FIRST RESTATED AND AMENDED EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This First Restated and Amended Exclusive Negotiating Rights Agreement ("**Restated Agreement**") is entered into as of this 13th day of August, 2019 (the "**Effective Date**"), by and between the City of Salinas, a California charter city and municipal corporation (the "**City**") and R.N. Borelli, Inc., dba Borelli Investment Company, a California corporation, and Green Valley Corporation, a California corporation (collectively, the "**Developer**") on the basis of the following facts:

RECITALS

A. The City and Developer entered into that certain Exclusive Negotiating Rights Agreement dated as of February 20, 2018, as amended by that certain First Amendment to the Exclusive Negotiating Rights Agreement between the City of Salinas and RN Borelli, Inc., dated as of December 10, 2018 and that certain Second Amendment to the Exclusive Negotiating Rights Agreement between the City of Salinas and RN Borelli, Inc., dated as of February 20, 2019, and that certain Third Amendment to the Exclusive Negotiating Rights Agreement between the City of Salinas and RN Borelli, Inc., dated as of May 20, 2019 (collectively, "**Original ENRA**") relating to lands owned by the City in Salinas, California, and identified as Assessor Parcel Number (APN) 003-862-001-000 by the Monterey County Assessor's Office, comprised of approximately 13.25 acres of land. This land was referred to in the Original ENRA as the "Site" or "Property." To avoid confusion and for the purposes of this Restated Agreement, this land will be referred to as the "**Airport Property**." The Airport Property is further divided into two Sections: the area comprised of approximately 7.5 acres enclosed by Airport Boulevard, Skyway Boulevard, Anderson Avenue, and Mercer Way ("**Northern Airport Site**"), and the area comprised of approximately 5.5 acres enclosed by Anderson Avenue, Skyway Boulevard, Mortensen Avenue, and Mercer Way ("**Southern Airport Site**"). For the purposes of this Agreement, references to the "Airport Property" shall refer to the Northern Airport Site and the Southern Airport site jointly, while references to the Northern Airport Site or Southern Airport Site shall refer to each respective area singularly.

B. Following the effective date of the Original ENRA, Developer and City conducted due diligence relating to the Airport Property. Further, in accordance with the Original ENRA, Developer and City entered into that certain Preliminary Long-Term Lease Agreement dated as of June 27, 2018 ("**PLTL**").

C. Following the execution of the PLTL, the parties conducted further discussions and negotiations relating to the Airport Property and other land owned by the City located on the northwest corner of John Street and Work Street, Salinas, California, and identified as APN 003-041-040-000, comprised of approximately 4.02 acres of land ("**PW Property**") and currently operated as a service facility by the Public Works Department of the City ("**PW Facility**").

D. The discussions and negotiations under the Original ENRA have resulted in a revised proposal from the Developer consisting of the City and Developer entering into: (1) a Long-Term Lease ("**LTL**") for the Airport Property; (2) an Exchange Agreement ("**EA**") for the exchange of the PW Property to Developer from the City in exchange for the

Southern Airport Site; and (3) a sublease of the Southern Airport Site and subject to any applicable public contracting requirements, a City option to enter into a "build-to-suit" agreement (collectively, "**SAS Sublease**") for the construction of new facility ("**New PW Facility**") to replace the existing PW Facility.

E. This Restated Agreement provides for the City to negotiate with Developer on an exclusive basis, to establish the terms and conditions of the LTL, EA, and SAS Sublease (at times, individually, an "**Operative Agreement**" and collectively, the "**Operative Agreements**").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Restated 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 the Operative Agreements as outlined below:

(a) LTL. During the Negotiating Period, the parties shall use good faith efforts to facilitate the negotiation of terms for a mutually satisfactory LTL. At a minimum, the following items need to be addressed during the course of these negotiations:

(i) Subdivision of the Airport Property.

(ii) Any necessary review required by the California Environmental Quality Act ("**CEQA**") or the National Environmental Policy Act ("**NEPA**").

(iii) Identification and/or remediation of any adverse conditions on the Airport Property.

(iv) Financial terms relating to the lease of the Airport Property. The parties have negotiated preliminary terms in a Preliminary Long-Term Lease Agreement ("**PLTL**"), which shall form the basis for the terms that will be presented to the City Council. The City Manager shall have the authority to sign and/or modify the PLTL, subject to the mutual agreement of Developer.

