

## **FIRST AMENDMENT TO REAL ESTATE OPTION AND PURCHASE AND SALE AGREEMENT**

This First Amendment to the Real Estate Option and Purchase and Sale Agreement (the “Amendment”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, (“Effective Date”) by and between SA Golden Investments, a California limited liability company (“Buyer”), and the City of Fontana, a California municipal corporation (“Seller”), to amend that certain Real Estate Option and Purchase and Sale Agreement dated as of February 22, 2024 (the “Agreement”).

### **RECITALS**

WHEREAS, Buyer and Seller are parties to the Agreement, pursuant to which Seller granted to Buyer an exclusive option to purchase certain real property located in the City of Fontana, County of San Bernardino, State of California, and more particularly described in the Agreement (the “Option Property”); and

WHEREAS, Buyer has exercised its option pursuant to Sections 1 and 2 of the Agreement, has completed all required due diligence on the Option Property, and has determined there are no disputed title items; and Buyer’s execution of this Amendment constitutes its written notice of feasibility approval to Seller and Escrow Holder, with the parties acknowledging that no further notice is required under the Agreement; and

WHEREAS, Seller acknowledges and accepts Buyer’s exercise of the option, the completion of Buyer’s due diligence, and the sufficiency of this Amendment as written notice of feasibility approval, and agrees that no additional notice is required under Sections 1 and 2 or the due diligence provisions of the Agreement; and

WHEREAS, the parties desire to amend the Agreement to modify certain terms and conditions as set forth herein.

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

### **AMENDMENTS**

The Agreement is hereby amended as follows:

1. Section 12.E. Conditions to Buyer’s Performance; Parking Structure. Section 12.E is hereby amended to read:

“Parking Structure. An adjacent parking structure containing not less than 500 spaces, with not less than 50 (gated) dedicated for the exclusive use of the Property, shall have commenced construction prior to the Closing Date. Parking spaces not dedicated for the exclusive use of the Property shall not be charged to the Property or Property’s tenants.”

2. Section 13.A Conditions to Seller’s Performance. Section 13.A. is hereby amended to read as follows:

“A. Buyer shall have received final approval (beyond any challenge or appeal period with no challenge or appeal then pending) of all necessary land-use approvals, authorizations and entitlements between Buyer and the City (collectively, the “**Entitlements**”), to develop the Option Property.”

3. Section 13. Conditions to Seller’s Performance. Section 13 is hereby amended to add new subsections G and H, which shall read as follows:

“G. Buyer shall submit to Seller all fully executed construction contracts and evidence of construction financing commitment no later than fifteen (15) days prior to the scheduled Closing Date.

H. Buyer shall cause the closing of all construction financing for the development of the Option Property to occur concurrently with the Closing Date hereunder.”

4. Section 28. Development Covenant and Condition Subsequent. A new Section 28 is hereby added to the Agreement, which shall read in its entirety as follows:

**“ 28 DEVELOPMENT COVENANT AND CONDITION SUBSEQUENT.**

Buyer covenants and agrees that the development of the Option Property, in accordance with the plans submitted to and approved by Seller, shall be fully completed no later than eighteen (18) months following the Closing Date (the “Completion Date”).

In the event Buyer fails to complete development of the Option Property by the Completion Date, Buyer shall pay to Seller, as liquidated damages, and not as a penalty, \$10,000 (ten thousand dollars) per month (prorated for any partial month) for each month that completion is delayed beyond the Completion Date.

The parties acknowledge and agree that actual damages resulting from such delay would be difficult to ascertain, and that the foregoing amount represents a reasonable estimate of the losses Seller would likely incur. Liquidated damages shall accrue monthly and be payable until the development is complete in accordance with the Agreement. This Section shall not apply to delays caused by circumstances solely outside of Buyer’s control.”

5. Except as expressly amended by this Amendment, all other terms, conditions, and provisions of the Agreement shall remain in full force and effect, In the event of any conflict between the terms of the Agreement and this Amendment, the terms of the Amendment shall prevail.

(SIGNATURES ON THE NEXT PAGE)

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

SELLER:

City of Fontana

By: \_\_\_\_\_

Name:

Title:

BUYER:

SA Golden Investments, Inc.

By: \_\_\_\_\_

Name:

Title: