

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Preliminary Draft DA - Exhibit O Form of Assignment Agreement  
**Date:** Tuesday, April 6, 2021 3:09:32 PM  
**Attachments:** [DA - Exhibit O Form of Assignment Agreement.DOCX](#)

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**From:** Phan, Johnny  
**Sent:** Friday, March 26, 2021 8:50 AM  
**To:** Miller, J. Gregg <[gmilller@coblentzlaw.com](mailto:gmilller@coblentzlaw.com)>; Straka, Stephanie <[SStraka@coblentzlaw.com](mailto:SStraka@coblentzlaw.com)>  
**Subject:** Preliminary Draft DA - Exhibit O Form of Assignment Agreement

A few changes. Johnny

## Johnny V. Phan

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**Exhibit O**

**Form of Assignment and Assumption Agreement**

RECORDING REQUESTED BY  
CITY CLERK  
OF THE CITY OF SAN JOSE  
(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383)

AND WHEN RECORDED MAIL TO:

[ \_\_\_\_\_ ]  
City Clerk, City of San José  
200 E. Santa Clara Street, 14th Floor  
San José, CA 95113

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**RELATIVE TO DEVELOPMENT AGREEMENT FOR [ \_\_\_\_\_ ]**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

**RECITALS**

A. \_\_\_\_\_, a \_\_\_\_\_ and the City of San José, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of \_\_\_\_\_, 20\_\_ for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the County of Santa Clara on \_\_\_\_\_ as Document No. \_\_\_\_\_.

*[add recital to document any previous transfer of the Transferred Property, with recording information]*

B. The Development Agreement provides that, subject to the terms and requirements set forth therein, including, without limitation, Section 12 (Transfer or Assignment) Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the execution and delivery of an approved Assignment and Assumption Agreement, to be released

from any prospective liability or obligation under the Development Agreement with respect to those rights, duties, obligations or interests and real property so Transferred, except as otherwise provided in the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

### ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of the later of (i) Assignor's conveyance of the Transferred Property to Assignee or (ii) the date on which City receives a copy of the fully executed Assignment and Assumption Agreement, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property [all as more specifically set forth on Exhibit B to this Agreement](the "Assigned and Assumed Obligations"). Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to (i) the Transferred Property that are not Assumed and Assigned Obligations and (ii) all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the Assigned and Assumed Obligations with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform, and to be subject to, all of the Assumed and Assigned Obligations. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property and the Assigned and Assumed Obligations.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section \_\_\_ of the Development Agreement.

5. Housing Obligations. Assignee has read and understands the obligations set forth in Exhibit D (Affordable Housing Program) of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit D, including the indemnities, waivers and releases set forth therein,

and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.

6. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

7. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Notices. The notice address for Assignee under Section \_\_\_\_ of the Development Agreement shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

8. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

[insert signature block]

**ASSIGNEE:**

[insert signature block]

**Exhibit A to Assignment & Assumption Agreement -**  
**Transferred Property**

**Exhibit B to Assignment & Assumption Agreement -**  
**Detailed List of Assigned and Assumed Obligations**