

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(Airport Boulevard, Salinas)**

This Exclusive Negotiating Rights Agreement (this “**Agreement**”) is entered into as of this 20th day of February, 2018 (the “**Effective Date**”), by and between the City of Salinas, a California charter city and municipal corporation (the “**City**”) and RN Borelli Inc, DBA Borelli Investment Company and Green Valley Corporation (collectively the “**Developer**”) for the land enclosed by Airport Boulevard, Skyway Boulevard, Mortensen Avenue, and Mercer Way in Salinas, California and presently owned by the City, on the basis of the following facts:

RECITALS

- A. The City owns the lands known as the Salinas Airport, Salinas, California. The subject property is a portion of that land that is depicted on the "Site Map" attached hereto as Exhibit A (the “**Site**” or “**Property**”). The site is identified as Assessor Parcel Number (APN) 003-862-001-000 by the Monterey County Assessor’s Office. Although the exact size of the site has not yet been determined, it is thought to be comprised of approximately thirteen (13) acres of land.
- B. Developer and City both acknowledge that the Site was formerly utilized by branches of the United States military, although the precise use of the land during that time is unknown. Developer and City further acknowledge that the Site is part of the Salinas Municipal Airport and is subject to the jurisdiction of the Federal Aviation Administration (the “**FAA**”), and that any agreements, projects, and/or activities based at the site may be subject to FAA requirements and/or approvals.
- C. The City and Developer acknowledge that all applicable requirements of the California Environmental Quality Act (“**CEQA**”) must be met in order to execute and deliver the Agreement and develop the Site and that this may require an environmental impact report, supplemental environmental impact report and/or other reports or analyses for CEQA purposes (collectively, the “**CEQA Documents**”). City and Developer further acknowledge that the Project may be subject to the requirements of the National Environmental Policy Act (“**NEPA**”), and that a review of the project under the provisions of NEPA may also be required for the Project (“**NEPA Documents**”).
- D. The City has received a proposal from Developer for the development of the Site by Developer and Developer desires to obtain a Long-Term Lease (or comparable vehicle, hereinafter “**LTL**”) for the Site from the City with an initial term not less than Thirty-Five Years (35 Years) with multiple options to extend such lease on terms to be agreed upon.
- E. This Agreement provides for the City to negotiate with Developer on an exclusive basis, to establish the terms and conditions of a long-term lease agreement, define the type and style of buildings to be constructed and to understand the economics of the proposed transaction (the “**Project**”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

**ARTICLE 1.
EXCLUSIVE NEGOTIATIONS; PREDEVELOPMENT EXPENSES**

Section 1 .1 Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, to finalize the terms of an LTL to allow the construction and operation of the Project on the Property. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory LTL.

The City and the Developer shall each devote such personnel and other resources as may be reasonably required to complete negotiations of the terms in the LTL during the Negotiating Period. Among the issues to be addressed in the negotiations are:

- (i). the terms of development and occupancy of the Project to the Developer, including the length of the LTL term and permissible uses for the site;
- (ii). the physical conditions and suitability of the Property for construction and operation of the Project, including the responsibilities of each party regarding site preparation and any required environmental mitigation and/or remediation;
- (iii). the adequacy of title to the Property as set forth in the preliminary title report referenced herein;
- (iv). the type(s) of entitlement(s), if any, necessary for the construction and operation of the Project;
- (v). estimated amounts and terms of payment for any fees that would be applicable to the project;
- (vi). the design of the Project;
- (vii). the construction schedule for the Project; and
- (viii). financing of the construction and operation of the Project (including the terms of the financing, if any).

Section 1.2 Negotiating Period. The initial negotiating period (the “Negotiating Period”) under this Agreement shall be nine (9) months commencing on the Effective Date. Provided that Developer is not in default as defined in this Agreement and the Agreement has not been terminated pursuant to Section 3.7, the Negotiating Period may be further extended by increments of three (3) additional calendar months upon the mutual agreement of both parties.

