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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SALINAS

and

REXFORD TITLE, INC.
PATRICIA JANE BONDESEN
ALVIN C. and KAREN RAE MORTESEN, TRUSTEES
RAY HARROD, JR., DBA HARROD CONSTRUCTION COMPANY
RCS SALINAS INVESTMENT I LLC
ANN AAROE, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE

For the

WEST AREA SPECIFIC PLAN PROJECT

(North of Boronda Future Growth Area)

This Development Agreement ("**Development Agreement**" and sometimes "**Agreement**"), dated as of XXXX, 2019, is entered into by and between the **CITY OF SALINAS**, a California charter city and municipal corporation, (hereinafter "**City**"), and the following, all of which are collectively referred to herein as "the Developers" and sometimes individually referred to herein as a "Developer":

REXFORD TITLE, INC., a California corporation (hereinafter "Rexford"),
PATRICIA JANE BONDESEN, a married woman dealing with her sole and separate property (hereinafter "Bondesen"),
ALVIN C. and KAREN RAE MORTENSEN, TRUSTEES (hereinafter "Mortensen"),
RAY HARROD, JR., dba **HARROD CONSTRUCTION COMPANY** (hereinafter "Harrod"),
RCS SALINAS INVESTMENT I LLC, a Colorado limited liability company (hereinafter "Global")
ANN AAROE, an individual and Successor Trustee (hereinafter "Kantro")

under the authority of Section 65864 *et seq*. of the California Government Code and the City's police powers. (The Developers and the City are, from time to time, referred to individually in this Agreement as a "Party" and collectively as the "Parties").

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. Purpose. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq*. (the "Development Agreement Statute") which authorize cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. In accordance with the Development Agreement Statute, the City has enacted Article VI, Division 11 of Chapter 37 of the Salinas Municipal Code (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute. (The provisions of the Development Agreement Statute and the Development Agreement Regulations are collectively referred to herein as the "Development Agreement Law.") This Agreement has been drafted and processed pursuant to the Development Agreement Law.

B. Developer's Interest in Property. The Developers own or have contractual rights to purchase approximately 625.38 acres of real property in the City which is a part of the ±796.55-acre West Area of the City's North of Boronda Future Growth Area (the "Project Area") as depicted on the map attached hereto as **Exhibit A-1**. The Project Area is located within the city limits of Salinas and is bounded by Boronda Road on the south, San Juan Grade Road on the west, Russel Road Extension and Rogge Road on the north, and Natividad Road on the east.

The part of the Project Area that Developer Rexford owns is shown on the map attached hereto as **Exhibit A-2** (the "Rexford Property"). The part of the Project Area that Developer Bondesen owns is shown on the map attached hereto as **Exhibit A-3** (the "Bondesen Property"). The part of the Project Area that Developer Mortensen owns is shown on the map attached hereto as **Exhibit A-4** (the "Mortensen Property"). The portion of the Project Area as to which Developer Harrod has contractual rights to purchase is shown on the map attached hereto as **Exhibit A-5** (the "Harrod Property"). The part of the Project Area that Developer Global has contractual rights to purchase is shown on the map attached hereto as **Exhibit A-6** (the "Global Property"). The part of the Project Area the Developer Kantro owns is shown on the map attached hereto as **Exhibit A-7** (the "Kantro Property").

C. Planning Uses. Consistent with the City of Salinas General Plan, the Developers have proposed, and the City has approved in the Project Approvals, a Specific Plan for the entirety of the Project Area. The Specific Plan, referred to herein as the "West Area Specific Plan," is a planned community comprised of residential uses with a minimum of 3,553 and a maximum of 4,340 dwelling units ("Total West GP Target"), a community park, four neighborhood parks, six small parks, up to five schools (two of which are existing as of the Effective Date), and up to ±571,500 square feet of mixed- use commercial uses (the Village Center) with a minimum of 91 residential units, together with retail, office, restaurant, entertainment and other non-residential uses, all as more specifically provided for in the Specific Plan, together with construction, site preparation and installation of infrastructure (the "Project"). The maximum number of dwelling units authorized under the Specific Plan excludes Density Bonus Dwelling Units allowed pursuant to Section 37-50.060 of the Salinas Municipal Code, Accessory Dwelling Units allowed pursuant to Section 37-50.250 of the Salinas Municipal Code, and/or any dwelling units allowed pursuant to Section 3.9.3 of the Specific Plan, which allows up to a maximum of 250,000 square feet of the allowable 571,500 square feet of mixed use commercial floor area which may be converted to up to a maximum of 250 dwelling units on the basis of 1,000 square feet of mixed use commercial floor area for one residential dwelling unit.

D. Project Approvals. The following approvals, entitlements, and findings (the "Project Approvals") were adopted by the City with respect to the Project after duly and properly noticed public hearings:

1. Certification and adoption of a Subsequent Program Environmental Impact Report for the West Area Specific Plan (the "Project EIR"), including project-specific mitigation measures as certified and adopted by City with the Project EIR and as specified within the adopted Mitigation Monitoring and Reporting Program adopted by the City Council of Salinas by Resolution No. _____ adopted on **{To be inserted at City Council Approval}.**

2 The West Area Specific Plan, ("**Specific Plan**") approved by the City Council of Salinas by Resolution No. _____ adopted on **{To be inserted at City Council Approval}.**

3. Zoning Ordinance map amendments adopted by the City Council of the City of Salinas by Ordinance No. _____ adopted on **{To be inserted at City Council Approval}.**

4. This Development Agreement approved by the City Council of Salinas by Ordinance No. ____, adopted on **{To be inserted at City Council Approval}** (the "Enacting Ordinance").

5. All Subsequent Project Approvals, as defined below, immediately upon approval.

E. Subsequent Project Approvals. In addition to the Project Approvals, the Project will require various additional future land use and construction approvals and permits from City in connection with development of the Project ("**Subsequent Project Approvals**"), which shall be deemed to be part of the Project Approvals as they are approved. Subject to the terms and requirements of this Development Agreement, Developers may convey fee title interest in portions of the Property to Affiliates or to third parties who will complete development of those portions of the Property. Developers may also convey portions of the Property to users who will apply to City, as needed, for required Subsequent Project Approvals to complete development of their portions of the Property. The Subsequent Project Approvals also include any review required by the California Environmental Quality Act (CEQA), including implementation of all mitigation measures, Mitigation Monitoring and Reporting Program, and conditions adopted as part of the Project Approvals.

F. Development Assurances. Developers desire to carry out the development of the Property as a master-planned community development consistent with the General Plan, the Project Approvals and this Agreement. The complexity, magnitude and build-out of the Project would be difficult for Developers to undertake if the City had not determined, through this Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment and risk associated with development of the Project. As a result of the execution of this Agreement, both Parties can be assured that the Project can proceed without disruption, which assurance will thereby reduce the risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project.

G. City Interests. City desires to advance the housing and economic interests of the City and its residents by encouraging quality residential development and economic growth in the incorporated portion of the North of Boronda Future Growth Area, in accordance with and envisioned by the Salinas General Plan, thereby enhancing and expanding housing and employment opportunities for residents and growing the City's tax base.

H. Public Benefits. City is also desirous of gaining the public benefits of the Project under the Project Approvals and this Agreement, which are in addition to those dedications, conditions and exactions required by laws or regulations, and which advance the planning objectives of, and provide benefits to, the City. Among the public benefits to be realized from the Project are those identified in Sections 2.2.1 and 2.2.2 of the Specific Plan and the following:

1. The Project will produce a significant portion of the residential development needed to house the City's projected population for the next 30+ years, as envisioned by and as provided for in the Salinas General Plan.

2. By incorporating the principles of New Urbanism, the Project promotes alternative modes of transportation with an emphasis on pedestrian and bicycle transportation to potentially reduce vehicle trips.

3. New Urbanism design helps bring a variety of land uses together in a relatively compact manner (close proximity), providing residents with the opportunity for healthier, more active lifestyle choices.

4. Greater accessibility to mixed use, commercial land uses will allow

residents living in or near the village centers, for example, to save travel time and spend less on transportation, as well as numerous other benefits which potentially add to a healthier economy.

5. New Urbanism encourages green transportation and utilizes various sustainable building methods. This will help the City achieve a greater level of environmental accountability and sustainability.

6. The Project provides a variety of housing options and affordability levels for residents at various stages of life.

7. The Project will comply with the City's Inclusionary Housing Ordinance and related Guidelines to ensure housing for workforce and very low, low, and moderate income households.

8. The Project incorporates a variety of housing sizes, types, densities and designs which create a pleasing residential environment.

9. The Project provides a wide array of recreation opportunities, including bike lanes, public parks, greenways, walkways, and open spaces, supporting a healthy, sustainable and pleasing physical environment community.

10. The Project and the surrounding community will be served by a ±30-acre community park which includes a variety of features and amenities.

11. The Project is designed to retain and detain stormwater in accordance with adopted Stormwater Development Standards and Best Management Practices, thus alleviating increased off-site flooding, siltation and erosion, and contributing to the recharge of groundwater aquifers.

12. The Project will provide or contribute to infrastructure improvements (streets, parks, sewers, stormwater management facilities) that benefit the City and further the City's long-range infrastructure goals.

13. As demonstrated by the Fiscal Impact Report prepared by the City's consultant (Economic & Planning Systems, Inc., July 2018), the Project will have a fiscally positive impact on the City's finances.

14. According the WASP area Water Supply Assessment (California Water Service (Cal Water), December 2015) conversion of the WASP area from agricultural to urban land use could result in an estimated reduction of consumptive groundwater use (or increase in groundwater storage) of 2,170 acre feet per year, which is a significant contribution toward reducing overdraft in the Salinas Valley Ground Water basin.

I. City Council Findings. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65857 and Article 6, Division 11 of Chapter 37 of the Salinas Municipal Code. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the public health, safety and general welfare of the City and that all of its provisions are consistent with the goals, policies, standards and land use designations specified in the General Plan, as well as all other applicable plans, policies and regulations of the City.

