

# **THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

(201 Baden Avenue, South San Francisco, California)

This Third Amendment to Purchase And Sale Agreement And Joint Escrow 2025 (“Effective Date”) by and between the City of South San Francisco, a municipal corporation (“Seller”) and Firehouse Live LLC, a California limited liability corporation (“Buyer”). Seller and Buyer are sometimes collectively referred to herein as “the parties.”

## **RECITALS**

A. Seller and Eden Housing, Inc. (“Eden”) entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated November 16, 2021 (the “Agreement”) with respect to that certain real property located at 201 Baden Avenue, South San Francisco, California as more particularly described in the Agreement (collectively, the “Property”). A copy of the Agreement and its exhibits are attached hereto as Exhibit A and incorporated herein.

B. In addition, Eden assigned its interest in the Agreement to Buyer pursuant to an Assignment and Assumption of Purchase Agreement dated December 20, 2022.

C. On December 30, 2022, Buyer acquired the Property. However, pursuant to the First Amendment to the Agreement, effective December 14, 2022, Buyer's acquisition of the Property was subject to certain post-closing obligations, including the obligation to attempt to negotiate a purchase and sale agreement with the owner of the KFC/Taco Bell Site adjacent to the Property. Buyer determined that further efforts to acquire the KFC/Taco Bell Site would not be successful, and Seller and Buyer executed a Second Amendment to the Agreement.

D. Pursuant to the Second Amendment, effective on November 8, 2023, the Seller allowed Buyer to replace post-closing obligations regarding the KFC/Taco Bell Site with a post-closing obligation for Seller to construct an affordable housing project on the Property consisting of approximately 50 to 60 units as described in the Agreement (“Affordable Housing- Project”).

E. Simultaneous with this Third Amendment, Buyer has provided notice to Seller of Buyer’s inability to develop an Affordable Housing Project. Buyer now wishes to reconvey the property to Seller because Buyer no longer wishes to develop the Affordable Housing Project at 201 Baden Avenue and has requested reimbursement of acquisition, design and carrying costs. The City has been the party in control of the property via rental agreement since Buyer’s purchase in 2022.

F. Seller intends to begin reconveyance and provide partial reimbursement for costs associated with acquisition, environmental testing, preliminary entitlements and legal costs associated with the reversion. In exchange for the cost reimbursement, Buyer will send Seller all environmental/geotechnical reports related to the project, including but not limited to the Phase 1 ESA.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, the parties hereby agree as follows:

1. Amendment to Agreement. The parties agree to amend the following Sections of the Agreement with all portions not restated remaining as is, additions shown in underline and bold, and deletions with strikethrough to read as follows:

6. The Closing

(g) In the event that Buyer is unable to construct the Residential Project, including but not limited to being unable to secure sufficient financing beyond the timeline set forth in this Agreement, unable to secure entitlements, or unable to commence construction, Buyer must notify the City, and upon acceptance, the Property shall revert to the City and the City may re-enter and take possession of the Property or any portion thereof with all improvements thereon without payment or compensation to Buyer, and revert in the City the estate theretofore conveyed to the Buyer. The interest created pursuant to this subsection (g) shall be a "power of termination" as defined in California Civil Code Section 885.010. Within thirty (30 days) of notification, the parties agree to record an executed grant deed and submit all necessary forms with San Mateo County. With the execution of the grant deed, the parties will consider the March 2023 lease agreement to be terminated. Upon reversion occurring, the City may require Buyer to complete a lot split for the Property, if the Property has been merged at the time of the reversion, at City's sole discretion and at Buyer's sole expense.