(v) The Airport Property shall be delivered in as-is condition, except the City shall be responsible for the remediation of any hazardous materials identified by environmental site assessments and in accordance with a final Remedial Action Plan approved by the government entity with appropriate oversight and regulatory authority, if any ("**RAP**").

(vi) The LTL shall have no effect unless any approvals necessary to facilitate its terms are granted by the Federal Aviation Administration ("**FAA**").

(b) EA. During the Negotiating Period, the parties shall use good faith efforts to

facilitate the negotiation of a mutually satisfactory EA. At a minimum, the following items need to be addressed during the course of these negotiations:

(i) The suitability of the PW Property and Airport Property for the intended use(s). Developer acknowledges that upon sale of the PW Property, any development occurring thereafter shall be in accordance with the requirement of local land use regulations, including the Salinas Zoning Code. In the event Developer wishes to ensure that a particular use or uses would be permissible under local regulations, Developer shall notify the City of its intended use or uses, and City shall inform Developer of any permits or other actions that would be required to allow said development. Developer may submit applications for said permits or actions prior to the sale of the property and City shall consent to the submittal of said applications as Property Owner. Developer may condition purchase of the property on a particular decision or outcome by the City; however, City shall retain its full land-use authority and shall not be obligated through this or any other Agreement to take any specific action on any land use application. Developer shall be responsible for any fees or charges normally associated with such applications, including the cost of any necessary CEQA review.

(ii) Exchange price for the PW Property to be determined by appraisal. City shall appoint an appraiser of its choosing to determine the fair market value of the PW Property ("**City Appraiser**"). Developer shall have the right to appoint an appraiser who shall hold a MAI membership designation with the Appraisal Institute ("**Developer Appraiser**"). The City Appraiser and Developer Appraiser shall meet and confer for the purpose of determining the fair market value of the PW Property in accordance with the criteria set forth in the Uniform Standards of Professional Practice. If the City Appraiser and Developer Appraiser do not agree on the fair market value of the PW Property but their two (2) separate determinations of fair market value of the PW Property are within ten percent (10%) of the lower determination, the fair market value of the PW Property shall be the average of the two determinations. If the City Appraiser and Developer Appraiser are unable to agree upon the fair market value of the PW Property, and their two (2) separate determinations of fair market value of the PW Property are not within ten percent (10%) of the lower determination, the two appraisers shall by mutual agreement appoint a third appraiser who shall be a MAI appraiser acceptable to both Parties. The third appraiser's determination of the fair market value shall be conclusive and binding provided the third appraiser's determination is between the determinations of the City Appraiser and the Developer Appraiser; otherwise the value shall be the average of the determinations of all three appraisers.

(iii) Due diligence period to conduct all standard investigation, inspections and due diligence regarding the PW Property including title review, physical condition and suitability of the PW Property based on Developer's contemplated use and development including the availability and/or costs of entitlements, permits, design, construction, financing and operation of any potential future development.

(iv) The PW Property shall be delivered "as-is," except the City shall be responsible for the: (A) cost of remediating of any hazardous materials identified by environmental site assessments and RAP, and (B) the cost of demolition of existing structures including structures associated with the operation of the PW Facility. During the leaseback period described in Section 1.1 (b) (vi), funds to pay for these remediation and demolition costs be deposited by the City into

a holdback account with the escrow holder. Upon expiration of the leaseback period, funds held in the holdback account shall be used to pay for the remediation and demolition work through completion.

(v) Subject to completion of any necessary environmental review under Section 1.1 (a) (ii) and obtaining FAA Approval under Section 1.1 (a) (vi), close of escrow to occur on or before December 31, 2019.

(vi) Following the close of escrow, City shall leaseback the PW Property and continue to operate the PW Facility thereon until completion of the New PW Facility upon the Southern Airport Site pursuant to the SAS Sublease. City shall pay Developer during the leaseback period in an amount equal to 0.67% of the exchange price per month for the PW Property, as appraised under Section 1.1 (b) (ii). City shall be responsible for all site maintenance and operating expenses during this period, and shall reimburse Developer at cost for any reasonable taxes, utilities, or insurance expenses incurred by the Developer for the PW Yard during that time.