J. Compliance with CEQA. The environmental impacts of the Project including the Project Approvals have properly been reviewed and assessed by the City pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq.; California Code of Regulations Title 14, section 15000 et seq. (collectively, "**CEQA**"). On _____, pursuant to CEQA and following consideration of the recommendations of the Planning Commission, the City Council certified and adopted a program level environmental impact report as provided in Section 15168 of the CEQA Guidelines (the "**Project EIR**"). The Project EIR provides the "first tier" environmental review of the Project, and also provides the City with a single environmental document as a baseline to evaluate related entitlements at a project level of analysis as well as subsequent development projects within the Specific Plan area. Unless one of the events set forth in Public Resources Code §21166 occurs, no subsequent or supplemental environmental impact report shall be required. Subsequent individual development that requires further discretionary approvals will be examined in light of the Project EIR to determine whether additional environmental documentation must be prepared.

K. Planning Commission. On _____, _____, the City of Salinas Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. _____ **{To be inserted upon approval by the Planning Commission}** to the City Council.

L. Enacting Ordinance; City Council. On_____, _____, the City Council of City adopted its Ordinance No. ___ approving this Development Agreement and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on _____, _____{**To be inserted upon City Council approval**}.

M. Project Provides Substantial Benefits. For the reasons recited herein, City and Developers have determined that the Project is a development for which this Agreement is appropriate. Through the establishment of vested rights as provided herein, this Agreement will reduce risk and eliminate uncertainty regarding Project Approvals and Subsequent Project Approvals, thereby encouraging investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial housing and employment opportunities and tax benefits, and other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

N. Applicability to Property. This Agreement shall be applicable to the Property and all portions thereof, the City, and the existing owners of the Property, the Developers and their successors in interest, all of whom shall be bound by the terms hereof.

O. Voluntary Commitments. To ensure that the intent of the City and of the Developers with respect to the Project Approvals and Subsequent Project Approvals is carried out, the Parties desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and the requirements included in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

SECTION 1
ADMINISTRATION

1.1 Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section. To the extent that any capitalized terms contained in this Agreement are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement.

1.1.1 "**Affiliate**" means any person, limited liability company, partnership, joint venture, trust, or corporation or other legal entity who now or hereafter (a) is a member of Developer; (b) directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the Developer; or (c) in which fifty percent (50%) or more of the equity interest of which is held beneficially or of record by the Developer, as the context may require; or (d) is Controlled by or under the day-to-day management of a member of Developer.

1.1.2 "**Agreement**" shall mean this Development Agreement, as set forth in the preamble of this Agreement.

1.1.3 "**Applicable City Regulations**" shall mean all of the following to the extent the following do not conflict with or are not inconsistent with the Project Approvals: Except as may be otherwise expressly set forth herein, the rules, regulations, ordinances, and official policies of the City (whether adopted by the City Council or the voters of the City) existing on the Effective Date governing the permitted uses of the land, density, design, improvement, and construction standards and specifications, applicable to development of the Property. Applicable City Regulations may include in whole or in part without limitation, (i) the General Plan, Specific Plan, the Inclusionary Housing Ordinance (Ordinance no. 2594, adopted June 6, 2017) and associated Guidelines (Resolution No. 21175, adopted June 6, 2017), and the Municipal Code (including standard specifications, design standards, and relevant public facility master plans adopted and published by the City), (ii) Exactions listed on **Exhibit B** to this Agreement, or elsewhere in this Agreement; and (iii) all other City laws that relate to or specify the permitted uses of land or improvements, the density or intensity of use, the subdivision of land for development, that are existing and in effect on the Effective Date; and (iv) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date relating to the Project and Property, including without limitation their text, terms and conditions of approval. A list of Applicable City Regulations, other than the Exactions and the Project Approvals, is set forth in **Exhibit C** to this Agreement. Exceptions to Applicable City Regulations include Uniform Codes (as defined in **Section 1.1.41** and referenced in **Section 2.3**), and the application of New City Laws (as defined in **Section 1.1.25**) permitted under **Section 2.4**.

1.1.4 "**CEQA**" shall mean the California Environmental Quality Act (California Public Resources Code Section 2100, *et seq*.), and the State CEQA Guidelines, (California Code of Regulations, Title 14, Section 15000, et seq.), as each is amended as of the Effective Date.

1.1.5 "**City**" shall mean the City of Salinas.

1.1.6 "**City Council**" shall mean the City Council of the City.

1.1.7 "City Planner" shall mean the officially designated city employee or their designee charged with the responsibility for the interpretation and administration of the Zoning Code, having the authority provided in **Section 37-10.160** of the Zoning Code. As defined in Section 37-10.160 of the Zoning Code, the City Planner is the Community Development Director.

1.1.8 "Community Development Director" shall mean that city official designated by the City Manager with such title and any city official who is authorized by the City Manager to assume and carry out the duties of such official under the same or a different title.

1.1.9 "**Control**" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of any entity including but not limited to a limited liability company, a partnership, a joint venture, a trust, or a corporation, whether through the ownership of voting securities, by contract, or otherwise.

1.1.10 "**Developers**" shall mean **REXFORD TITLE, INC.,** a California corporation, **PATRICIA JANE BONDESEN,** a married woman dealing with her sole and separate property, **ALVIN C. and KAREN RAE MORTENSEN, TRUSTEES**, **RAY HARROD, JR.,** dba **HARROD CONSTRUCTION COMPANY, and GLOBAL INVESTMENT & DEVELOPMENT LLC,** a California limited liability company**, ANN AAROE,** an individual and Trustee, and, subject to **Section 5.3**, their successors and assigns.

1.1.11 "**Development Agreement Law**" shall have the meaning given in Recital A.

1.1.12 "**Development Agreement Regulations**" shall have the meaning given in Recital A.

1.1.14 13 "**Development Agreement Statute**" shall have the meaning given in Recital A.

1.1.14 " Boronda Road Congestion Relief Project" (the "Congestion Relief Project") means the City-sponsored project to widen East Boronda Road into a four-lane roadway with two-lane roundabouts, landscaped median, and bike lanes to accommodate future (year 2064) traffic demands on East Boronda Road (including the build-out of the WASP area).

1.1.15 "**Effective Date**" shall mean the date determined under **Section 1.2.1.**

1.1.16 "**Project EIR**" shall have the meaning given in **Recital J**.

1.1.17 "**Enacting Ordinance**" shall mean the Ordinance Approving this Agreement as first referenced in **Recitals J and K** of this Agreement.

1.1.18 "Exactions" shall mean exactions that may be imposed by the City as a condition of developing the Project, including but not limited to City Impact Fees, in-lieu payments, requirements for acquisition, dedication or reservation of land, obligations to construct on-site or off-site public and private improvements, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, measures imposed for the protection of the public health or safety, or impositions made under Applicable City Regulations.

1.1.19 "Fiscal Impact Report" shall mean the report entitled "Fiscal Impact of Salinas' WASP and CASP Future Growth Areas" (EPS, July 26, 2018) commissioned by the City that analyzed, among other things, estimated costs associated with providing required public services to, and the revenues generated by, the Project.

1.1.20 "Frontage Improvements" shall mean the public improvements made necessary by that development. Construction of frontage improvements includes 20-foot width of pavement, plus curb, gutter, sidewalk, landscaping, and sound wall (if required) and dedication of 30-feet of right-of-way.

1.1.21 "**Force Majeure Event**" shall mean an event that causes a delay in performance beyond the control of the Party claiming the same. For the purpose of this definition, a cause shall be beyond the control of the Party whose performance would otherwise be required only if such cause would prevent or hinder the performance of such a requirement by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of a Force Majeure Event (such as the failure to order materials in a timely fashion). A Force Majeure Event shall include, without limitation, any of the reasons set forth in this **Section 1.1.21**: (a) delay attributable to acts of God, accident, strikes or labor disturbances or disputes, (b) delay attributable to the actions or inaction of any governmental agency including the City that unreasonably delays development of the Property, (c) delays of the City in processing any Project Approval beyond the period of time permitted by law or required by this Agreement for the processing of such Project Approval, (d) delay attributable to inclement weather, earthquake or other natural disaster resulting in suspension of Project work for safety purposes, e.g., extended periods of heavy rainfall, (e) delay attributable

to inability to procure or a general shortage of labor, equipment, materials or supplies in the open market, rationing or restrictions on the use of utilities, or failure of transportation (but not attributable to a mere increase in price unless such price is commercially unreasonable and will extend for a period of time under the circumstances), (f) delay caused by acts of a public enemy, war, terrorism, insurrections, civil disturbance, riots, mob violence, sabotage, malicious mischief, or casualty, (g) delay attributable to a development moratorium (including but not limited to a sewer or water moratorium) approved by the City or other entity having jurisdiction, (h) delay caused by litigation or administrative action preventing or delaying the approval or development of the Project or adversely affecting the ability of the City or other public entity or the Developer or its successors or assigns to obtain financing for the Project, (j) delay attributable to local, state or federal laws or regulations (other than those expressly permitted by this Development Agreement), (k) delay attributable to governmental agencies in issuing permits or approvals or taking other actions required for development of the Project, (l) delay attributable to the commencement of circulation of an initiative or referendum petition or the filing of any court action to set aside or modify this Development Agreement for the Project Approvals or any Subsequent Project approvals, or (m) delay attributable to insufficient water available to serve the Project or any phase, increment or portion thereof, or (n) any delay claimed by a Party in the performance of any term, covenant, condition or obligation under this Agreement caused by a default of the other Party.

1.1.22 "**General Plan**" shall mean the City of Salinas General Plan adopted September 17, 2002.

1.1.23 "**Moratorium**" shall mean any action by or on behalf of the City or another public entity having jurisdiction (including but not limited to action taken by virtue of a referendum or initiative) which delays or halts the processing, implementation or approval of subdivision maps, building permits or other Project Approvals.

1.1.24 "**Municipal Code**" shall mean the City of Salinas Municipal Code.

1.1.25 "**New City Laws**" shall mean any ordinances, resolutions, orders, rules, official policies, standards, specifications or other regulations, which are promulgated or adopted by the City Council or the City's electorate (through their power of initiative) after the Effective Date. The application of New City Laws to the Project shall be governed by **Section 2.4**.

1.1.26 "**Non-Curable Default**" shall mean a default for which a cure period shall not exist, as set forth in **Section 4.1.2**.

1.1.27 "Parcelization Map" shall mean a parcel map processed administratively for the purpose of creating master parcels for sale, financing or phasing purposes and on which no development may occur without further subdivision or other entitlement approval by the City.