If an LTL is executed by the City and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed LTL.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended pursuant to Section 1.2), the City shall not negotiate with any entity, other than the Developer, regarding the disposition or development of the Property, or solicit or entertain bids or proposals to do so. The foregoing shall not prevent the City from providing information, if required by law, regarding the Property and development thereof to persons or entities other than Developer.

Section 1.4 No Reimbursement for Predevelopment Expenses. During the Negotiating Period the Developer will incur third party expenses related to the due diligence and predevelopment activities outlined in Article 2 below (the “**Predevelopment Costs**”). The Developer understands that the City is under extreme financial pressure, and agrees that under no circumstance, including without limitation even if the City is in default under this Agreement, will the City reimburse the Developer for Predevelopment Costs or be liable for any other monetary payment to the Developer.

Section 1.5 Good Faith Deposit. Developer shall provide to the City a cash deposit (the “**Good Faith Deposit**”) in accordance with Section 2.11 of this Agreement. The City shall use the Good Faith Deposit to pay for Reimbursable Costs as defined by Section 2.6. These funds shall be managed in accordance with the provisions of Section 2.11.

ARTICLE 2. NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the LTL, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable LTL prior to the expiration of the Negotiating Period or any Extension Period thereof. Time is of the essence of each and every provision hereof in which time is a factor.

Section 2.2 Preliminary Agreement. Within one hundred twenty (120) days of the execution of this agreement, City and Developer shall negotiate and attempt to agree on the terms of an LTL that

is expected to be acceptable to all parties whose approval is necessary for the project, including the City Council and, if applicable, the FAA. These terms shall be agreed to in a Preliminary Long-Term Lease (“**PLTL**”) that defines the details of the Project and stipulates the proposed terms. The City Manager shall have authority to execute a PLTL on behalf of the City. These terms shall be used for the development of the additional items provided for in this section – however, both City and Developer acknowledge that all terms and conditions contained in the PLTL will not be final unless and until it has been formally adopted and/or approved by all necessary parties, including, if applicable, the FAA.

Section 2.3 Project and Architectural Plans. Within one hundred twenty (120) days from the date of execution of the PLTL defined in Section 2.2, the Developer shall prepare and submit to the City a preliminary site plan, floor plan, and architectural rendering (“**Preliminary Plans**”) for review and approval. The Developer shall work cooperatively with the City to prepare a design for the Project that will be compatible with the surrounding neighborhood and will support City’s strategic goals and objectives as defined by the City Council. City shall make its technical staff available (on a reasonable basis) to provide verbal and/or written feedback on the Preliminary Plans as they are being developed. The Preliminary Plans shall form the basis for final construction documents, will be used for the preparation of any necessary environmental review under CEQA and NEPA upon execution of the PLTL, and will be included as an exhibit in the LTL. If requested by the City, the Developer shall engage in community meetings and solicit input from community stakeholders on the proposed design and operation of the Project.

Section 2.4 Conceptual Development Program. Within one hundred twenty (120) days from the date of execution of the PLTL defined in Section 2.2, the Developer shall submit to the City a Conceptual Development Program that shall include a breakdown of the proposed scope of development including a range of building square feet by land use and acreage by land use, improvements, approximate number and mix of buildings, and proposed uses. The Developer shall further submit a detailed market analysis for the Project demonstrating the marketability and economic viability of the proposed Project.

Section 2.5 Developer Demonstration of Capability. Within one-hundred twenty (120) days from the date of execution of the PLTL defined in Section 2.2, the Developer shall prepare and submit to the City documentation demonstrating its capability to finance and develop the Project. This shall include, but not be limited to:

- (a). A detailed financial plan for the Development containing matters typically contained in such plans which will be used to evaluate the financial feasibility of the Development;
- (b). An organizational chart of the Developer showing the proposed phasing and cash flows which will correspond to the proposed development Project;
- (c). A schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of the Project (the "**Development Schedule**");and
- (d). Organizational documents for the entities signing the documents (and, to the extent requested by the City, information, certifications and/or documents relating to the ownership, control and signing authority of the direct and indirect owners, members or partners of each such entity).