(vii) EA is conditioned on FAA approval of the New PW Facility and execution of the SAS Sublease.

(c) SAS Sublease. During the Negotiating Period, the parties shall use good faith efforts to facilitate the negotiation of a mutually satisfactory SAS Sublease, the terms of which shall include:

(i) Except as provided in Section 1.1 (c) (vi) below, Developer shall sublease to City the Southern Airport Site for its use as a New PW Facility. Further, Developer shall offer to construct a New PW Facility as the Southern Airport Site in accordance with the following:

(A) Developer to furnish and transport all necessary labor, materials, tools, implements, supplies, building materials and component parts, and appliances required to commence and complete construction of:

(1) all site preparation work, including engineering specifications, design plans, and surveys required to obtain all entitlements and permits, grading, storm water drainage/management system, and installation of sanitary sewer and utility services; and

(2) the New PW Facility upon the Southern Airport Site in strict conformity with all plans and specifications provided by the City, and all applicable state, county, and municipal laws, codes, and regulations, free of any and all liens and claims of laborers, materialmen, suppliers, and subcontractors, free from any and all defects or deficiencies. Developer and City acknowledge that scope of work under the SAS Sublease shall include the site preparation work/infrastructure.

(B) The initial rent shall be set so that Developer shall have a minimum return of 8% on the 1.1(c)(i)(B) Costs (as defined later in the next sentence) incurred by

Developer during the construction of the New PW Facility. For purposes of this subsection, "**1.1(c)(i)(B) Costs**" shall include the following:

(1) Cost of construction of the New PW Facility which are limited to actual costs plus a maximum of 13% for contractor profit, overhead, and insurance only to the extent such costs are not covered by the debt service payments in subsection 3 ("**PW Facility Costs**");

(2) actual costs for the site preparation work for the entire Airport Property plus a maximum of 13% for contractor profit, overhead, and insurance proportionately allocated (based on relative square footage) to the Southern Airport Site ("**Site Preparation Costs"**) only to the extent such costs are not covered by the debt service payment(s) in subsection 3;

(3) then-current debt service on any financing of PW Facility Costs and Site Preparation Costs and costs of such financing; and

(4) "pass-through" of ground rent under the LTL and standard "NNN" expenses proportionately allocated to the Southern Airport Site (based on relative square footage) ("**Ground Rent Pass-Through**").

It is acknowledged financing will be secured for the construction of the New PW Facility (if applicable as to Developer under this subsection (B)) and Site Preparation Costs. Such financing may include, but not necessarily be limited to, a construction loan for the construction of the New PW Facility, the issuance of a bond through the formation of a CFD relating to the Site Preparation Costs (per Section 1.1 (c)(iv)(A)), or other financial instrument. It is further acknowledged and agreed that "then-current debt service" under subsections (1) - (3) above shall not include any financing proceeds (i.e., principal) used to pay any costs (New PW Facility and/or Site Preparation Costs) shall not be a component of cost under subsection (B)(3) above.

(C) If desired, City shall have the right to contribute any portion of the proceeds from the sale of the PW Property to be applied towards costs associated with the construction of the New PW Facility. In this event, the City's lease payments shall be reduced to match the parameters defined in subsection (B), above.

(D) Developer shall post a security for completion of the New PW Facility by a certain date to be determined consistent with contemplated time frames for entitlement process and financing requirements.

(ii) City may, at its own discretion and cost, elect to engage a third party to construct the New PW Facility. In this event, instead of rent being set based upon the 1.1(c)(i)(B) Costs, rent shall be set so that Developer shall have a minimum return of 8% on the "**1.1 (c)(ii) Costs**" which shall include the following:

(A) Site Preparation Costs only to the extent such costs are not covered by the debt service payment(s) in subsection 2;

(B) then-current debt service on any financing of Site Preparation Costs and costs of such financing; and

(C) Ground Rent Pass-Through.