1.1.28 "Park Impact Fees" shall mean and refer to City-wide impact fees levied on all new development in the City of Salinas for the purpose of funding the acquisition and improvement of new and existing parks within the City of Salinas, including the North of Boronda Future Growth Area. The term "Park Impact Fees" shall not include the West Area Park Impact Fee, which is defined in **Section 1.1.45**, below.

1.1.29 "**Planning Commission**" shall mean the Planning Commission for the City of Salinas.

1.1.30 "**Project**" shall mean the project commonly known as the "**West Area Specific Plan**" which is proposed to be constructed on the Property as more fully described in **Recital C**.

1.1.31 "**Project Approvals**" shall mean the permits and approvals granted by the City for the Project, including each Subsequent Project Approval, as set forth in **Recital D**.

1.1.32 "**Property**" shall mean the real property described in **Recital B**.

1.1.33 "**Processing Fees**" shall have the meaning given in **Section 2.8.2**.

1.1.34 "**Rights of Access**" shall mean the right of developer to enter or encroach on certain public improvements as set forth in **Section 2.10.8.**

1.1.35 "**Specific Plan**" shall mean the West Area Specific Plan as adopted by the City Council, and amended from time to time.

1.1.36 "**Subsequent Project Approvals**" shall have the meaning given in **Recital E**.

1.1.37 "**Subdivision Map Act**" shall mean that legislation set forth in California Government Code Sections 66410 through 66499.58.

1.1.38 "**Tentative Map**" shall mean one or more tentative subdivision maps, whether a Parcel Map or not, for the Property, including any conditions of approval applied to such map. .

1.1.39 "**Term**" shall have that meaning as set forth in **Section 1.2.2** of this Agreement.

1.1.40 "TFO" shall mean the City of Salinas Traffic Impact Fee Program (Traffic Fee Ordinance) with its implementing resolutions.

1.1.41 "Uniform Codes" shall mean any and all codes and regulations applicable to improvements, structures, and development in the City, and the applicable version or revision of such codes and regulations as modified and adopted by the City. Uniform Codes includes the Uniform Building, Plumbing, Electrical, and Fire Codes, City standard construction specifications and details, City grading standards, Title 24 of the California Code of Regulations, and similar codes and regulations relating to Building Standards, in effect at the time of approval of the appropriate permit.

1.1.42 "**Vested Elements**" shall have that meaning as set forth in **Section 2.1.1** of this Agreement.

1.1.43 "West Area" shall mean the portion of the North of Boronda Future Growth Area bordered by Boronda Road on the south, San Juan Grade Road on the west, Russell Road Extension and Rogge Road on the north, and Natividad Road on the east, being the land regulated by the West Area Specific Plan.

1.1.44 "WASP" shall mean and refer to the West Area Specific Plan.

1.1.45 "West Area Park Impact Fees" (WAPIF) shall mean the impact fee levied on development within the West Area of the North of Boronda Future Growth Area for the purpose of funding the acquisition and the improvement of parks within the WASP.

1.2 Effective Date and Term.

1.2.1 The Effective Date of this Agreement is _____, 20____.

1.2.2 The term of this Agreement shall commence upon the Effective Date and continue for a period of twenty (20) years from the Effective Date (the "Original Term"), unless the Term is terminated, modified, or extended by the terms of this Agreement. The Original Term may be extended only upon the mutual written consent of the Parties and only for five (5) year periods ("Extended Term"). Consent for the Extended Term shall be granted by the City to Developers demonstrating good faith compliance as described in Section 4.5, Annual Review. Developers may request the

Extended Term within two (2) years of the current term expiration. Requests for an Extended Term must be submitted in writing with an accompanying City issued "Notice of Compliance," (Section 4.5.4) issued for the previous year, In no event shall there be more than two (2) Extended Terms such that the total of the Original Term and Extended Terms may not exceed thirty (30) years in total. The Original Term has been established by the Parties as a reasonable estimate of the time required to develop and to build out the Project, taking into consideration the complexity of the Project, anticipated actions or other public agencies, normal market and economic conditions, and other contemplated potential circumstances which could affect the timing of development.

In the event that a Developer, within its individual portion of the Property, has not (i) conducted site improvements and grading over at least ten percent (10%) of its Property pursuant to permits issued by the City; (ii) provided documentation to the satisfaction of the City that Developer has installed infrastructure or improvements totaling more than three million dollars ($3,000,000); or (iii) in the event that three (3) or more Developers, collectively, have not, pursuant to the formation of an assessment district for the purpose of financing Project infrastructure, had assessments levied totaling $15 million in the aggregate prior to the tenth (10th) anniversary of the Effective Date, the Term of this Agreement, as to any single Developer pursuant to subsections (i) or (ii) herein, or as to all Developers pursuant to subsection (iii), shall end fifteen (15) years after the Effective Date without the opportunity for extension, unless otherwise mutually agreed to in writing by the Developer and City. Developers shall each demonstrate compliance with this provision on or before the tenth (10th) Annual Review, per Section 4.5 of this Agreement.

1.2.3 In accordance with Government Code Section 66452.6(a), the term of any Tentative Map, including modifications or amendments thereto, relating to the Property or any portion thereof shall automatically be extended to and until the later of the following: (1) the duration of this Agreement; or (2) the expiration of the Tentative Map in accordance with the Subdivision Map Act without reference to any extension given under this Agreement.

1.2.4 If this Agreement terminates for any reason before expiration of rights given under the Project Approvals or any Tentative Map pursuant to the Subdivision Map Act, such termination shall not affect the Developers' rights and obligations to proceed in accordance with the law governing such Project Approvals and/or Tentative Map, nor shall it affect any other covenants of the Developers specified in this Agreement to continue after the termination of this Agreement. If this Agreement terminates for any reason, including expiration of the Term, the terms and conditions of this Development Agreement, and Project approvals shall continue to govern the Project

unless the City has previously specifically amended such rules, regulations and policies until such time as the City amends such rules, regulations and policies.

1.2.5 The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

1.2.6 This Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a final certificate of occupancy has been issued for the building(s) on the lot. Termination of this Agreement for any residential dwelling lot shall not in any way be construed to terminate or to modify any assessment district, fee district, public financing district, special tax district, tax and/or any Mello Roos Community Facilities District lien affecting such lot at the time of termination.

1.2.7 Notwithstanding anything to the contrary in this Agreement, the term of any Permit Approval shall not include the period of time during which any moratorium, lawsuit, referendum, initiative or other legal challenge involving the Permit Approval was or is pending. If this Agreement or a Project Approval is unsuccessfully appealed or otherwise legally challenged, the term of this Agreement shall be extended until such appeal or legal challenge is finally resolved or adjudicated (including the expiration of time for further appeals). In addition, the term may be extended for a reasonable time upon the request of the Developer with the consent of the City. The Developers understand and agree that the City does not have authority or jurisdiction over another public agency's authority to impose a moratorium.

1.2.8. Execution and Recording. The Developers have executed and acknowledged this Agreement. Not later than ten (10) days after the Effective Date, the City Clerk will cause recordation of this Agreement with the Monterey County Recorder against the Property, provided that a referendum applicable to the Enacting Ordinance has not been timely submitted to the City.

1.3 City's Police Power. The Parties understand, acknowledge, and agree that the limitations, reservations, and exceptions contained in this Agreement are intended to reserve to the City that part of its police power which cannot be limited by contract and this Agreement shall be construed to reserve to the City that part of its police power which cannot be restricted by contract.

SECTION 2
DEVELOPMENT OF THE PROPERTY

2.1 Vested Elements.

2.1.1 The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, the subdivision of land and requirements for infrastructure and public improvements, the general location of public utilities, and other terms and conditions of development of the Property shall be governed by the Project Approvals, Applicable City Regulations and this Development Agreement (collectively "**Vested Elements**"), except as expressly provided in this Agreement.

2.1.2 The Developers shall have a vested right to develop the Property in accordance with the Vested Elements subject to the terms and conditions of this Agreement and also subject to a referendum that specifically overturns the City's approval of the Project Approvals or Subsequent Project Approvals.

2.2 Applicable City Regulations. Except as may otherwise be specifically provided in this Agreement, the City shall have the right to regulate the development of the Property and uses within the Project pursuant to the Applicable City Regulations if, and only to the extent, such regulations do not conflict with or are not inconsistent with the Project Approvals or the Vested Elements.

2.3 Uniform Codes. In the construction of the Project, each particular improvement shall be subject to all Uniform Codes in force and effect when a building, grading or other application for a building permit or equivalent permit is granted by the City.

2.4 Applicability of New City Laws.

2.4.1 New City Laws (including amendments to Applicable City Regulations) shall not be applicable to the Property unless such New City Laws are (a) generally and uniformly applicable on a city-wide basis and not otherwise inconsistent with the Vested Elements or terms of this Agreement or (b) meet one of the following requirements: (i) they are mandated by State or Federal law pursuant to **Section 2.5**; or (ii): they are imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558, or a finding that an otherwise permitted use represents a current and immediate threat to public health, safety or welfare pursuant to Government Code Section 65858. Examples of New City Laws that would be generally

and uniformly applicable on a city-wide basis and applicable to the Property pursuant to subdivision (a) of this section are storm water utility programs, rent control regulations, rental registry and/or inspection programs, and accessory-dwelling unit restrictions.

Nothing herein shall be construed to limit the authority of the City to adopt ordinances, policies, and regulations which have the legal effect of protecting persons or property from conditions which create a health, safety, or welfare risk.

To the extent any future changes in the General Plan, Zoning Code, or any future rules, ordinances, regulations, or policies are not inconsistent with the terms and the conditions of the Specific Plan and this Agreement, such future changes in the General Plan, Zoning Code, or such future rules, ordinances, regulations, and policies shall be applicable to the Property.

A Developer, by giving written notice to the City, may elect to have all or part of the Property subject to any New City Laws that are otherwise not applicable to the their portion of the Property under this Section. In the event a Developer so elects, the Developer shall provide written notice to the City and the other Developers of that election (such notice to be provided pursuant to this Agreement) and thereafter such New City Law shall be deemed part of the Applicable City Regulations applicable to that Developer. Such notice shall be in a form provided by the City Attorney which notice shall be recorded and which shall contain a copy of the New City Law which is being made applicable to a portion of the Property.