The City shall determine whether the information contained in any and all of the documents described above are adequate for the City to conduct its due diligence. The City may reasonably request, and the Developer shall provide, additional documentation or information if deemed necessary by the City to establish the Developer’s capability to carry out the Project.

Section 2.6 Reimbursement of City Costs. Developer shall reimburse the City for its actual out-of-pocket costs and any expenses incurred in fulfilling their obligations under this Agreement from the date hereof, including, but not limited to:

- (a). The cost of obtaining planning approvals, reviewing and processing any planning

documents, development impact fees, and plan check fees;

- (b). The cost of preparing, reviewing and processing any documents as described in Section 2.9 that may be required;
- (c). The costs of staff review of Developer submittals and the costs of consultants retained by the City in connection with the Agreement or the Project (including, without limitation, attorneys' fees and costs) at rates set forth in disclosures from the City; and

These costs shall collectively be referred as the “**Reimbursable Costs**,” and shall be governed in accordance with Section 2.11 of this Agreement. Reimbursable Costs may also include a City fee for administrative overhead for project management at a rate specified by the City.

Section 2.7 Due Diligence. During the Negotiating Period, the parties shall conduct due diligence activities, including but not limited to planning, soils report, hazardous materials report, financial feasibility and title adequacy.

- (a). Phase I Environmental Study. Within sixty (60) days of the execution of this Agreement, the City shall prepare or cause to be prepared a Phase I Environmental Site Assessment for the Site to determine the potential need for environmental remediation. The City will provide a copy of this Assessment to the Developer within five (5) days of receipt. If necessitated by the findings of the Phase I Site Assessment, City shall prepare or be caused to be prepared a Phase II Environmental Site Assessment. The City's costs in the preparation of these Assessments shall not be considered to be Reimbursable Costs as defined elsewhere in this Agreement.
- (b). Entitlement Review. City shall notify the Developer within thirty (30) days of execution of this Agreement what entitlements, if any, will be required by the City of Salinas in addition to the LTL. Additionally, City shall conduct an investigation to determine whether approvals from any other government agency, including the FAA, are necessary for the Project or the LTL. Within ten (10) days of discovery of relevant information pertaining to this, City shall provide to Developer an outline of any regulatory and/or permitting requirements required by the City, and what plans or studies will be required by the City. Any regulatory and permitting requirements outside the City's control shall also be provided as well as any known issues that could affect the timeline for the Project.
- (c). Title Adequacy Determination. Within sixty (60) days following the Effective Date, the City shall cause a reputable title company, reasonably acceptable to Developer, to issue a Preliminary Title Report (the “Report”) regarding the Property to the Developer, with a legal description of the Property (if available), together with copies of all underlying documents referenced in the Report. If the Developer objects to any exception appearing on the Report (or any title exception that arises after the date of the Report), the Developer shall provide such objection to the City in writing on or before the expiration of the Negotiating Period. If the Developer objects to any exception to title, the City, within thirty (30) days of receipt of Developer's objection shall notify the Developer in writing whether the City elects to
 - (1) cause the exception to be removed from the Report,
 - (2) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or
 - (3) terminate this Agreement unless the Developer elects to take title subject to such exception. If any party elects to terminate this Agreement pursuant to this Section 2.7(b), no party shall thereafter have any obligations to or rights against the others hereunder. The parties acknowledge that any executed LTL shall provide a similar opportunity for the Developer to determine the title adequacy of the Property.
- (d). Utilities. During the Negotiating Period, the Developer shall consult with any utility companies

serving the Property to determine if existing utility facilities require expansion, relocation or undergrounding in connection with the construction and operation of the Project.

- (e). Water Supply. During the Negotiating Period, the Developer shall consult with the water supply company serving the Property to determine if adequate water supply is available for the construction and operation of the Project.