The last paragraph of Section 1.1 (c)(i)(B) shall be applicable to the 1.1 (c)(ii) Costs. To illustrate and clarify, in the event the 1.1 (c)(ii) Costs are funded through the issuance of a bond with the 30-year term by the formation of a CFD, the annualized debt service payments on the bond will include (1) a principal amount due, and (2) interest at a rate to be determined. Based on these assumptions, the portion of the debt service payment for principal would not be a component of the 1.1 (c)(ii) Costs, although the portion of the debt service for interest would be a component of the 1.1 (c)(ii) Costs.

(iii) Upon FAA approval and filing of a Notice of Determination or finding of exemption, as determined appropriate by City, Developer shall reimburse the City for costs associated with securing FAA approval and CEQA review. Developer shall be responsible for all other costs of any required permits or other required approvals.

(iv) City and Developer shall work together to identify potential sources of funding which would reduce overall project costs. These sources of funding may include, but not necessarily be limited to, the following:

(A) The site preparation work for the entire Airport Property referenced in Section 1.1(c)(i)(A)(1) above may be funded through the issuance of a bond with 30-year term by the formation of a Community Facilities District ("**CFD**") pursuant to the Mello-Roos Community Facilities Act of 1982.

(B) Developer shall assist City with investigating the feasibility of securing low interest, long-term amortization financing through the California Infrastructure and Economic Development Bank (IBank). City will also investigate alternative financing mechanisms and make the final determination on methods to finance the New PW Facility.

(v) Preliminary goals include City completion of design work and Developer processing, with City cooperation, of entitlements within 180 days of the execution of the SAS Sublease. Design work and entitlements to be secured within six months of execution of the SAS Sublease, Developer construction to commence within approximately 12 months following execution of the SAS Sublease, and Developer construction to be completed within 24 months following execution of the SAS Sublease.

(vi) The SAS Sublease is conditioned on FAA review and approval of the EA and the New Public Works Yard.

(vii) The SAS Sublease is conditioned on any necessary review required by the CEQA or NEPA. The City retains full discretion to disapprove or condition the SAS Sublease based on CEQA and NEPA review.

(viii) The SAS Sublease will be subject to the execution of the LTL and EA.

Section 1.2 Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Restated Agreement shall commence on the Effective Date and continue until December 31, 2019, unless extended upon the mutual written agreement of both parties. If the Operative Agreements are executed by the City and the Developer prior to the expiration of the Negotiating Period, this Restated Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the Operative Agreements.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (or as extended pursuant to mutual written agreement of the parties), the City shall not negotiate with any entity, other than the Developer, regarding the disposition or development of the Airport Property and/or PW 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 Airport Property and/or PW 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 due diligence and predevelopment activities (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 Restated Agreement, will the City reimburse the Developer for Predevelopment Costs or be liable for any other monetary payment to the Developer.

Section 1.5 Deposits. Any costs incurred by the City that are reimbursable by the Developer as defined by Section 1.6 below shall be managed in accordance with the following provisions:

(a) City acknowledges Developer's delivery of the deposit in the sum of $10,000 under Section 2.11 (a) of the Original ENRA. Upon FAA approval of a Release of Restrictions for the Airport Property, Developer shall immediately deposit an additional $40,000.00 (for a total deposit of $50,000.00) with the City.

(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 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 Restated Agreement, whether or not the Operative Agreements have 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 1.6 Reimbursement of City Costs.

The deposits by Developer under Section 1.5 above, shall be used to reimburse the City for its actual out-of-pocket costs and any expenses incurred in fulfilling its obligations under this Restated 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 required hereunder, including studies necessary for CEQA and NEPA review and for obtaining approvals from other agencies such as the FAA;

(c) The costs of staff review of Developer submittals and the costs of consultants retained by the City in connection with the Restated Agreement (including, without limitation, attorneys' fees and costs) at rates set forth in disclosures from the City.

These costs shall collectively be referred as the "**Reimbursable Costs**," and shall be governed in accordance with Section 1.5 of this Restated Agreement. Reimbursable Costs may also include a City fee for administrative overhead for project management at a rate specified by the City. Reimbursable Costs shall not include any work, including work of the nature described above, for any CEQA analysis or other review of any rezoning of the PW Property which the City undertakes independently.