2.4.2 Developer shall have the right to challenge the application under subsections (a) and (b) of **Section 2.4.1** of New City Laws to the Project. If Developer chooses to challenge the application of a New City Law to the Project, Developer shall give written notice to the City Attorney in accordance with **Section 6.11** of this Agreement. Developer's written notice shall inform the City of the factual and legal reasons why Developer believes the City cannot apply the New City Law to the Project consistent with the Vested Elements and this Agreement. The City shall respond to Developer's notice within thirty (30) days of receipt of such notice. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City's response with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution is reached at the conclusion of the meet-and-confer period, the Parties may initiate dispute resolution proceedings in accordance with **Section 4.4** below, or Developer may initiate a legal action or proceeding challenging such application. If it is determined at the conclusion of such dispute resolution process or legal action that such New City Laws apply to the

Project, and if such New City Laws have the effect of substantially and materially preventing development of the Project in accordance with the Vested Elements (i) the Parties shall process an amendment to this Agreement in accordance with the Development Agreement Law, and/or (ii) the Parties shall amend the Project Approvals or amend the Applicable City Regulations without amending this Development Agreement to allow the Project to be built as originally intended.

2.4.3 There shall be a presumption that any New City Laws affecting the Project and having any of the following effects shall be considered inconsistent with the Vested Elements and this Agreement:

2.4.3.1 Limiting or reducing, directly or indirectly, the total number of residential units in the Project, the mix of residential types in the Project, or the maximum number of residential units allocated to an identified ownership interest within the Project.

2.4.3.2 Limiting or reducing the total retail square footage in the Project or the amount of retail square footage allocated to an identified ownership interest within the Project.

2.4.3.3 Limiting or materially changing the location of buildings, parking, grading, or other improvements on the Property.

2.4.3.4 Imposing new, modified, increased or additional dedication requirements.

2.4.3.5 Imposition of a Moratorium. This limitation on the City shall not apply when a Moratorium meets the requirements of **Section 2.4.1** for application of New City Laws to the Property; provided that the application of any such Moratorium to the Property shall be limited in both scope and time to only effectuate the purpose for which it was imposed. The Developers understand and agree that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium.

2.4.3.6 Except as required in **Section 2.13** (Inclusionary Housing), imposing requirements for dedication, sale, or other conveyance of residential units and/or lots for less than market price as determined by the Developers.

2.4.3.7 Fees, charges, or exactions that have the same effect as a Development Impact Fee, as defined in Chapter 9, Article V of the Salinas Municipal Code and/or as shown on **Exhibit B** and **Table 1 to Exhibit B**.

2.4.3.8 Materially frustrating the intent or purpose of the Vested Elements, except with respect to increased costs. Increased costs may be considered by the City when determining whether the intent or the purpose of the Vested Elements have been materially frustrated by a New City Law, but increased costs shall not be a sole determining factor.

2.5 As provided in Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations. In the event State or Federal laws or regulations enacted after the Effective Date of this Development Agreement or action by any other governmental agency other than City prevent or preclude compliance with one or more provisions of the Vested Elements or this Development Agreement, or require changes in plans, maps or permits approved by City, this Development Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental agency. Immediately after enactment of any such new law or regulation, the Parties shall meet and confer in good faith to determine the necessity of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement. If the Parties are unable to reach agreement on the modification, then either party may submit the issue to dispute resolution pursuant to **Section 4.4** or may terminate this Agreement.

To the extent that any actions of federal or state agencies (or actions of other governmental agencies, including the City, required by federal or state agencies, or actions of the City taken in good faith to prevent adverse impacts upon the City by actions of federal, state, or other governmental agencies) have the effect of preventing, delaying, or modifying the development of the Property or any portion thereof, the City shall not in any manner be liable for any such prevention, delay, or modification.

2.6 Processing and Development

2.6.1 The Tentative Map includes a condition as required by Government Code Section 66473.7(b)(1). Final maps shall comply with Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Development Agreement Statute. City agrees that Developer may file and process tentative maps or vesting tentative maps, including Parcelization Maps, in accordance with Chapter 4.5

(commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code, as the same may be amended from time to time, and the Applicable City Requirements. If final maps are not recorded for an entire parcel before such tentative map(s) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the term of this Agreement or the term otherwise applicable to such map if this Agreement is no longer in effect. The term of any other permit (except building permits which shall not be extended), or other land use entitlements approved as a Project Approval or Subsequent Project Approval shall automatically be extended for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such Development Approval or Subsequent Project Approval if this Agreement is no longer in effect.

2.6.2 The City shall promptly accept, process, review and act upon all applications for permits and approvals for the Project, in a professional, timely manner including Subsequent Project Approvals under **Section 2.9** hereof. Upon request of the Developer, the City shall inform the Developer of the necessary application requirements for any requested City approval or requirement relating to the Project.

2.6.3 City and Developer shall cooperate in processing all applications for permits and approvals for the Project, provided, however, that such cooperation shall not include any obligation, on the City's part, to incur any un-reimbursed expense, and the City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

2.6.4 The Developers and the City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act (Government Code sections 65920 through 65963.1). The City shall endeavor to make sure that adequate staff is available to process the Developers' applications for permits and approvals within the time periods required by the Permit Streamlining Act and the Developers shall pay the City Processing Fees with respect thereto. If requested by the Developers (or any of them), the City in its sole direction may retain additional staff and overtime staff assistance or staff consultants as may be necessary to timely process some or all applications for permits and approvals for the Project on an expedited schedule. If the Developers request that City pursue such expedited processing, City agrees to provide the Developers with reasonable prior notice of the amount and due date of the additional costs associated therewith. If the City determines to retain additional staff or to provide overtime staff assistance or staff consultants, the staff and the consultants shall be at the sole selection of the City and shall be paid for at the sole cost and expense of the

Developers. Upon the City's written request, the Developers shall advance a deposit sufficient to cover the City's estimated costs. Such deposit shall be replenished, as necessary, from time to time, to assure that the City shall not bear any of the costs associated with additional staff, overtime, or staff consultants.

2.6.5 The Parties shall cooperate and diligently work to implement any zoning, tentative map, final development plan and/or land use, grading or building permits or approvals which are necessary or desirable in connection with the development of the Project in substantial conformance with the Vested Elements.

2.6.6 Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning any of the Project Approvals, City shall process applications for permits and approvals as provided herein to the fullest extent allowed by law and Developer may proceed with development of the Project pursuant to the Project Approvals or Subsequent Project Approvals to the fullest extent allowed by law. City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

2.6.7 The term of any Permit Approval shall not include the period of time during which any moratorium, lawsuit, referendum, initiative or other legal challenge involving the Permit Approval was or is pending.

2.7 Development Timing.

The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Property will be developed or the order in which each increment of the Project will be developed. Such decisions depend upon numerous factors which are not within the control of the Developer, such as market conditions and demand, interest rates, absorption, and other similar factors. Buildout of the Project, and the resulting need for public service facilities, will take many years. Development of the Project may be phased as homebuilding goes forward and creates the need for additional capacity. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the Parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise expressly so provided in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment provided

Developer is in compliance with the Project Approvals, provided, however, nothing herein shall override any phasing or timing for development set forth in a Parcelization Map conditions of approval, Mitigation Monitoring and Reporting Program (the West Area, Salinas General Plan FEIR (2002), and Final Supplement to the Salinas General Plan Final Program FEIR 2007) mitigation measures, and Section 9.4 and other applicable sections of the Specific Plan.

2.8 Property Taxes; Processing Fees.

2.8.1 The Property shall remain subject to general property taxes, as well as special taxes, assessments, and fees, existing as of the Effective Date and to increases in such taxes, assessments, and fees permitted by law and Developer shall be obligated to incur Exactions in addition to those set forth in **Exhibit B** required to be imposed pursuant to State or Federal law, under the provisions of **Section 2.5**

2.8.2 Developer shall be obligated to pay all applicable application and processing fees, permitting fees, including development review applications, plan check, map review, inspection and monitoring fees and fees of outside consultants, for land use approvals, grading and building permits, temporary use of land permits, and other administrative and ministerial permits, and other permits and entitlements ("**Processing Fees**") in connection with the Project established and in effect at the time of application processing.

2.9. Subsequent Project Approvals. City may deny an application for a Subsequent Project Approval if such application is incomplete or otherwise does not comply with this Agreement or Applicable City Regulations or is materially inconsistent with the Project Approvals. The City may approve an application for a Subsequent Project Approval subject to any conditions reasonably necessary to bring the Subsequent Project Approval into compliance with this Agreement or Applicable City Regulations, or as necessary to make the Subsequent Development Approval consistent with the Project Approvals or if an amendment has been previously approved by the City to allow the requested deviation. If City denies any application for a Subsequent Project Approval, City shall specify in writing the reasons for such denial.

2.9.1. Nothing herein shall limit the ability of the City to require the necessary reports, analyses, or studies to assist in determining whether any of the requested Subsequent Approvals are consistent with applicable law and this Agreement.

2.10 Streets and Related Improvements.

2.10.1 The City had adopted a Traffic Improvement Fee Program (TFO) in recognition that the traffic impacts of new development are not limited to the immediate vicinity of the new development, but have an impact upon the major streets throughout the city and in part to ensure that new development contributes toward offsetting the burden it imposes upon the City's traffic system.

The City last updated its Traffic Improvement Fee Program (TFO) on January 19, 2010 (Resolution No. 19802). The City intends to update the TFO when it updates its General Plan, which is anticipated to begin in early 2020 ("TFO Update"). The TFO Update will be comprehensive and while the City cannot commit to a particular date by which the General Plan update and TFO Update will be completed, to a particular result, or to a particular approach or methodology, the TFO Update may take into consideration a number of factors including, but not limited to, cost estimates and elimination of the two-tier fee structure. Except as otherwise specifically set forth in this Agreement, in their development of the Project the Developers shall comply with the TFO. However, when the TFO update is complete, the Developers may choose, at their discretion, to initiate an amendment to this Agreement pursuant to **Section 3** of this Agreement to reflect changes resulting from the TFO Update. The Developers may also, at their discretion, request that the City form an assessment district or adopt a plan area fee as additional mechanisms to finance construction of the roadways and related improvements necessary for the Project.

