

SECOND IMPLEMENTATION AGREEMENT

THIS SECOND IMPLEMENTATION AGREEMENT (this "Agreement") is entered into as of the 14th day of September, 2022 (the "Agreement Date"), by and between the CITY OF RIALTO, a California municipal corporation (the "City") and AYALA & 210 PARTNERS, LLC, a Delaware limited liability company (the "Developer"). City and Developer are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on or about April 24, 2018, the City and Developer entered into a Purchase and Sale Agreement ("Purchase and Sale Agreement") in which the City agreed to sell and Developer agreed to purchase approximately 7.5 acres of real property located at the northeast corner of Renaissance Parkway and Ayala Drive in the City of Rialto ("Entire Property"); and

WHEREAS, the Entire Property consists of six (6) separate parcels known as Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, and Parcel 6; and

WHEREAS, on or about April 24, 2018, Developer executed a Purchase Money Promissory Note Secured by Deed of Trust for three million two hundred twenty-one thousand six hundred and eighty dollars (\$3,221,680) ("Purchase Money Note"); and

WHEREAS, on or about April 24, 2018, Developer and City entered into a Construction Loan Agreement for a sum of three million seven hundred thousand dollars and no cents (\$3,700,000), and on or about April 23, 2019, the City and Developer entered into a First Amendment to Construction Loan Agreement to increase the loan amount by three hundred thousand dollars (\$300,000), to a total of four million dollars (\$4,000,000) (collectively the "Construction Loan Agreement"); and

WHEREAS, on or about April 24, 2018, Developer executed a Construction Promissory Note Secured by Deed of Trust for three million seven hundred thousand dollars (\$3,700,000), and on or about April 23, 2019, the Parties executed a First Amendment to Construction Promissory Note Secured by Deed to Trust to increase the total principal sum of the note to four million dollars (\$4,000,000) (collectively the "Construction Note"); and

WHEREAS, Developer has previously sold Parcels 1 (Cracker Barrel), 2 (Sonic), 3 (Dutch Bros.), 5 (Parking), and 6 (Texas Roadhouse) of the Entire Property; and

WHEREAS, in April 2021, Developer entered into a Real Property Purchase Agreement and Joint Escrow Instructions, in which Developer agreed to sell and Schneider Real Estate Associates, Inc. agreed to purchase Parcel 4 for a price of one million sixteen thousand seven hundred fifty and 00/100 dollars (\$1,016,750.00); and

WHEREAS, on June 1, 2021, Developer and City entered in that certain Implementation Agreement ("First Implementation Agreement") in which the parties agreed that the City would be entitled to receive sixty percent (60%) of the net sale proceeds of the first of Parcel 3 or Parcel 4 to close and that fifty percent (50%) of all accrued interest under the Construction Note would be forgiven concurrently with the release of the first of Parcel 3 or Parcel 4 to close; and

WHEREAS, on July 25, 2022, escrow closed on Parcel 3 and the City received 60 percent (60%) of the net proceeds in the amount of \$629,531.48 and fifty percent (50%) of all accrued interest under the Construction Note was forgiven concurrently with the release of Parcel 3; and

WHEREAS, Schneider Real Estate Associates, Inc. did not proceed with the purchase of Parcel 4 and it remains available for sale; and

WHEREAS, the parties wish to enter into this Agreement for the purpose of amending the Purchase and Sale Agreement, First Implementation Agreement, Construction Loan Agreement, Purchase Money Note, and Construction Note regarding the sharing of net sale proceeds associated with the sale of Parcel 4, and the elimination of the remaining interest that has accumulated on the Purchase Money Note and Construction Note; and

WHEREAS, the Parties understand that any undefined terms used in this Agreement shall have the same meaning, as applicable, as set forth in the Purchase and Sale Agreement, First Implementation Agreement Construction Loan Agreement, Purchase Money Note, or Construction Note.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

Section 1. Close Out of Parcel 4

a. The terms and provisions in the Purchase and Sale Agreement, First Implementation Agreement, Construction Loan Agreement, Purchase Money Note, and Construction Note concerning the release price to be paid to the City upon the sale of Parcel 4 in accordance with an End-User Sale Agreement are hereby amended in accordance herewith.

b. Upon the close of escrow on Parcel 4, the City shall be entitled to receive a portion of the Net Sale Proceeds (as defined in the First Implementation Agreement) in the greater amount of (i) \$370,468.52 or (ii) fifty percent (50%) of the Net Sale Proceeds, and the Developer shall be entitled to the remaining balance of the Net Sale Proceeds, if any.