Section 2.8 Reports. The Developer shall provide the City with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement, the Property, and the Development. The Developer makes no representation or warranty as to the accuracy or completeness of any such materials.

Within fifteen (15) days after the Effective Date of this Report, the City shall make available to Developer copies of all currently existing plans, studies and other written information regarding the Site in their possession, to the extent not previously delivered to Developer and to the extent material to the Project. Developer may request copies of any documents material to the project, which shall be promptly provided to Developer at no cost. Thereafter, the City shall promptly provide to Developer within ten (10) days after receipt thereof copies of all plans, studies and other written information material to the Project which are received by the City.

Section 2.9 Environmental Review. During the Negotiating Period the City and the Developer shall review existing environmental documentation to ascertain whether such documentation adequately addresses the proposed Project. Based on that analysis, after approval of the PLTL, but prior to the City's consideration of the LTL, the City shall prepare or cause to be prepared the appropriate environmental documentation required by CEQA and NEPA, subject to the following:

- (a). The Developer will fully cooperate with the City in the City's preparation of the CEQA Documents and NEPA Documents as the lead agency.
- (b). The costs of document preparation and any studies or research necessary to develop these documents shall be the sole responsibility of the Developer, except as specified elsewhere in this agreement.
- (c). City shall select the appropriate staff or contractors to prepare the necessary documentation and/or conduct the appropriate studies. If City staff shall perform any of this work, Developer shall compensate the City for the staff time utilized.
- (d). Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA and NEPA documentation.

Section 2.10 Progress Reports. Every ninety (90) days during the Negotiating Period or any Extension period thereof, the Developer shall submit a written progress report advising the City on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Development.

Section 2.11 Reimbursable Costs. Any costs incurred by the City that are reimbursable by the Developer shall be managed in accordance with the following provisions:

- (a). Concurrently with the execution of this Agreement, Developer has caused to be deposited with the City of Salinas a sum of money which shall be utilized by the City for the payment of Reimbursable Costs. The initial sum to be deposited with the City shall be \$10,000. These funds shall be utilized by the City to pay for any Reimbursable Costs as specified in this Agreement. Upon agreement of a PLTL, which shall include a work plan and budget of the scope of work contemplated for CEQA and NEPA compliance, Developer shall immediately deposit an additional \$40,000 with the City for a total deposit of \$50,000 .

- (b). The City shall track all expenditures made from the deposited funds, and shall provide a breakdown of all expenditures to the Developer upon request. If the sum initially deposited proves inadequate, the City may request additional funds from Developer. The City shall have the right to unilaterally halt all work on the Project should it be determined that the funds on deposit are insufficient to continue work without exposing the City to financial liability.
- (c). Upon termination of this Agreement, whether or not an LTL has been adopted, the City shall stop all work immediately and shall compensate any parties (including, if appropriate, the City itself) that have performed work pursuant to this Section. Developer shall be responsible for reimbursing the City for any costs not covered by the deposited funds. Any deposited funds remaining after the City has satisfied all contractual obligations shall be refunded to the Developer.

Section 2.12 Attorney's Fees. In the event of any action or proceeding brought by any party against another party(ies) under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorney's fees in such action or proceeding in such amount as the court may adjudge reasonable. Attorney's fees for in-house City Attorney staff, if awarded, shall be calculated at the market rate. The prevailing party shall be determined by the court based on an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit, or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. The provisions of this Section shall survive termination of this Agreement.

ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Developer to enter into a LTL or to enter into any particular LTL. By execution of this Agreement (and any extension of the Negotiating Period), the City is not committing itself to or agreeing to lease the Property, agreeing to provide any City assistance, agreeing to approve any land use entitlements, agreeing to certify any environmental documents, undertake construction, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a LTL and all proceedings and decisions in connection therewith. Any LTL resulting from negotiations pursuant to this Agreement shall become effective only if and after such LTL has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the Developer. Execution of this Agreement by Developer is an agreement to negotiate diligently and in good faith toward business terms for the LTL according to the terms and conditions hereof, reserving final approval by the governing board and/or authorized officers of Developer, as applicable, as to such business terms and the final LTL. Until and unless a LTL is signed by the Developer, approved by the City Council, and executed by the City, no agreement drafts, actions, deliverables, term sheets, outlines, memoranda or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into a LTL or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. As such, the City retains the absolute discretion before the execution of any LTL to determine not to proceed with the Project or any portion thereof.