2.10.2 The City plans to complete the Congestion Relief Project along the entire frontage of the WASP as a four-lane expressway with landscaped median, turn lanes, bike lanes, roundabouts, and traffic signage. The Congestion Relief Project will also include a widened four-lane bridge over Gabilan Creek within the Central Area Specific Plan (CASP). The Congestion Relief Project will include roundabouts at the intersections of Boronda Road with McKinnon Street and with Natividad Road. The Congestion Relief Project (which consists of four-lanes, landscaped median, turn lanes, bike lanes, roundabouts, and traffic signage) will be paid from a variety of sources including TFO funds, supplemented with Measure X funds, Senate Bill 1, potential grant funds, and other City revenues. Developers' contribution to the cost of the Congestion Relief Project shall include payment of TFO fees. Developers shall also be responsible for related improvements along the Boronda Road frontage including the Frontage Improvements (curb and gutter, sound wall, sidewalk, landscaping, street lighting, and right-of-way dedication). The Developers' responsibility shall also include the landscaping, irrigation,

and maintenance of the landscaping in the ultimate third lane (10-feet) buildout of Boronda Road. (Exhibit D)

The Parties understand and acknowledge that completion of the Congestion Relief Project along the entire frontage of the WASP is important to the completion of development within this Project Area. The Parties further understand and acknowledge that the City cannot predict when or the rate at which the Congestion Relief Project will be commenced or will be completed. When the Congestion Relief Project will begin and will be completed depend upon numerous factors, not all of which are within the control of the City, such as weather, cost, challenges to the project, and similar factors. Consequently, the City cannot commit to a date certain by which its work on the Congestion Relief Project will begin or will be completed; however, in acknowledgement of the importance of the Congestion Relief Project to the Project, notwithstanding what is otherwise provided in **Section 1.2.2** of this Agreement, in the event the City has not completed the Congestion Relief Project along the entire frontage of the WASP (from McKinnon Street to Natividad Road) within seven (7) years of the Effective Date, the Original Term of this Agreement and the deadline for the Developers to meet their Project improvement obligations under Section 1.2.2, shall automatically be extended for five (5) years for any of the Developers who are not at that time in default of this Agreement.

2.10.3 The following streets within the West Area may by action of the City Council be designated as Major Thoroughfares: Collector Feature Street Section 3 (Road C), a segment of the Southerly Greenway, Collector Feature Street Section 4 (Road G), a segment of the Northerly Greenway, Boronda Road between McKinnon Street and Natividad Road, San Juan Grade Road between Boronda Road and the Russell Road Extension, Russell Road between San Juan Grade Road and Natividad Road, Rogge Road between the westerly boundary of the high school site and Natividad Road, and El Dorado Drive and McKinnon Street within the Project. Access to abutting lots and on-street parking are not allowed on these streets.

2.10.4 Improvements for other streets or street segments which are required by the Project EIR to mitigate cumulative impacts, but which are not included within the TFO shall be paid for by the Developers on a fair-share basis. These fair-share payments shall be indexed annually and shall be paid by the Developers in the same manner and at the same time that TFO payments are made.

2.10.5 All of the other interior streets not designated as major thoroughfares within the WASP will be constructed and paid for by Developers in accordance with the street sections contained in **Section 5** of the Specific Plan.

2.10.6 WASP streets shall be constructed in phases on a subdivision-by-subdivision basis in conjunction with the review and approval of individual tentative subdivision maps. Streets within the WASP shall be dedicated as part of the public street system, shall be accepted by the City upon completion, and shall be maintained by the City through an assessment district upon expiration of the Developer's one-year warranty period.

2.10.7 When a Developer applies for a building permit and there are still traffic impact fees due to the City after applying all traffic fee credits assigned to that Developer, the Developer shall pay the difference at the then applicable rate. If the traffic impact fee credits issued on all of the Developer's buildings in the Project exceed the total traffic impact fees due, the City shall repurchase the excess traffic impact fee credits from the Developer at the then current rate.

2.10.8 The City shall grant to Developer Rights of Access subject to City's standard conditions for such Right of Access as may be necessary across, under, and over the surface and subsurface of all City streets as may be required from time to time for construction and installation of the following improvements:

2.10.8.1 Gas, electricity, water, wastewater, drainage, telephone, cable media, computer, security, telecommunications, and all other utilities, facilities and like improvements (including without limitation their related conduits, wires, lines, pipes, mains, pumps, meters and other structures, stations and improvements) necessary or desirous to the Project; and

2.10.8.2 Construction, paving, striping, cleaning, and repairing streets within the Project.

2.11. Parks and Recreation Facilities

2.11.1 Public Parks Provided. As described in **Section 2.9** of the WASP, the Project shall provide a total of 49.76 net acres of parkland ("the WASP Parkland") to meet the General Plan and Subdivision Ordinance requirement of 3 acres of developed parkland per 1,000 residents assuming buildout with 3.67 people per dwelling unit. The City will determine the final design of public park facilities, including the number and the type of sports fields that can be accommodated within the park configuration and acreage in accordance with City standards. The Community Park is ±30.83 net acres. Neighborhood parks vary from ±2.4 acres to ±3.6 acres in size. Small parks are typically less than two acres in size, but in no case less than 0.5 acres in size. Net acreage of each

park will be refined in connection with tentative subdivision map review. The location, size and type of each park shall be substantially as shown in **Table 2-4 and Figure 2-7** of the WASP. The design standards for the WASP's parks shall be substantially as described in **Section 2.9.1** of the WASP. No additional dedication or reservation of park land or open space, or the payment of any additional *in lieu* fee or exaction for park or open space land, shall be required of the Project.

2.11.2 Park Improvements. Improvements to dedicated parkland made by a Developer in accordance with the City's Park and Sports Facility Standards (May 2018) as approved by the Library and Community Services Director shall be deemed consistent with the General Plan, the Specific Plan, the City's park and sports facility standards and any other applicable standards adopted by the City.

2.11.3 Park Improvement Fees. The City shall adopt, and Developers shall pay, a new West Area Park Improvement Fee ("WAPIF") in an amount sufficient to fund the acquisition of designated WASP parkland, the cost of street improvements abutting such designated parkland, and the cost of park improvements to equip such parklands within the WASP in accordance with adopted park improvement standards. Developers who construct park improvements in accordance with adopted park improvement standards shall receive Park Improvement Fee credits in the amount of the actual cost of such improvements as constructed (hard and soft costs), not to exceed the per acre cost as calculated in the Park Facilities Development Impact Fee Update Study (Willdan, November 5, 2019) referred to herein as he WAPIF Fee Study, by type of park constructed. The fee credit for land will be $250,000 per acre and will be adjusted annually by the construction cost index change as published by the Engineering News Record in April along with all of the other development impact fees. The fee credits for the construction soft cost will be limited to the percentages of each category that were used in the WAPIF Fee Study, provided however, that costs actually be incurred but assigned to a "contingency" category may be converted to hard costs at the option of the Developer. WAPIF fees collected will be accounted for in a separate fund with Park Impact Fees so that, to the extent feasible, sufficient funds are available to pay fee credits as accrued. If sufficient funds are not available in the WAPIF fund to reimburse the Developer as provided herein, reimbursement will not occur until such time as sufficient funds become available. In the case of parkland purchased by the City from third parties, or park improvements constructed or installed by the City, the cost recovered by the City from WAPIF Fees or from the WAPIF fund shall be limited to the acquisition cost and park improvement costs (hard and soft costs) calculated in the WAPIF Fee Study by type of park constructed, and any cost overage shall not be charged to the Developers.

2.11.4 Timing of Park Dedications and Improvements. Dedications of WASP parkland and improvements to WASP parkland shall be coordinated on a subdivision-by-subdivision basis with the development of the overall WASP to the extent feasible to assure the availability of recreational facilities to serve the residents of the area. Developers shall not be required to dedicate or improve designated park land until such park land is included in a recorded final subdivision map. The City shall coordinate its acquisition of parklands and construction of park improvements funded with Park Impact Fees so that, to the extent feasible, such improved parklands are available for use at the time of issuance of the first certificate of occupancy for residential development for which Park Impact Fees have been paid.

2.11.5 Community Park. The WAPIF will be in an amount sufficient to fund the cost of street improvements abutting such designated parkland, and the cost of park improvements to equip the community park in accordance with adopted park improvement standards.

2.11.5.1. Improvement of Community Park. Improvement of the Community Park shall be funded through the use of West Area Park Impact Fees as provided, in part, in **Section 8.5** of the Specific Plan. The recreation center buildings shall be funded through the Public Facilities Impact Fee (Recreation Services Impact Fee).

2.11.5.2. Sequential Development. Acquisition and improvement of WASP Community Park land shall be coordinated and sequenced on a subdivision-by-subdivision basis with the development of the overall WASP to the extent feasible.

2.12. School Sites.

2.12.1. The Project shall include sites for two (2) new elementary schools (±10 acres each) and one (1) new middle school (±20 acres).). The Project includes one (1) existing elementary School (McKinnon Elementary School) and one (1) existing high school (Rancho San Juan High School).

2.12.2. Sites for new schools within the West Area may be provided pursuant to a written agreement between Project Developers and the school districts. In the absence of such agreement, school sites shall be reserved by the Developer and acquired by the school district in accordance with **Section 31-804 *et seq***. of the Salinas Municipal Code.

2.12.3. Responsibility for development of public schools, including the acquisition of school sites and the construction of school facilities, lies with the respective

school districts.

2.12.4. Project Developers and the City shall cooperate with school districts to facilitate joint use of school sites and facilities.

2.12.5. If not needed for school purposes, as determined by the applicable school district, school sites may be developed for residential use up to a maximum of fifteen (15) units per net residential developable acre.

2.12.6. The Project Developers shall be responsible for the payment of school impact fees pursuant to Government Code Section 65996 as specified by the Project EIR as full and complete school facilities mitigation.

2.13. Inclusionary Housing.

2.13.1 Inclusionary Housing Ordinance. All residential development within the Project shall comply with the City's Inclusionary Housing Ordinance embodied in Ordinance No. 2594, as adopted June 6, 2017, and Resolution No. 2567 (collectively the "Inclusionary Ordinance") and the Guidelines adopted pursuant thereto. For those Developers that choose to pay in lieu fees (for sale and rental) the in-lieu fees shall be set at the amount pursuant to the Inclusionary Housing Ordinance as of the Effective Date of this Agreement. The housing in lieu fees and/or rental housing impact fees will be adjusted by the percentage increase in the Engineering News Record (ENR) cost index, based on the most current April edition. The Inclusionary Ordinance is attached hereto as **Exhibit E**.