(h) The parties acknowledge that acquisition of the KFC/Taco Bell site located at 199 Airport Boulevard, South San Francisco ("KFC/Taco Bell Site") is not in either Seller or Buyer's control; therefore, the parties agree that if Buyer is able to acquire the KFC/Taco Bell Site on or before December 31, 2023, then Buyer shall proceed with developing an 82-unit senior housing project with a ground floor restaurant and drive thru. If Buyer is unable to negotiate and execute a Purchase and Sale Agreement to acquire the KFC/Taco Bell Site on or before December 31, 2023, then, at its sole discretion within one (1) year from said date, Seller may either require Buyer to re-convey the Property to Seller in accordance with Section 6(g) of the Agreement and Seller may re-enter and take possession of the Property- or any portion thereof with all improvements thereon without payment or compensation to Buyer, or request Buyer to proceed with developing a 50-60 unit 1 bedroom senior housing project at the Property. If Buyer does not agree to proceed with such the required project, Buyer shall re-convey the Property to Seller as described above and seller may compensate Seller as outlined in Table 1 below. Prior to Seller providing payment, Buyer will send Seller all environmental/geotechnical reports related to the project, including but not limited to the Phase 1 ESA.

Table 1: Seller Reimbursement to Buyer

Building Appraisal	\$3,392.50
Land Acquisition	\$1,326.00
Environmental Consulting	\$27,493.15
Geotech / Soils Report	\$6,000.00

Permits & Fees - Other	\$6,280.70
Reversion estimate	\$15,000.00
Recording Costs	\$6,699.00
Total	\$66,192.00

(i) Nothing contained herein is intended to relieve Buyer of liability to the extent of any loss for fraud or intentional misrepresentation, or bad faith, waste, willful misrepresentation by Buyer, or the failure to make any disclosures regarding the condition of the Property required by law, or be deemed in any way to limit the rights of the Seller to obtain specific performance by Buyer of its obligations hereunder.

10. Conveyance AS IS.

(a) Conveyance – AS-IS. Seller specifically acknowledges that the Buyer is transferring the Property on an “AS IS”, “WHERE IS” and “WITH ALL FAULTS” basis and that, Seller is not relying on any representations or warranties of any kind whatsoever, express or implied, from Buyer, or its employees, appointed or elected officials, agents, or brokers as to any matters concerning the Property. Buyer makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (v) except as otherwise provided in this Agreement, the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property

13. RELEASE BY BUYER.

(a) BY BUYER. All language from Section 13 remains as is but is moved to section 13 (a).

(b) BY SELLER. Effective upon the reconveyance of the Property to Seller, Seller waives releases, remises, acquits and forever discharges Buyer, and its officers, directors, board members, managers, employees and agents, and any other person acting on behalf of Buyer, from any and all claims, except for any claims related to actions by the Buyer that were willfully concealed, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Seller now has or which may arise in the future on account of or in any way arising from or in connection with the physical condition of the Property or any law or regulation applicable thereto including, without limiting the generality of the foregoing, any federal, state or local law,

ordinance or regulation pertaining to Hazardous Materials. This Section shall survive the termination of this Agreement and the Close of Escrow.

Seller acknowledges that Buyer is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

BY INITIALING BELOW, SELLER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Seller's initials:

2. Limitations. The parties agree that the provisions of Section 12(a) shall apply only for the time period that Buyer owned the Property, and the provisions of Section 12(b) shall not apply to any pre-existing Hazardous Materials that were located on or near the Property and shall only apply to Hazardous Materials that Buyer actually released at the Property during the time period Buyer owned the Property.
3. General Provisions. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Amendment and the meaning of the provisions hereof. The provisions of this Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. The terms and provisions of this Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Amendment. The provisions of this Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

<p>SELLER:</p> <p>CITY OF SOUTH SAN FRANCISCO</p> <p>By: Sharon Ranals City Manager</p> <p>ATTEST:</p> <p>By: Rosa Govea Acosta City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: Sky Woodruff City Attorney</p>	<p>BUYER:</p> <p>EDEN FIREHOUSE LIVE LLC a California limited liability company</p> <p>By: Eden Development Inc., a California nonprofit public benefit corporation, its sole member and manager</p> <p>By: Name: Title:</p>
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