premises' current state in proceeding with acquisition of the Premises; (d) Buyer accepts the Premises in the Premises' condition as of the Close of Escrow; (e) to the extent that Buyer's own expertise with respect to any matter regarding the Premises is insufficient to enable Buyer to reach an informed conclusion regarding such matter, Buyer has engaged the services of Persons qualified to advise Buyer with respect to such matters; (f) Buyer has received assurances acceptable to Buyer by means independent of Seller or Seller's agents of the truth of all facts material to Buyer's acquisition of the Premises; and (g) the Premises is being acquired by Buyer as a result

of Buyer's own knowledge, inspection and investigation of the Premises and not as a result of any representation made by Seller or Seller's agents relating to the condition of the Premises, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Premises other than those expressly set forth herein.

3. JOINT ESCROW INSTRUCTIONS

3.1 **Escrow Instructions.** This Section 3 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Premises, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

3.2 **Escrow Agent Authority.** Seller and Buyer authorize Escrow Agent to:

3.2.1 **Charges.** Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow;

3.2.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

3.2.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

3.2.4 **Counterpart Documents.** Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one original of the same document.

3.3 **Buyer's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Premises from Seller on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions:

3.3.1 **Title Policy.** Title Company is committed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

3.3.2 **Seller Escrow Deposits.** Seller deposits all of the items into Escrow required by Section 3.6;

3.3.3 **Settlement/Closing Statement.** Buyer reasonably approves Buyer's Escrow Closing Statement;

3.3.4 Seller Pre-Closing Obligations. Seller performs all of the material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

3.4 Seller's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Premises to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent to such sale on or before the Escrow Closing Date:

3.4.1 Buyer Official Action. Seller's receipt of the Buyer Official Action in accordance with Section 2.4;

3.4.2 Buyer Escrow Deposits. Buyer deposits all of the items into Escrow required by Section 3.5;

3.4.3 Settlement/Closing Statement. Seller reasonably approves Seller's Escrow Closing Statement; and

3.4.4 Buyer Pre-Closing Obligations. Buyer performs all of the material obligations required to be performed by Buyer pursuant to this Agreement prior to Close of Escrow.

3.5 Buyer's Escrow Deposits. Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least one (1) Business Day prior to the Escrow Closing Date:

3.5.1 Closing Funds. All monetary amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow, all in immediately available funds;

3.5.2 Escrow Closing Statement. Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer; and

3.5.3 Other Reasonable Items. Any other money or documents required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not previously been delivered by Buyer.

3.6 Seller's Escrow Deposits. Seller shall deposit the following items into Escrow and, concurrently, provide a copy of each document (excluding the Grant Deed) deposited into Escrow to Buyer, at least one (1) Business Day prior to the Escrow Closing Date:

3.6.1 Grant Deed. The Grant Deed signed by the authorized representative(s) of Seller in recordable form;

3.6.2 Escrow Closing Statement. Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

3.6.3 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form used by the Escrow Agent;

3.6.4 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

3.6.5 **Other Reasonable Items.** Any other money or documents required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not been previously delivered by Seller.

3.7 **Closing Procedure.** Upon Escrow Agent's receipt of written confirmation from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

3.7.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the following documents to be filed with the Recorder of the County for recording in the official records of the County regarding the Premises in the following order of priority at Close of Escrow: (a) the Grant Deed; and (b) any other documents to be recorded regarding the Premises through the Escrow upon the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed with the Recorder of the County for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each conformed copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 3.7.1 shall establish the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior to junior interests, in the order provided in this Section 3.7.1;

3.7.2 **Funds.** Distribute all funds held by the Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer, respectively;

3.7.3 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

3.7.4 **Form 593.** File the Form 593 with the California Franchise Tax Board; and

3.7.5 **Title Policy.** Obtain from the Title Company and deliver to Buyer the Buyer Title Policy issued by the Title Company.

3.8 **Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 3.12. Without

limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 3.8, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 3.8 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

3.9 Escrow Costs. Escrow Agent shall Notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Each party shall pay its own costs and expenses arising in connection with the Closing (including, without limitation, its own attorneys' and advisors' fees, charges, and disbursements), except the following costs (the "Closing Costs"), which shall be allocated between the parties as follows:

(a) Escrow fees and costs shall be paid one-half by Seller and one-half by Buyer;

(b) The cost of the Title Policy attributable to the standard coverage portion shall be paid by Seller;

(c) The cost of the Title Policy attributable to the extended coverage portion shall be paid by Buyer; and

(d) Buyer shall pay the cost of any documentary transfer taxes in connection with the recording of the Grant Deed;

(e) All other closing fees and costs shall be charged to and paid by Seller and Buyer in accordance with customary practices in the County.

3.10 Allocation of Taxes. Real Estate Taxes relating to the Premises, if any, shall be prorated between Seller and Buyer as of Midnight on the date prior to the Close of Escrow.

3.11 Escrow Cancellation Charges. If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close for any reason other than the Default of either Buyer or Seller, Buyer and Seller shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any.