2.14. Infrastructure Financing.

2.14.1 Level of Municipal Services. In determining the level of improvement and service to be applied to and required by the Project, the City, the City's consultants, the FGA Developers and their consultants shall apply the factors and assumptions set forth in the City of Salinas Public Facilities Impact Fee Study (February 2014, adopted April 8, 2014) (the "Nexus Study") and in the Fiscal Impact Report.

2.14.2 City Development Impact Fees. Except as provided in **Sections 2.14.2.1 or 2.14.2.2** of this Agreement, the Developers shall be obligated to pay only those City Development Impact Fees as set forth in **Exhibit B** attached and incorporated herein by this reference. The City may not impose or exact additional or increased City Development Impact Fees on the Developers or the Project.

2.14.2.1 State and Federal Fees; Permits and Approvals. Notwithstanding **Section 2.14.2**, Developer shall be obligated to pay fees that may be

imposed pursuant to State or Federal law (subject to **Section 4.6** of this Agreement). The Developers shall also comply with lawful requirements of, and obtain all permits and approvals required by other local, regional, state, and federal agencies having jurisdiction over the Developers' activities in furtherance of this Agreement. The Developers shall pay all required fees when due to federal, state, regional, or other local government agencies other than the City and acknowledge that the City does not control the amount of such fees.

2.14.2.2 Subsequent Project Approvals and City Processing Fees. This Development Agreement shall not limit the authority of the City to charge any and all lawfully enacted City Processing Fees required for Subsequent Project Approvals, including application, inspection and monitoring fees, fees for staff and consultants used by the City in connection with processing permit and other approvals, and fees for preparation of environmental analysis under CEQA, which are in force and effect on a city-wide basis and are in compliance with Government Code Section 66014.

2.14.2.3 Other Agency Impact Fees. Notwithstanding the provisions of **Section 2.14.2**, Developer shall be obligated to pay school impact fees imposed pursuant to the provisions of Government Code 65995 through 65996 and Education Code sections 17620 through 17626 and traffic impact fees imposed by the Transportation Agency for Monterey County (TAMC), in addition to whatever other agency impact fees may be imposed and applicable to the Project through the Term of this Agreement. Such fees shall be payable upon issuance of building permits, or at such other time as may be negotiated with the applicable agency.

2.14.2.4 Exactions. Except as expressly provided in this Agreement or mandated by state or federal law, the City shall not impose any additional development impact fees or charges or require any additional dedications or improvements through the exercise of the police power or otherwise, with the following exception: The City may impose reasonable additional fees, charges, dedication requirements as conditions of the City's approval of an amendment to the (i) Project Approvals, (ii) Subsequent Project Approvals, or (iii) this Agreement, which amendment is either requested by the Developers or agreed to by the Developers; and

2.14.3 Mitigation Measures. Nothing contained in this Agreement shall relieve Developer of the obligation to implement feasible mitigation measures identified in the Project EIR for the purpose of mitigating or avoiding significant environmental effects of the Project; provided, however, that City retains the authority to adopt substituted measures or findings of overriding circumstances as provided by CEQA and

the CEQA Guidelines.

2.14.3.1. Agricultural Mitigation. The City's Agricultural Land Preservation Program (ALPP) was adopted on April 8, 2008 (Resolution No. 19422). The WASP, as part of the Salinas Future Growth Area Annexation and Sphere of Influence (SOI) Area, is a "GSA-MOU identified growth area" as defined in the ALPP. Developers shall comply with the ALPP as described in Section 9.5 of the Specific Plan. As set forth in Section 9.3 of the Specific Plan, the Developers will not be required to establish agricultural mitigation easements for the lands within the Project area and will be required to pay an agricultural land mitigation fee in the amount of $750 per acre of converted land designated by the California Department of Conservation's Farmland Mapping and Monitoring Program as "Prime" or "of Statewide Importance" (Designated Farmland).

2.14.4. Drainage/Stormwater. The City and the Developers acknowledge and agree that the analysis, plans, polices and design of the drainage and stormwater management facilities of the Specific Plan conform with or exceed the requirements of the (stormwater management plan in effect as of the Effective Date). The City and the Developers further acknowledge that the storm water requirements and stormwater fees imposed upon development and redevelopment projects, as well as to individual properties, in the city change from time-to-time and that the Project will be subject to whatever storm water requirements, storm water programs and utilities, and stormwater fees are in effect as of the date of application for a Project Approval or a Subsequent Project Approval. Developer shall implement the drainage and stormwater management policies of the Specific Plan in phases as provided in **Section 8.3** of the Specific Plan.

2.14.5. Reimbursement Ordinance. On June 3, 2014, the City adopted an ordinance to provide for the establishment of one or more zones of benefit and the reimbursement for costs incurred in connection with the annexation and entitlement of lands in the North of Boronda Future Growth Area (Ordinance No. 2549, the "Reimbursement Ordinance")

2.14.6. Installation of Improvements; Inspections. In any instance where a Developer is required to install improvements that are subject to inspection and approval by the City, Developer shall obtain City approval of the plans and specifications, and provided Developer has supplied all information required by the City, the City shall promptly review and act on the application for such approval in a diligent manner in accordance with law. The commentary on plans shall specify the changes required to comply with City regulations. Developer shall correct the plans as requested

or shall explain in writing why any changes were not made, or deviated from the changes requested by the City.

2.15. Significant Actions by Third Parties Necessary for Approval. At Developer's sole discretion, but consistent with the Project Approvals, Developer may apply for such other permits, grants of authority, agreements, and other approvals from other private, public and quasi-public agencies, organizations, associations or other public entities as may be necessary to the development of, or the provision of services and facilities to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals.

2.16. Cooperation of Parties. Each of the Parties shall act toward each other and the tasks necessary or desirous to the Project in a fair, diligent, expeditious and reasonable manner (except in those cases where a Party is given sole discretion under this Agreement), and no Party shall take any action that will unreasonably prohibit, impair or impede the other Party's exercise or enjoyment of its rights and obligations secured through this Agreement. This agreement to cooperate shall not require either Party to incur any un-reimbursed expenses.

2.17. Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project within the Term of this Agreement should it become necessary due to fire, earthquake, or other natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

2.18. Fiscal Neutrality. The Fiscal Impact Report was prepared to summarize, among other things, estimated costs associated with providing required public services to, and the revenues generated by, the Project. Based upon the findings of the Fiscal Impact Report, the City has determined that the economic impact of the Project on the City will be fiscally positive. The conclusions of the Fiscal Impact Report are predicated among other things on the following assumptions regarding the shared responsibilities for ownership and maintenance of infrastructure between the City and the West Area of the Future Growth Area:

2.18.1 Construction and Dedication of Streets. The Developer shall construct or install all improvements within the City-maintained areas described in **Section 2.18.1** above. If Developer installs landscaping within the City-maintained areas,

Developer shall maintain such landscaping in a healthy weed-free condition for one year following the City acceptance of the Project improvements. Developer shall dedicate such landscaped areas to the City.

2.19 Landscaping and Lighting Maintenance District. A Landscaping and Lighting Maintenance District ("LLMD") will be established by the City in connection with the development of the West Area to reimburse the City for the costs of maintenance performed by the City within the public areas of the Project, including but not limited to the following maintenance tasks:

(a) Maintenance of public parks less than two (2) acres in size.

(b) Operation and maintenance (including replacement as needed) of all street path lighting.

(c) Maintenance of all low-impact development (LID) areas within public streets, parcels, and rights-of-way, and in supplemental detention and retention basins (open space).

(d) Slurry coating of all interior streets and alleys every 5-7 years, depending on the deterioration of the asphalt as determined by the Public Works Director or his designee.

(e) Maintenance of all traffic calming devices, such as the center median islands, roundabouts, bulb-outs, and traffic circles, including landscaping.

(f) Maintenance and replacement of the public paths, street trees, decorative street furniture, and traffic/street signs.

(g) Maintenance of the landscaping and the walls within the abutting half of the right-of-way of the arterial streets surrounding the West Area.

(h) Maintenance of alleys (including paving) and the adjacent landscaping within alley rights-of-way and/or easements.

(i) Maintenance of landscaping located within the public right-of-way of the southerly greenway street/path and landscape easement.

The LLMD shall be established in phases on a subdivision-by-subdivision basis in conjunction with the review and approval of individual tentative subdivision maps. Prior to establishment of the LLMD the Developers shall provide all of such maintenance

work. Developers shall maintain all areas of the LLMD until such time as the City reasonably determines there is sufficient residential development within the Project to support the City's costs of such maintenance.

2.20 Completion of Improvements. The City generally requires that all improvements necessary to service new development be completed prior to issuance of building permits (except model homes). However, the Parties acknowledge that some of the backbone improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all backbone infrastructure improvements required to service such portion of the Property in accordance with the Project Approvals and Subsequent Project Approvals shall be completed prior to issuance of any building permits within such portion of the Property (except permits for model homes). Provided, however, the Community Development Director may approve the issuance of building permits prior to completion of all such backbone improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the City Engineer or the Developer has entered into an agreement with the City as provided in Section 66462 of the California Government Code, and that the Developer's performance to complete all of the backbone infrastructure is secured in the manner provided in Chapter 5 of the Subdivision Map Act (beginning with Section 66499).

2.21 Obligations of the Developers. The Developers shall develop the Property in accordance with and subject to the terms and the conditions of this Agreement, the Project Approvals, and the Subsequent Project Approvals, if any, and any amendments to the Project Approvals or this Agreement as may, from time to time, be approved pursuant to this Agreement. The failure of a Developer to comply with any term or condition of or fulfill any obligation of the Developers under this Agreement, the Project Approvals or the Subsequent Project Approvals or any amendments to the Project Approvals or to this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by that Developer under this Agreement. An individual Developer's default under this Agreement shall not affect the rights or the obligations of the other non-defaulting Developers who have entered into this Agreement.

Except as otherwise provided herein, the Developers shall be responsible, at their sole cost and expense, to make the contributions, improvements, dedications, and conveyances set forth in this Agreement and the Project Approvals.

SECTION 3
AMENDMENT OF AGREEMENT
AND SUBSEQUENT APPROVALS

3.1. Amendment of This Agreement. This Agreement may be amended from time to time in accordance with the Development Agreement Statute, only upon the mutual written consent of the City and Developer.