ARTICLE 2.
GENERAL PROVISIONS

Section 2.1 Limitation on Effect of Restated Agreement. This Restated Agreement shall not obligate either the City or the Developer to enter into the Operative Agreements or to enter into any particular Operative Agreement. By execution of this Restated Agreement (and any extension of the Negotiating Period), the City is not committing itself to or agreeing to the terms of the Operative Agreements outlined herein, 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 Restated 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 the Operative Agreements and all proceedings and decisions in connection therewith. Any Operative Agreement resulting from negotiations pursuant to this Restated Agreement shall become effective only if and after such Operative Agreements have 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 Restated Agreement by Developer is an agreement to negotiate diligently and in good faith toward business terms for the Operative Agreements 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 Operative Agreements. Until and unless all Operative Agreements are 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 Restated Agreement shall impose any legally binding obligation on either

party to enter into or support entering into the Operative Agreements 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 Operative Agreements to determine not to proceed with the development projects, sale transaction, or any portion thereof.

Section 2.2 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: City Manager
200 Lincoln Avenue
Salinas, CA 93901
Email: ray.corpuz@ci.salinas.ca.us

With a copy to:
Economic Development Manager
City of Salinas
Office of the City Manager
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 Company
Attn: Ralph Borelli
2051 Junction Avenue, Suite 100
San Jose, CA 95131
Email: ralph@ralphborelli.com

With a copy to:
Mark S. Carlquist
Carlquist & McClellan
718 University Ave., Suite 116
Los Gatos California, 95032
Email: mark@carlquistlaw.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 2.3 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 Airport Property and/or PW Property with respect to this Restated Agreement or any dispute or act arising from it.

Section 2.4 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 Restated 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) provide insurance as set forth in Section 2.20;

(d) deliver to the City, within three (3) 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 Airport Property or PW Property, as applicable; and

(e) 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 grossly negligent or intentional acts of the City; 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 2.5 Costs and Expenses. Except as otherwise defined in this Restated Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Restated Agreement, and the performance of each party's obligations under this Restated Agreement.

Section 2.6 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 Restated Agreement or any Operative Agreement that may result from this Restated Agreement, unless the City retains a broker, agent or finder.

Section 2.7 Parties' Discretion to Terminate Restated Agreement. Both parties agree to pursue negotiation of mutually acceptable Operative Agreements with all good faith and diligence; however, if at any time during the Negotiating Period, either party is in breach of any part of this Restated Agreement, the other party may provide written notice of said violation(s) to the breaching party, and may direct the breaching party to cure the violation(s). If the breaching party has not cured said violation(s) within thirty (30) days of the breach notification, the non-breaching party may then terminate this Restated Agreement effective immediately by providing written

notice to breaching party; such termination shall be effective immediately upon receipt of such notice by the breaching party.

The parties may also elect, by mutual written agreement, to terminate this Restated Agreement at any time.

Following any termination of this Restated Agreement, each party shall be free to negotiate with any other party with regard to the nature and scope of the projects 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 Restated Agreement. Except as expressly provided in this Restated 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 Restated 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 Restated Agreement, the City shall be free to negotiate with any persons or entities with respect to the sale, lease and development of the Airport Property and the PW Property.

Section 2.8 Non-Confidentiality of Information. The parties acknowledge that each party will need sufficient, detailed information from the other party about the proposed developments to make informed decisions about the content and approval of the proposed Operative Agreements. 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 Restated Agreement and with each party's officers, agents, and employees to the extent necessary for the negotiation and decision making process. If this Restated Agreement is terminated without the execution of all Operative Agreements, each party shall return to the other party any confidential information submitted by the other party under this Restated 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 2.9 Governing Law; Venue. This Restated 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 Restated Agreement shall be in the Superior Court of the County of Monterey, or in the appropriate federal court with jurisdiction over the matter.

Section 2.10 Entire Agreement. This Restated 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 Restated Agreement, except as expressly set forth herein. All prior negotiations between the Parties are superseded by this Restated 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 2.11 Counterparts. This Restated 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 2.12 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 Restated Agreement to a new entity controlled by the parties comprising the Developer that will be the Developer entity under the Operative Agreements. 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 applicable Operative Agreement would be between the City and the Developer or such assignee.

Section 2.13 Non-Recourse Agreement. No member, official, employee, agent, or consultant of any party to this Restated 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 Restated Agreement.

