

When Recorded Mail to:

The City of Fontana
City Clerk's Office
8353 Sierra Avenue
Fontana, CA 92335

EXEMPT FROM FILING FEES GOVERNMENT CODE § 6103

(Space above for Recorder's Use)

DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

between

THE CITY OF FONTANA
a California municipal corporation

and

SA Golden Investments Inc.
a California limited liability company

[Dated as of _____, 2026, for reference purposes only]

DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

This Development Impact Fee Deferral Agreement ("Agreement") is entered into between the CITY OF FONTANA, a California municipal corporation, ("City") and SA Golden Investments Inc., a California limited liability company ("Owner"). City and Owner are sometimes individually referred to herein as "Party" and together as "Parties." This Agreement is effective on the date ("Effective Date") it is fully executed by the Parties.

RECITALS

1. Owner is the fee simple owner of that certain real property located at 8153 Banana Ave., Fontana, CA 92335, in San Bernardino County, California, identified with Assessor's Parcel Number 0230-041-60 -0000 ("Property"). The Property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and consists of approximately 37,172 square feet.

2. The Owner or Owner's designees desires to develop a multi-family residential housing project on the Property, consisting of two (2) buildings with collectively twenty-four (24) residential units ("Project").

3. Owner has applied to the City for those permits and entitlements necessary to allow the construction of the Project.

4. In connection with the granting of such permits and entitlements, the City has imposed certain development impact fees and charges (hereinafter referred to individually as an "Impact Fee," and collectively as "Impact Fees") as allowed by the City's Municipal Code and adopted resolutions.

5. Owner has requested that the City defer the collection of certain Impact Fees imposed against the Project in order to make the Project financially viable. The City has determined that this Project will benefit and enhance the economic strength of the community through the payment of property taxes and generally contribute to the economic and commercial well-being of the City and its residents. The Impact Fees that are eligible for deferment are only those development impact fees which are directly imposed and levied by the City. The deferment of any Impact Fees under this Agreement shall not apply to any other fees levied by the City, nor shall it apply to fees levied by the County, School District or any other public entity. Accordingly, the City has agreed, subject to the terms, conditions and limitations of this Agreement, to defer payment of the following Impact Fees payable with respect to the Project as more particularly set forth in this Agreement:

As of the Effective Date of this Agreement, the aggregate sum of the foregoing Impact Fees is in the amount of Five hundred fifty-seven thousand, one hundred thirty-one dollars and eight cents (\$557,131.08) and shall be hereinafter collectively referred to as the "Deferred Fees."

AGREEMENT

NOW THEREFORE, IN CONSIDERATION of the above Recitals, incorporated herein by this reference, the mutual agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Deferred Fees. The City hereby agrees, subject to the terms, conditions and

limitations of this Agreement, to defer payment of the Deferred Fees until such time as described in Section 1.1 below. For purposes of this Agreement, “development impact fee” shall have the meaning ascribed to it in Chapter 21, Article V, Sections 21-120 of the Fontana Municipal Code.

1.1 **Owner’s Obligation.** Owner, or its successor in interest to the Property, or any portion thereof, shall be liable for the payment of the applicable development impact fees that are temporarily deferred pursuant to this Agreement. Owner will be responsible to pay the current development impact fee rate that is in effect at the time of actual payment. Owner shall satisfy its payment obligations under this Agreement by the following means and upon the earlier of the corresponding dates:

- (1) Pay the principal sum of the Deferred Fees within ninety (90) days after the date of issuance of the final occupancy clearance (the “Certificate of Occupancy” or “COO”) for Building, Permit Nos. BLD-24-01341, for the Project; or
- (2) Pay the principal sum of the Deferred Fees on or before the close of escrow date if the Property or the Project is sold, but in no event shall the Deferred Fees for the Project be paid later than May 28, 2026 (“Maturity Date”).

The Deferred Fees may be prepaid, without penalty, in whole or in part, at any time prior to the Maturity Date.

1.2 As consideration to the City for the City granting the deferment of the Deferred Fees, the Owner shall be obligated to pay the late charges, fees and interest on any outstanding fees due. If the Deferred Fees are not paid by the Maturity Date, Owner acknowledges and agrees to pay to City: i) a ten percent (10%) penalty charge on the principal sum of the Deferred Fees outstanding; and ii) interest at a rate of ten percent (10%) simple interest annually which is due and payable each month the Deferred Fees are outstanding following the Maturity Date.