3.12 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

3.12.1 **Cancellation Instructions.** The Parties shall, within seven (7) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

3.12.2 **Return of Funds and Documents.** Within seven (7) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within seven (7) Business days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Escrow; (c) Escrow Agent shall, unless otherwise provided in this Agreement, return to Buyer all funds deposited in Escrow by Buyer, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to Seller all funds deposited in Escrow by Seller, less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11.

3.13 **Eminent Domain.** If any portion of the Premises or any interest in any portion of the Premises becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended eminent domain action or proceedings in the nature of eminent domain, Seller shall give Buyer Notice of such occurrence and Buyer shall have the option, exercisable within ten (10) Business Days after receipt of such Notice from Seller, to either: (a) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 3.12; or (b) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer, at the Close of Escrow, any right of Seller to receive any eminent domain award attributable to the Premises acquired by Buyer pursuant to this Agreement.

4. **REMEDIES**

4.1 **BUYER'S RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES.**

4.1.1 **ELECTION OF REMEDIES.** DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY SELLER UNDER THIS AGREEMENT PRIOR TO THE CLOSING, BUYER SHALL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER THE INITIAL DEPOSIT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE AMOUNT SET FORTH IN THIS SECTION 4.1.1, ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY BUYER.

4.1.2 WAIVER OF RIGHTS. SELLER AND BUYER EACH ACKNOWLEDGE AND AGREE THAT SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT IF SELLER WERE TO BE LIABLE TO BUYER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE AMOUNT SPECIFIED IN CLAUSE "(2)" OF SECTION 4.1.1. ACCORDINGLY, SELLER AND BUYER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 4.1.1 ARE REASONABLE AND SHALL BE BUYER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER. BUYER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES AGAINST SELLER ARISING FROM OR RELATING TO THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 4.1.1.

4.1.3 STATE CIVIL CODE SECTION 1542 WAIVER. BUYER ACKNOWLEDGES THE PROTECTIONS OF STATE CIVIL CODE SECTION 1542 REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4.1.4 ACKNOWLEDGMENT. BY INITIALING BELOW, BUYER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF STATE CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1.

Initials of Authorized
Buyer Representative(s)

4.1.5 STATEMENT OF INTENT. STATE CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF BUYER TO BE BOUND BY THE LIMITATIONS ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 4.1, AND BUYER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST SELLER FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO BUYER AS OF THE EFFECTIVE DATE.

4.2 LIQUIDATED DAMAGES TO SELLER. IF THE CLOSE OF ESCROW DOES NOT OCCUR ON OR BEFORE THE ESCROW CLOSING DATE DUE TO BUYER'S DEFAULT, THEN SELLER SHALL RETAIN THE INITIAL DEPOSIT, AS LIQUIDATED DAMAGES. THE AMOUNT OF THE INITIAL DEPOSIT IS THE REASONABLE ESTIMATE BY THE PARTIES OF THE DAMAGES SELLER WOULD SUFFER FROM SUCH DEFAULT, IT BEING AGREED THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE AND IMPRACTICABLE, TO FIX THE EXACT AMOUNT OF DAMAGE THAT WOULD BE INCURRED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER. UPON SUCH A DEFAULT BY BUYER, ESCROW SHALL BE CANCELED AND THE PARTIES SHALL PROCEED IN ACCORDANCE WITH SECTION **Error! Reference source not found.** IN ADDITION, IF ALL OR ANY PORTION OF THE INITIAL DEPOSIT HAS BEEN DEPOSITED INTO ESCROW BY BUYER, ESCROW AGENT IS HEREBY IRREVOCABLY INSTRUCTED BY BUYER AND SELLER TO DISBURSE THE INITIAL DEPOSIT TO SELLER AS LIQUIDATED DAMAGES FOR BUYER'S DEFAULT UNDER THIS AGREEMENT AND FAILURE TO COMPLETE THE PURCHASE OF THE PREMISES, PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, ET. SEQ.

4.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 4.1 or Section 4.2, as applicable.

4.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

5. GENERAL PROVISIONS

5.1 Notices, Demands and Communications Between the Parties. Any and all Notices submitted by one Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 5.1. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 5.1. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 5.1. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Buyer: NYMA Properties, LLC
30100 Town Center Drive, Suite 0-449
Laguna Niguel, California 92677
Attention: Gary Dix

With a copy to:

To Seller: Successor Agency to the Fontana
Redevelopment Agency
8492 Wheeler Avenue
Fontana, California 92335
Attention: Executive Director

With a copy to: Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101
Attn: Delmar Williams

5.2 Relationship of Parties. The Parties each intend and agree that Seller and Buyer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

5.3 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive

calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

5.4 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

5.5 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

5.6 Unavoidable Delay; Extension of Time of Performance.

5.6.1 Notice. Performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The extension of time for performance under this Agreement resulting from the occurrence of an Unavoidable Delay shall commence on the date of occurrence of the condition causing the Unavoidable Delay and shall in no event be longer than ninety (90) days after written notice is received by a Party from the other Party of the occurrence of such an Unavoidable Delay; provided, however, that failure to perform by a Party due to the occurrence of an Unavoidable Delay shall not constitute a breach or Default of this Agreement. Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

5.6.2 Assumption of Economic Risks. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF

EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized
Seller Representative(s)

Initials of Authorized
Buyer Representative(s)

5.7 Real Estate Commissions. Seller shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. Buyer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

5.8 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

5.9 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.10 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

5.11 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Premises.

5.12 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver.

Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

5.13 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

5.14 Counterparts. This Agreement may be signed in multiple counterpart originals each of which is deemed to be an original and all of which shall constitute one agreement. This Agreement includes nineteen (19) pages and three (3) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and agreement of the Parties regarding the subject matter of this Agreement.

5.15 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronically shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures on following page]

SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(NYMA Properties, LLC)

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

SELLER:

**SUCCESSOR AGENCY TO THE
FONTANA REDEVELOPMENT
AGENCY, a public corporation**

By: _____
Kenneth R. Hunt
Executive Director

Attest:

By: _____
Secretary to the Successor Agency

Approved as to form:

Best Best & Krieger LLP

By: _____
Successor Agency Counsel

BUYER:

**NYMA PROPERTIES, LLC, a California
limited liability company**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(NYMA Properties, LLC)

Premises Legal Description

EXHIBIT A

16498.90000\8807743.1

NYMA PROPERTIES

ASSESSOR PARCEL NUMBER 0193-234-12

PARCEL MAP 9118, PARCEL 2

EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(NYMA Properties, LLC)

Buyer Official Action

EXHIBIT B

16498.90000\8807743.1

**CERTIFICATION OF AUTHORITY
FOR
NYMA PROPERTIES, LLC**

The undersigned members of NYMA PROPERTIES, LLC, a California limited liability company ("LLC"), do hereby certify that we are all of the members of the LLC and that there are no other members.

We further certify that the following named person(s):

are authorized and empowered for and on behalf of and in the name of the LLC to sign, enter into, make, execute and deliver that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (NYMA Properties, LLC), dated _____, by and between the Successor Agency to the Fontana Redevelopment Agency, a public corporation, and the LLC ("Agreement"), and all other documents to be made or entered into by the LLC in connection with the transactions contemplated in the Agreement, pursuant to which the LLC may acquire title to that certain real property defined in the Agreement as the "Premises. The above-named person(s) are also authorized and empowered for and on behalf of and in the name of the LLC to perform the obligations of the LLC set forth in the Agreement and to take all actions that may be considered necessary or convenient to conclude the transactions contemplated in the Agreement and perform the obligations of the LLC pursuant to the Agreement.

The authority conferred and certified to in this Certificate shall be considered retroactive and any and all acts authorized in this Certificate that were performed before the execution of this Certificate are approved and ratified. The authority conferred and certified to in this Certificate shall continue in full force and effect until the Successor Agency to the Fontana Redevelopment Agency has received notice in writing from all of the members of the LLC of the revocation of this Certificate.

We further certify that: (1) the activities covered by the authorities certified to in this Certificate and the foregoing certifications constitute duly authorized activities of the LLC; (2) these authorities and certifications are now in full force and effect; and (3) there is no provision in any document under which the LLC is organized and/or that governs the LLC's continued existence or operation limiting the power of the undersigned to grant such authority or make the certifications set forth in this Certificate, and that the same are in conformity with the provisions of all such documents.

LLC Members:

EXHIBIT B

EXHIBIT C
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(NYMA Properties, LLC)

Grant Deed

EXHIBIT C

16498.90000\8807743.1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NYMA Properties, LLC
30100 Town Center Drive, Suite 0-449
Laguna Niguel, CA 92677
Attention: Gary Dix

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Exempt from Recording Fees – Government Code section 27383

GRANT DEED

The undersigned declares:

Documentary Transfer Tax is:

County of San Bernardino; City of Fontana

Assessor's Parcel Nos.: **[SEE EXHIBIT "1"]**

- computed on full value of interest or property conveyed, or
- computed on full value of liens or encumbrances remaining at time of sale.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Successor Agency to the Fontana Redevelopment Agency, a public corporation
("Grantor"),

hereby grants to

NYMA Properties, LLC, a California limited liability company ("Grantee"),

that certain real property legally described in Exhibit "1" attached to and by this reference
incorporated into this Grant Deed, subject to:

1. Real property taxes and assessments, not delinquent.
2. Covenants, conditions, restrictions, easements, exceptions, reservations, rights,
rights-of-way and other matters of record.

Dated: _____

SUCCESSOR AGENCY TO THE FONTANA
REDEVELOPMENT AGENCY, a public
corporation

By: _____

Kenneth R. Hunt
Executive Director

EXHIBIT C

EXHIBIT "1"
TO
GRANT DEED

Legal Description

EXHIBIT C

16498.90000\8807743.1