Section 3.2 Notices. Formal notices, demands and communications (other than day to day routine communications) between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless: (i) dispatched by certified mail, postage prepaid, return receipt requested, (ii) sent by express delivery or overnight courier service with a delivery receipt, (iii) personally delivered with a

delivery receipt, or (iv) sent by electronic mail with a copy delivered by one of the previous three methods, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Salinas
Attn: Andrew Myrick
200 Lincoln Avenue
Salinas, CA 93901
Email: andym@ci.salinas.ca.us

With a copy to: City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Email: chrisc@ci.salinas.ca.us

Developer: Borelli Investment Corporation
Attn: Ralph Borelli
2051 Junction Avenue, Suite 100 San Jose, CA 95131
Email: ralph@ralphborelli.com

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Right of Entry. The Developer and its consultants shall have the right to enter upon the Property during normal business hours to conduct investigations in accordance with this Agreement. In connection with such entry and investigation, the Developer shall:

- (a). give the City or its designee reasonable advance notice of the time and reason for entrance;
- (b). repair and restore any damage it may cause;
- (c). deliver to the City, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which the Developer conducts, or causes to be conducted, with respect to the Property; and
- (d). indemnify, defend and hold the City and its council members, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs), with the exception of any injury or death to Developer or its consultants arising out of the negligent or intentional acts of the City or dangerous conditions on the Property for which the City should know or have known to exist, which may proximately arise out of the Developer's or its consultants' entry upon the Property or the investigation(s) and test(s) which the Developer may conduct; provided, however, that this indemnity shall not apply to matters arising from the results of the Developer's investigations, tests and inspections (e.g., this indemnity shall not apply to any diminution in value or remediation costs incurred by the City if the Developer's investigations were to discover an environmental condition that required remediation).

Section 3.5 Costs and Expenses. Except as otherwise defined in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations

undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement. The City will keep track of its costs and may consider these costs a "contribution" to the construction and operation of the Project.

Section 3.6 No Commissions. Developer acknowledges that City has not retained the services of any broker, agent or finder with respect to the Property or in connection with any matters relating to this transaction of the subject discussions, and agrees to hold the City harmless from and against any claim for commission, fee, or other remuneration by any broker, agent, or finder under any claimed retainer for services with respect thereto. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any LTL that may result from this Agreement, unless the City retains a broker, agent or finder.

Section 3.7 Parties' Discretion to Terminate Agreement. Both parties agree to pursue negotiation of a mutually acceptable LTL with all good faith and diligence; however, if at any time during the Negotiating Period Developer, in its sole discretion, reasonably determines that negotiation of a LTL is no longer desirable, Developer can exercise its right to provide written notification to City of its intent to terminate the Agreement, effective upon receipt of such notice. Following such termination, each party shall be free to negotiate with any other party with regard to the nature and scope of the Development described herein, and shall assume responsibility for all of the party's own expenses and costs incurred up to and including the date of termination of this Agreement.

City recognizes that Developer will be expending funds and assuming risk in reliance upon City's representations in this Agreement. Therefore, City may not unilaterally terminate this Agreement prior to the termination of the Negotiating Period, or any extension thereof, unless the Developer is in violation of the terms of this Agreement. If the Developer is in violation of any part of this Agreement, City may provide written notice of said violation(s) to Developer, and may direct Developer to cure the violation(s). If Developer has not cured said violation(s) within thirty (30) days of the City's notification, City may then terminate this Agreement effective immediately by providing written notice to Developer.