1.3 Notwithstanding the above provisions, all unpaid principal and any accrued interest, charges and fees, shall be due upon the occurrence of any of the following events:

- (a) a sale or transfer of the Project or the Property; or
- (b) the occurrence of an Event of Default under this Agreement.

Section 2. Conditions to Deferment. The City shall defer the payment of the Impact Fees upon satisfaction of the following conditions:

- (a) the Owner’s execution and delivery to the City of this Agreement; and
- (b) the Owner’s delivery of a proforma or other financial information evidencing that upon completion, the Project will have adequate value to provide payment of the Deferred Fees.

Section 3. Security. Owner acknowledges City is under no obligation to grant a deferment of the Impact Fees due and payable upon the Project. In-lieu of the City requiring Owner to obtain a letter of credit as security for this Agreement the Parties agree that a recorded lien related to the Project shall serve as security for this Agreement. Owner hereby acknowledges and agrees that the obligation to pay the deferred development impact fees shall continue and remain an obligation of Owner, as well as (jointly and severally) any successors in interest of Owner, including, without limitation, any successor in interest to the Property or any portion of the Property. Without limiting the nature of the foregoing, any deferred development impact fees that

remain unpaid following the time that they are required to be paid may be collected by the City, as a lien against the applicable portion of the Property, as a special assessment against the applicable portion of the property (collected at the same time and in the same manner as ad valorem property taxes), or by any combination of the foregoing. Additionally, should Owner fail to pay the Deferred Fees pursuant to this Agreement, the City shall reserve the right to revoke all prior COO's issued for the Project until such time as the Deferred Fees are paid in full.

Section 4. Rights Not Granted Under Agreement. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by City concerning the construction of the Project, or any other project, development or other construction by Owner within the City. This Agreement does not, and shall not be construed to, exempt Owner from paying any fees for any permits, licenses or other approvals which may be required by the City, and (other than the Deferred Fees) at the time required by the City, concerning the construction of the Project, or any other project, development or other construction by Owner within the City. This Agreement does not, and shall not be construed to, exempt Owner in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance or operation of the Project, or any other project, development or other construction by Owner within the City. This Agreement does not, and shall not be construed to, exempt Owner or the Property from the application and/or exercise of City power of eminent domain, or its police powers including, but not limited to, the regulation of land uses, and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

Section 5. Default.

a. Events of Default. Each of the following events shall constitute an "Event of Default":

- (1) Owner fails to pay when due any principal payment or other sum due under this Agreement;
- (2) Owner defaults in the performance of any other term, covenant, or agreement contained in this Agreement; or
- (3) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"): (A) Owner (i) commences a voluntary case or proceeding, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) applies for or consents to the appointment of a trustee, receiver, assignee, liquidator or similar official, (iv) makes an assignment for the benefit of its creditors, or (v) admits in writing its inability to pay its debts as they become due; or (B) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Owner in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Owner or substantially all of Owner's assets, (iii) orders the liquidation of Owner, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or any other property of Owner, and in each case the order or

decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

b. **Rights Upon Event of Default.** In addition to all other available legal or equitable remedies, upon an Event of Default, the City shall have the right to do any one or more of the following:

- (1) Revoke the COO for the Project, including revocation of previously issued COOs for other structures related to the Project; or
- (2) Accelerate the Maturity Date to the date of the Event of Default.

Section 6. Cumulative Remedies. The rights or remedies of City, as provided in this Agreement, or pursuant to any applicable laws, rules or regulations, may be pursued singly, successively, together or otherwise against the Owner, at the sole discretion of City. The City's failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights or remedies, or of the right to exercise them at any later time.

Section 7. Indemnification. Owner agrees to indemnify, defend and hold harmless City, its elected and appointed officials, officers, employees, contractors and agents from and against all claims, demands, causes of action, costs, damages, liabilities and obligations of any kind or nature arising out of the deferral of Impact Fees provided to Owner, the Deferred Fees, this Agreement, including, without limitation, all costs of collection, including actual attorneys' and expert witness fees.

Section 8. Prevailing Wages. Developer is aware of the requirements of California Labor Code Sections 1720 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. It shall be Developer's sole obligation to determine whether, and to what extent if any, the Prevailing Wage Laws apply to the Project. Owner shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any actual or alleged failure by Developer or its employees, agents and contractors to comply with the Prevailing Wage Laws, if applicable to the Project.