Section 2.14 No Third Party Beneficiaries. This Restated 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 Restated Agreement.

Section 2.15 Actions by the City. Whenever this Restated 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 2.16 Amendment. This Restated Agreement may not be altered, amended or modified except by a writing duly approved and executed by all Parties.

Section 2.17 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 2.18 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 Restated Agreement and/or Developer's failure to perform any obligation of Developer under this Restated Agreement. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this Restated Agreement.

Section 2.19 Attorney's Fees. In the event of any action or proceeding brought by any party against another party(ies) under this Restated 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 Restated Agreement.

Section 2.20 Insurance Requirements.

(a) Developer shall maintain throughout the term of this Restated Agreement, at no cost to City, insurance as follows:

(i) Comprehensive, broad form general liability insurance, in an amount not less than One Million Dollars ($1,000,000), combined single limit.

(ii) Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars ($1,000,000).

(iii) Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars ($1,000,000), combined single limit.

(iv) Developer shall cause its contractors and subcontractors to provide the following insurance coverages:

A. Comprehensive, broad form general liability insurance in an amount not less than One Million Dollars ($1,000,000), combined single limit.

B. Automobile liability insurance for owned, hired and non-owned vehicles, in an amount not less than One Million Dollars ($1,000,000), combined single limit.

C. Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars ($1,000,000).

(v) Solely with respect to the contractor(s) or subcontractor(s) that will be handling any hazardous materials while on any City-owned property, contractor's pollution liability insurance, in an amount not less than Two Million Dollars ($2,000,000), per pollution incident and in the aggregate. The phrase "handling hazardous materials" as used herein shall include without limitations testing.

(vi) Developer shall cause its geotechnical and civil engineering consultants who are performing work on any City-owned Property, if any, to maintain professional liability insurance in an amount not less than two million dollars ($2,000,000) per occurrence. Developer shall use its reasonable efforts to cause such professional liability insurance to have an inception date or a retroactive date coinciding with or prior to the date such consultant's services are first performed and to cause coverage to continue uninterrupted until at least three (3) years after the date such work or services are accepted.

(b) General Requirements.

(i) All insurance provided for under this Restated Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports, or otherwise acceptable to City's Risk Manager.

(ii) The professional liability policies required pursuant to this Section 20.20 shall be written on a "claims made" form with a "thirty day extended reporting provision" that survives this Restated Agreement. All other liability policies required hereunder shall be written on an occurrence basis.

(iii) Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

(iv) Comprehensive general and automobile liability insurance policies shall be endorsed or otherwise provide the following:

A. Name City and its councilmembers commissioners, board members, departments, officers, agents and employees, as additional named insureds, as their respective interests may appear hereunder.

B. All policies shall be endorsed to provide thirty (30) days' advance written notice to City's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given to the City's Risk Manager. Developer covenants and agrees to give City reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

(v) All insurance provided for under this Restated Agreement are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Restated Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the City. Such policies shall also provide for severability of interests and that an ·act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(vi) Developer shall deliver to City certificates of insurance and additional insured endorsements in form reasonably satisfactory to City, evidencing the coverages required hereunder on or before entry onto any City-owned property under this Restated Agreement. In addition, Developer shall deliver to City complete copies of the relevant policies upon request therefor from City. If Developer shall fail to procure such insurance, or fails to deliver evidence of

insurance as required herein, and such failure continues for more than ten (10) days following written notice from City to Developer, City may, at its option, terminate this Restated Agreement.

(vii) Notwithstanding anything to the contrary in this Restated Agreement, Developer's compliance with this Section 20.20 shall in no way relieve or decrease liability of Developer under Section 2.18, or any other provision of this Restated Agreement, and no insurance carried by the City shall be called upon to satisfy the Developer's indemnification obligations or any other obligations of Developer under this Restated Agreement.

SIGNATURES ON FOLLOWING PAGE

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

APPROVED AS TO FORM:

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

CITY:

CITY OF SALINAS, a municipal corporation

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

DEVELOPER:

RN BORELLI, INC. DBA BORELLI INVESTMENT COMPANY, a California corporation

By:_____
Ralph Borelli, Chairman

GREEN VALLEY CORPORATION, a California corporation

By:_____
Case Swenson, President