Notwithstanding the above paragraph, the information presently available to the City indicates that the City's total costs, excluding Reimbursable Costs, in the execution and implementation of this Agreement, including those items specified in Section 2.7(a) and (c), will not exceed \$100,000. If upon further investigation the City discovers and reasonably believes that its cumulative costs for the implementation of this agreement will exceed that amount, the City may, at its sole discretion, terminate this agreement.

Upon termination pursuant to this Section, except as expressly provided in this Agreement, no party shall have any liability to any other party for damages, nor shall any party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity. In the event of the expiration or earlier termination of this Agreement, the City shall be free to negotiate with any persons or entities with respect to the sale, lease and development of the Site.

Section 3.8 Non-Confidentiality of Information. The parties acknowledge that each party will need sufficient, detailed information from the other party about the proposed Development to make informed decisions about the content and approval of the proposed LTL. The parties understand and agree that City is subject to the California Public Records Act (Government Code Section 6253 *et seq.*) and cannot guarantee that any such information received from the other party can remain confidential.

The parties agree that each party may share information provided by the other party of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the respective parties concerning matters related to this Agreement and with each party's officers, agents, and employees to the extent necessary for the negotiation and decision making process. If this Agreement is terminated without the execution of a LTL, each party shall return to the other party any confidential

information submitted by the other party under this Agreement. If any litigation is filed seeking to make public any information either party submitted to the other party in confidence, the City and Developer shall cooperate in defending the litigation. Each party shall pay the party's own costs of defending such litigation and shall indemnify the other party against all costs and attorneys' fees awarded to the plaintiff in any such litigation.

Section 3.9 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to choice of law principles, and venue for any action under this Agreement shall be in the Superior Court of the County of Monterey, or in the appropriate federal court with jurisdiction over the matter.

Section 3.10 Entire Agreement. The Developer and the City understand and agree that neither Party is under any obligation whatsoever to enter into an Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations between the Parties are superseded by this Agreement. The City and the officers, members, staff and agents have not made any representations, warranties or promises to the Developer other than any that are expressly set forth herein.

Section 3.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.12 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's reasonable discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, Developer shall have the right to assign its rights and obligations under this Agreement to a new entity controlled by the parties comprising the Developer that will be the Developer entity that will be the managing party to this Agreement. The City shall have the right to review and approve, which approval shall not be unreasonably withheld, the organizational documents of such entity and the entities comprising such entity. If and when approved, the LTL would be between the City and the Developer or such assignee.

Section 3.13 Non-Recourse Agreement. No member, official, employee, agent, or consultant of any party to this Agreement shall be personally liable to any other party, or any successor in interest or person claiming by, through or under any party, in the event of any default or breach, or for or on account of any amount which may be or become due, or in any claim, cause or obligation whatsoever under the terms of this Agreement.

Section 3.14 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.15 Actions by the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager of the City shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council, including amendments to the Schedule within the time frame of the Negotiating Period and any extensions thereto as set forth in Section 1.2.

Section 3.16 Amendment. This Agreement may not be altered, amended or modified except by a writing duly approved and executed by all Parties.

Section 3.17 Compliance with Regulations. Developer acknowledges that Developer shall be required to comply with (and to cause its contractors, subcontractors, tenants to comply with) the City's laws, policies, rules, and regulations.

Section 3.18 Indemnification. The Developer shall indemnify, defend, and hold the City

harmless from any and all costs, expenses, losses, claims, liabilities, damages and causes of action arising out of Developer's entering into or performing this Agreement and/or Developer's failure to perform any obligation of Developer under this Agreement. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

CITY:

CITY OF SALINAS, a municipal corporation

By: _____
Ray E. Corpuz, Jr, City Manager

DEVELOPER:

RN Borelli, Inc. DBA Borelli Investment Company

By: _____
Ralph Borelli, Chairman

Green Valley Corporation

By: _____
Case Swenson, President

APPROVED AS TO FORM:

By: _____
Christopher A. Callihan, Esq. City Attorney

EXHIBIT A

PROPERTY MAP

Airport Boulevard (Site Marked With Star)