3.1.1. Major Amendments and Minor Amendments. Any amendments to this Agreement which affects or relates to (a) the Term of this Agreement, (b) permitted uses of the Property, (c) provisions for the reservation or dedication of land, (d) conditions, terms, restrictions, or requirements for subsequent discretionary action, (e) the density or the intensity of use of the Property or the maximum height or gross square footage of proposed non-residential buildings, or (f) monetary contributions by the Developers, shall be deemed a "Major Amendment" and shall require giving notice and a public hearing before the Planning Commission and the City Council. Any amendment which is not a Major Amendment shall be deemed a "Minor Amendment."

The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties fine that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment, they shall effectuate such clarifications, minor changes, or minor adjustments through a written Minor Amendments approved in writing by the Developers and the City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

The City Attorney shall have the authority to determine if an amendment is a Major Amendment or a Minor Amendment. The City Attorney's determination may be appealed to the City Council.

3.2 Amendment of Project Approvals. The Project Approvals from time to time, may be modified in the following manner:

3.2.1. Amendment to this Agreement Not Contemplated. Subsequent Project Approvals and (except as expressly provided below) modifications to Project Approvals shall not require an amendment to the terms of this Agreement, and the terms

of this Agreement shall apply to all Subsequent Project Approvals and amendments to modifications to Project Approvals, without any further action of the Parties.

3.2.2. Determination of Need for an Amendment. Upon the written request of the Developer, the City Attorney shall determine whether any requested modification of the Project Approvals requires an amendment to the terms of this Agreement. If the City Attorney finds that the proposed modification does not result in a material change to the terms of this Agreement, the modification shall be approved administratively as a Minor Revision as provided in **Section 9.7.1** of the Specific Plan without amendment of this Agreement.

3.2.3. Processing of Amendments. Any request by the Developer for a modification of the Project Approvals that is determined by the City Attorney to require an amendment to this Agreement shall be processed as an amendment to this Agreement in accordance with the Development Agreement Statute and **Section 9.7.2** of the Specific Plan..

3.2.4. Administrative Approval of Minor Revisions. Minor modifications to Project Approvals that do not materially change the character of the Project, such as minor adjustments in location or area that do not increase the overall size of the Project site, minor changes in the location of buildings, substitution of custom homes in the place of pre-designed homes, or the area designated for year-round outdoor/sidewalk/parking lot display by the anchor tenant, design and architectural details, floor plan or landscaping, as well as modifications listed in **Section 9.7.1** of the Specific Plan, do not require amendment of this Agreement, and shall be approved administratively through the building permit process without the necessity of notice, hearing, CEQA review, separate application or process.

3.2.5. CEQA Review. The City has conducted extensive environmental review of the Project Approvals and has certified the West Area Specific Plan Final Environmental Impact Report (the "Project EIR") pursuant to the requirements of CEQA. To the maximum extent permitted by law, the City shall process Subsequent Project Approvals under the existing CEQA approvals (or as an addendum or supplement to the existing CEQA approvals) and shall not require further CEQA action unless such additional review is legally mandated under the CEQA Guidelines. The Parties acknowledge that certain discretionary Subsequent Project Approvals, if any, may be legally required to be subject to additional review under CEQA. The City shall process all documents required under CEQA for the Project. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement is intended to limit or restrict the discretion of the City to take any appropriate action as may be required by

CEQA with respect to any such discretionary Subsequent Project Approvals. The Developers are responsible for all costs associated with any additional CEQA review required for Subsequent Project Approvals, including the payment of recording fees (if any) and the Notice of Determination Fee or Notice of Exemption Fee, as applicable.

SECTION 4
DEFAULT, REMEDIES, TERMINATION

4.1 Defaults.

4.1.1 Except for Non-curable Defaults, any failure by the City or Developer to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, the default shall continue and no additional cure period shall be provided. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under **Section 4.3**.

4.1.2 Any Assignment or other transfer in violation of **Section 5** shall be considered a Non-curable Default.

4.1.3 No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any Default.

4.2 Actions During Cure Period. During any cure period specified under **Section 4.1.1** and during any period prior to delivery of any notice of default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

4.3 Remedies for Non-Defaulting Party.

4.3.1 In the event either Party is in default under the terms of this Agreement, subject to any applicable requirements of **Section 4.4**, the other Party may elect to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided in this Agreement; and (iii) pursue any judicial remedies available.

4.3.1.1 Developers' Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and the conditions of this Agreement unless such default is cured or this Agreement is terminated. The Developer shall cause to be placed in any covenants, conditions, and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover reasonable attorneys' fees and costs for such enforcement.

4.3.2 Unless otherwise provided in this Agreement, either Party, in addition to any other rights or remedies, may institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance.

4.4 Dispute Resolution; Legal Action.

4.4.1 Mediation. Except as otherwise provided herein, no action or proceeding with respect to any dispute, claim or controversy arising out of or relating to this Agreement ("**Dispute**") may be commenced until the matter has been submitted to mediation. Either Party may commence mediation by providing to the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings in Monterey County (unless otherwise agreed by the Parties). The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise

admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action or proceeding with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action or proceeding, if the Parties so desire. The provisions of this **Section 4.4.1** may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom enforcement is ordered.

4.4.2 If the mediation required under the provisions of this Agreement has not resolved the Dispute any Party to this Agreement may then commence an action or proceeding relating to a Dispute. Jurisdiction over any such dispute(s) shall be had in Monterey County or in the appropriate federal court with jurisdiction over the matter.

4.5 Annual Review.

4.5.1 Each year during the Term of this Agreement beginning on or about the first anniversary date of the execution of this Agreement, the City shall review the extent of good faith compliance by Developers with the terms of this Agreement. This review shall be conducted by the Community Development Director and shall be limited in scope to compliance with the terms of this Agreement pursuant to the Development Agreement Statute.

4.5.2 A finding by the Community Development Director of good faith compliance by Developers with the terms of this Agreement, or a lack of a finding to the contrary, shall conclusively determine such good faith compliance up to and including the date of such review.

4.5.3 The burden of proof, by substantial evidence, of good faith compliance shall be upon the Developers. The Developers shall provide the evidence determined to be necessary by the City Attorney to demonstrate good faith compliance with the provisions of this Agreement. The Community Development Director may conduct the annual review notwithstanding the Developers' failure to submit the written request or to provide substantial evidence of compliance. Costs reasonably incurred by the City in connection with the annual review and any related hearing shall be paid by the Developers in accordance with the City's schedule of fees in effect at the time of the review. If, following such review, the Community Development Director is not satisfied

that the Developers have demonstrated good faith compliance with all the terms and the conditions of this Agreement, the Community Development Director may refer the matter along with her or his recommendation to the City Council. Similarly, in the event the Developers disagree with the Community Development Director's determination of non-compliance with all the terms and the conditions of this Agreement, the Developers may appeal the Community Development Director's determination to the City Council to determine whether the Developers are in compliance.

4.5.4 With respect to each year for which an annual review of compliance with this Agreement is conducted, upon request of Developers (or any of them), the City shall provide Developer with a written "**Notice of Compliance**," or, based on substantial evidence of a material failure of Developer to comply in good faith with the terms of this Agreement after notice and a reasonable opportunity to Developer to cure such failure, "**Notice of Non-compliance**," as applicable, duly executed and acknowledged by the City. Either Party shall have the right to record any such notice.

4.5.5 Failure by the Developers (or any of them) to request review under this **Section 4.5** or failure of City to initiate review under this **Section 4.5** shall not invalidate any provisions of this Agreement or constitute a default hereunder.

4.6 Force Majeure Delay, Extension of Times of Performance.

4.6.1 In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event.

4.6.2 Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay, the reason for the delay and an estimated length of delay. Upon the other Party's receipt of such notice, the period of time for performance of any obligation or duty shall be automatically extended for the period of the Force Majeure Event, unless the other Party objects in writing within thirty (30) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached at the conclusion of the meet and confer session(s), either Party may initiate dispute resolution proceedings as set forth in **Section 4.4** of this Agreement. During the period of any Force Majeure Event extension, the Parties shall use their best efforts to minimize potential adverse effects resulting from the Force Majeure Event.

4.7 Legal Challenge by Third Party.

4.7.1 It is specifically understood and agreed by the Parties that the Project contemplated by this Agreement is a private development, that the City has no interest in or responsibility for or duty to third persons concerning any of said improvements, except for those improvements that are accepted by the City for maintenance and responsibility, and that the Developers shall have the full power over and exclusive control of the Property subject only to the limitations and the obligations of the Developers under this Agreement.

4.7.2 In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (not a Party to this Agreement) challenging the validity or enforceability of this Agreement, the Parties shall cooperate with each other in the defense of any such challenge, provided such cooperation shall not extend to payment of funds or expenses in defending such challenge unless agreed by the cooperating Party.

4.7.3 Developer shall indemnify, defend and hold harmless the City, its officers, agents, employees, officers from any claim, action or proceeding brought by a third party within the applicable statute of limitations (i) challenging the validity of this Agreement or seeking to attack, set aside, void or annul any action, decision or approval taken by the City pursuant to this Agreement, (ii) any development of the Property during the term of this Agreement or the Project Approvals, (iii) any actions or inactions by the Developers (or any of them) or their contractors, subcontractors, agents, or employees in connection with construction of the improvement of the Property and the Project, or (iv) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless or defend it to the extent that such claims, costs or liability arise from, or are alleged to have arisen from, the sole negligence or willful misconduct of the City. The City shall cooperate with Developer in the defense of any matter in which Developer is defending or holding the City harmless and for such purpose Developer shall retain competent legal counsel approved by the City, which approval shall not be unreasonably withheld or delayed; provided, however, that the City and the Developers shall each bear their own respective costs, if any, arising from such defense. The City shall promptly notify the Developers of any such claim, action or proceeding. If the City fails to promptly notify the Developers of any such claim, action or proceeding, or if the City fails to cooperate fully in the defense, the Developer shall not thereafter be responsible to defend, indemnify or hold harmless the City. Nothing contained in this Agreement

prohibits the City from participating in the defense of any claim, action or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

4.8 Estoppel Certificate.

4.8.1 Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party:

4.8.1.1 This Agreement is in full force and effect, and unless otherwise indicated has not been amended.

4.8.1.2 To best of knowledge, the Party requesting such certificate is not in default of the performance of its obligations under this Agreement, or alternatively, if a default exists or notice of default has been given, the nature and amount of any such defaults.