Section 2. Interest on the Purchase Money Note and Construction Note

a. Release of Interest on Purchase Money Note. In accordance with the Section 14(g) of the Rider to the Purchase Money Note, all accrued interest under the Purchase Money Note shall be forgiven concurrently with the release of Parcel 4.

b. Release of Interest on Construction Note. Based on the declaration of a national emergency (declared by the President of the United States in March 2020), the declaration of a state emergency (declared by the Governor of the State of California in March 2020), and the declaration of a local emergency (declared by the City Council of the City in March 2020), the Parties agree that the completion of all obligations set forth in the Construction Loan Agreement and Construction Note as set forth therein was materially impacted by the global pandemic caused by the COVID-19 virus. In consideration thereof, the Parties agree that upon the close of escrow on Parcel 4, and the payment of funds to the City in accordance with Section 1(b) of this Agreement, all remaining accrued interest under the Construction Note shall be forgiven concurrently with the release of Parcel 4.

Section 3. Miscellaneous

a. Entire Agreement / Other Agreements Still in Effect: This Agreement contains the entire agreement between the Parties with respect to the matters herein provided for. Unless explicitly amended or contradicted by this Agreement, the terms and provisions of the Purchase and Sale Agreement, Construction Loan Agreement, Purchase Money Note, and Construction Note shall remain in effect. In the

event of a conflict between the terms and provisions of this Agreement and the Purchase and Sale Agreement, Construction Loan Agreement, Purchase Money Note, or Construction Note, the terms and provisions of this Agreement shall control.

b. **Amendments:** This Agreement can only be amended by an instrument in writing executed and delivered by the City and the Developer.

c. **Waivers:** No waiver of, or consent with respect to, any provision of this Agreement by a Party hereto shall in any event be effective unless the same shall be in writing and signed by such Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

d. **No Third Party Beneficiaries:** No person or entity, other than the City, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

e. **Notices:** Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the Party entitled thereto at its address set forth below, or at such other address as such Party may provide to the other Party in writing from time to time, namely:

CITY: City Manager
City of Rialto
150 S. Palm Ave.
Rialto, CA 92376

With a copy to: Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240
Riverside, CA 92507-2479
Attention: Eric Vail, Esq.

DEVELOPER: Ayala & 210 Partners, LLC
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
Attn: Joseph Davidian, Manager

With a copy to: Karavas Kiely & Schloss LLP
11400 W. Olympic Blvd., Suite 1480
Los Angeles, CA 90064
Attn: Richard A. Schloss

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the Party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (c) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (d) if given by any other means, upon delivery at the address specified in this Section.

f. **Jurisdiction and Venue:** Each of the Parties (a) agrees that any suit action or other legal proceeding arising out of or relating to this Agreement shall be brought in the Superior Court of California, County of San Bernardino. Each of the Parties agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

g. **Attorneys' Fees:** If any action is instituted to interpret or enforce any of the provisions of this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

h. **Law:** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

i. **Usage of Words:** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine

j. **Interpretation:** The Parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting Parties shall not be employed in the interpretation of this Agreement.

k. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original.

l. **Time of the Essence:** Time is of the essence of Developer's performance of all of its obligations under this Agreement.

m. **Incorporation of Recitals:** The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

n. **Authority:** The persons executing this Agreement on behalf of the parties warrant the party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other Agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

AYALA & 210 PARTNERS, LLC

By: 

Joseph Davidian

Its: Manager

CITY:

CITY OF RIALTO:

Marcus Fuller, City Manager

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

ATTEST:

Barbara McGee, City Clerk