Section 9. No Set-Off Rights. Owner understands and agrees that it shall not have any rights whatsoever to set-off against amounts due hereunder or otherwise due City for any amount or obligation due to Owner or claimed to be due Owner from City.

Section 10. Successors and Assigns. Owner may not assign this Agreement, in whole or in part, without the prior written consent of City, and any attempt to make such assignment shall be null and void. This Agreement shall be binding on any and all successors and permitted assigns of the Parties.

Section 11. Governing Laws and Venue. This Agreement shall be governed by the laws of the State of California, without regard to the conflict of laws principles. The Superior Court of the State of California in the County of San Bernardino, California, shall have exclusive jurisdiction of any litigation between City and Owner arising out of this Agreement. The Owner hereby expressly waives the provisions of any federal or state law providing for a change of venue to any other state court or to federal district court, due to any reason whatsoever, including, without implied limitation, the fact that the City (a public agency) is a Party to this Agreement, due to any

diversity of citizenship between the City and the Owner, or due to the fact that a federal question may be involved. Without limiting the generality of the foregoing, the Owner expressly waives, to the maximum legal extent, the benefit of California Code of Civil Procedure Section 394 and all other state and federal statutes and judicial decisions of similar effect.

Section 12. Notices. All notices required to be delivered under this Agreement or applicable law shall be delivered by personal delivery, express mail or by United States mail, certified, postage prepaid. Notices personally delivered or delivered by express mail shall be deemed received upon receipt. Notices delivered by certified mail shall be deemed received the earlier of three (3) days following deposit of such notice with the United States Postal Service or actual receipt. Notices shall be sent as follows:

To City: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: Phillip Burum, Deputy City Manager

To Owner: SA GOLDEN INVESTMENTS INC
918 S Teakwood Ave
Bloomington, CA 92316
Attn: Saber Awad, Manager

Section 13. Attorneys' Fees and Costs. Should either party bring any action or proceeding against the other that in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the other party, in addition to all other relief to which the prevailing party may be entitled, the litigation costs and attorneys' fees, in an amount to be determined by the court. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure Section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during the defense of any appeal taken from such underlying judgment or other judicial order.

Section 14. Entire Agreement. This Agreement constitutes the entire agreement of City and Owner and supersedes all previous agreements, oral or written, on the subject matter of this Agreement.

Section 15. Modification. This Agreement shall be amended or modified only by an Agreement in writing signed by each of the Parties.

Section 16. Headings. Section headings contained in this Agreement are for convenience only, and shall not impact the construction or interpretation of any provision.

Section 17. Further Acts. The Parties agree to execute such additional documents and to take such further actions as are reasonably necessary to accomplish the objectives and intent of this Agreement.

Section 18. Severability. If any provision or clause of this Agreement or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

Section 19. Good Faith Negotiations. The City and the Owner acknowledged that this Agreement are the product of mutual, good faith arms-length negotiations in that the City and the Owner each have been, or have had the opportunity to have been, represented by legal counsel of its own choosing in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to either the interpretation or the enforcement of this Agreement. In any action or proceeding brought to interpret or enforce this Agreement, the trier of fact may refer to such extrinsic evidence which is not in direct conflict with any express term or provision hereof to ascertain and give effect to the intent of the Parties hereto.

Section 20. Time is of the Essence. Time is of the essence in this Agreement.

Section 21. No Third Party Beneficiary. This Agreement and the performance of the City's and the Owner's obligations hereunder are for the sole and exclusive benefit of the City and the Owner. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the City or the Owner hereunder as a result of the City's or the Owner's performance or nonperformance of their respective obligations under this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

CITY OF FONTANA

a California municipal corporation

By: _____

Acquanetta Warren, Mayor

Date: _____

SA Golden Investments Inc.

a California limited liability company

By: _____

Its: _____

Date: _____

ATTEST:

Germaine Key, City Clerk

Date: _____

APPROVED AS TO FORM:

Best, Best & Krieger, LLP

By: _____

Ruben Duran, City Attorney

Date: _____

EXHIBIT "A"

Legal Description of Property -8153 Banana Ave, Fontana, California 92335.

Assessor's Parcel Number 0230-041-60 -0000