4.8.2 A Party receiving a request hereunder shall execute and return such certificate within twenty (20) business days following the receipt thereof. The Parties acknowledge that any certificate given hereunder may be relied upon by any governmental agency, any assignee, and other persons having an interest in the Project, including holders of any deed of trust. The City Manager shall be authorized to execute any such certificate for the City, unless otherwise directed by the City Council.

4.9 Termination of Agreement. This Agreement is terminable by mutual written consent of the Parties, and such termination shall not require or be contingent upon the approval or consent of any other person or entity. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement. Any unused fees, fee credits or deposits shall be refunded to Developers forthwith. Any one or more of the Developers may terminate this Agreement upon the City's mutual written consent. In the event any one or more of the Developers so terminates this Agreement with respect to their portion of the Property, the rights and obligations of the remaining Developers under this Agreement shall not be effected and this Agreement shall remain in full force and effect as to those remaining Developers.

4.9.1 Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, neither Party shall have any further rights or obligations under this Agreement. Subject to **Section 4.9.3**, each Party

understands that it may have sustained damages that arise, or may arise out of, or relate to the termination of this Agreement that may not be apparent and that are presently unknown. Each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for all such damages. The waivers and releases in this Agreement include waivers and releases of any claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to termination of this Agreement by mutual written consent of the Parties.

4.9.2 Subject to **Section 4.9.3**, each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, all rights or benefits that it has or may have under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4.9.3 Nothing herein contained shall release or excuse Developer in the performance of its obligations to indemnify and defend the City as provided in this Agreement.

4.10 Limitation on Legal Actions. In no event shall the City, or its officers, employees, or agents be liable in damages for any breach or violations of this Agreement, it being expressly understood and agreed that the Developers sole legal remedy for a breach or a violation of this Agreement by the City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

SECTION 5
ASSIGNMENTS

5.1 Limitation As To Assignment. Except as permitted by **Section**s 5.2 and 5.3 of this Agreement, Developer shall not assign, or attempt to assign or otherwise transfer this Agreement or any right herein (each referred to as an "**Assignment**") in whole or in part, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City may refuse to give its consent only if, in light of the proposed assignment and financial resources, such assignee would not in the City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. The Developers acknowledge that the identity, make-up and

proposal of the Developers are of particular concern to the City and it is because of these matters that the City has entered into this Agreement.

5.2 Permitted Assignment. The prior written approval of the City shall not be required for the following Assignments:

5.2.1 Any Assignment to one or more Affiliates of Developer; or

5.2.2 The merger, consolidation, restructuring or sale of substantially all of the assets of Developer or of any Affiliate; or

5.2.3 The assignment to any trustee by way of a deed of trust in favor of holder or beneficiary under such deed of trust, or the absolute or collateral assignment, pledge, grant or transfer to such holder, of the Developer's right, title and interest in, to and under this Agreement for the purpose of creating an encumbrance on or security interest in such interest, or to or by any such holder or other purchaser in connection with its acquisition of the Project Site by foreclosure or deed in lieu of foreclosure; or

5.2.4 The sale of individual parcels to third parties (provided, however, that such parcels shall be subject to the Specific Plan and Project Approvals).

5.3 Assumption of Assigned Obligations. As a condition to any Assignment under this Agreement, any person or entity accepting such Assignment ("**Assignee**") shall assume all of the obligations of this Agreement as they pertain to the portion of the Property being transferred to the Assignee. The assumption shall be on a form acceptable to the City and following the Assignment shall be recorded on the portion of the Property transferred. This requirement shall apply whether or not the transfer requires approval of the City.

5.4 Release of Developer. Upon the effectiveness of any Assignment and assumption of Developer's obligations by any Assignee, the Developer shall be fully relieved and released of each of its duties and obligations with respect to the portion of the Property transferred to the transferee from and after the date of such transfer, except as to those obligations of Developer under this Agreement, Project Approvals or Applicable City Regulations that affect more than the portion of the Property being transferred.

5.5 Successive Assignment. In the event of any Assignment under the provisions of this **Section 5**, the provisions of this **Section 5** shall apply to each successive Assignment and Assignee. The Developer's obligations under this Agreement with respect to the portion of the Property transferred which are to be assumed by the

Assignee shall be set out in substantially the form of the Assignment and Assumption Agreement.

5.6 Unapproved Transfers Void. Any Assignment, or attempted Assignment, that is not approved by the City as required under this **Section 5**, or that is inconsistent with the provisions of this **Section 5,** shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

SECTION 6
GENERAL PROVISIONS

6.1 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Project, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Project, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

6.2 Covenants Binding on Successors and Assigns. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

6.3 Covenants Run With Land. The provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property which is for the benefit of the Property or shall constitute a burden upon the Property, as applicable, shall run with the land, and is binding upon each Party and each successive owner during its ownership of the Property, or any portion thereof.

6.4 Bankruptcy. The obligations of this Agreement shall not be dischargeable in Bankruptcy.

6.5 Reimbursement of Development Agreement Costs and Fees. Prior to the City's issuance of any Subsequent Project Approvals, the Developers shall reimburse the City for all its reasonable and actual costs, fees, and expenses incurred in drafting, reviewing, revising, and processing this Agreement, including, but not limited to, recording fees, ordinance publication fees, staff time in preparing staff reports, and staff time, including legal counsel and special counsel fees, for preparation and review of this Agreement and changes requested by the Developers (or any of them). Exhibit F.

6.6 Reimbursement of Annexation Costs and Fees. Prior to the City's issuance of any Subsequent Project Approvals, the Developers shall reimburse the City for all its reasonable and actual costs, fees, and expenses incurred in relation with the annexation of the Property into the City including, but not limited to, staff time, legal counsel fees, consultant fees, and publication fees. Exhibit G.

6.7 Preamble, Recitals, Exhibits. References herein to "**this Agreement**" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

6.8 Attorneys Fees. Should any legal action or proceeding be brought by either Party regarding any matter arising out of or relating to this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorneys' fees actually incurred, court costs, and such other costs as may be determined by the court.

6.9 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a separately undertaken private development and Developer shall have full power over and exclusive control of the Project subject only to the limitations and obligations of Developers under this Agreement and the Project Approvals and Subsequent Project Approvals. No partnership, joint venture, agency or other association of any kind between Developers and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating development and the owner of the Project.

6.10 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

6.11 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective Party as follows:

If to City:
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Attn: City Manager

With a Copy To:
City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Attn: City Attorney

And

Community Development Director
City of Salinas
65 West Alisal, 2nd Floor
Salinas, California 93901

If to Developer:

Rexford Title, Inc.
Attention: Mark Kelton
2716 Ocean Park Blvd., Suite 3006
Santa Monica, CA 90405

Ray Harrod, Jr.
365 Victor Street, Suite S
Salinas, CA 93907

Patricia Jane Bondesen
Three Ravine Way
Kentfield, CA 94904

RCS Salinas Investment I, LLC
Attention: Joseph Rivani
3470 Wilshire Blvd. Suite 1020
Los Angeles, CA 90010

Alvin C. and Karen Rae Mortensen
27840 Mesa Del Toro Road
Salinas, CA 93908

Ann Aaore
[We need the contact information]

With a Copy To:
Brian Finegan
Attorney at Law
P. O. Box 2058
Salinas, CA 93902

A notice shall be effective on receipt. Any Party may change the address stated herein by giving written notice to the other Party, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which provides written request to City for notice.

6.12 Invalidity of Agreement; Severability. If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of **Section 4.9** relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the forgoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

6.13 Applicable Law; Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement

shall be filed and heard in a court of competent jurisdiction in Monterey County. The Developers acknowledge and agree that the City has approved and has entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or the meaning of this Agreement shall be that accorded legislative acts of the City.

6.14 Waivers. No waiver of any obligations under this Agreement shall be enforceable or admissible unless set forth in a writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly set forth in such writing. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

6.15 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

6.16 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

A-1	Map of West Area of Future Growth Area
A-2.1	Map of Rexford Property
A-3.1	Map of Bondesen Property
A-4.1	Map of Mortensen Property
A-5.1	Map of Harrod Property
A-6.1	Map of Global Property
A-7.1	Map of Kantro Property
B	Exactions Applicable to the Project E
Table 1 to Exhibit B	Development Impact Fees
C	Regulations Applicable to the Project
D	Boronda Road (WASP Project Buildout)

E	Inclusionary Housing Ordinance and Guidelines
F	Development Agreement Costs and Fees
G	Annexation Costs and Fees

6.17 Interpretation. This Agreement has been drafted jointly, and reviewed by the Parties and their attorneys and, therefore, shall not be construed in favor of or against a Party that may have drafted any particular term or provision. Prior versions or drafts of this Agreement shall not be used to interpret the meaning or intent of this Agreement or any provision hereof.

6.18 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiation or previous agreements between the Parties with respect to all or any part of the subject matter hereof. To the extent that there are conflicts or inconsistencies between this Agreement and any prior agreement, the provisions of this Agreement shall prevail.

6.19 Further Assurances and Acts. Each Party shall perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.

6.20 Signatures; Signature Pages; Execution in Counterparts. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective individuals or legal entities of the Developers and of the City. This Agreement shall inure to the benefit and be binding upon the Parties hereto and their respective successors and assigns. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages in counterparts which, when attached to this Agreement, shall constitute this as one complete Agreement.

6.21 Time of the Essence. Time is of the essence in the performance of each Party's respective obligations under this Agreement.

6.22 No Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following:

(a) Confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express Parties to it;

(b) Relieve or discharge the obligation or liability of any person not an express Party to this Agreement;

(c) Give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

IN WITNESS WHEREOF, the City and Developers have executed this Agreement as of the date first hereinabove written.

"City":

CITY OF SALINAS,

a municipal corporation

By: _____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

"Developers":

Rexford Title, Inc.
A California corporation

By: _____
Its: _____

By: _____
Its: _____

_____
Patricia Jane Bondesen

_____
Alvin C. Mortensen, Trustee

_____
Karen Rae Mortensen, Trustee

_____
Ray Harrod, Jr.
d/b/a Harrod Construction Company

RCS Salinas Investment I LLC
A California limited liability company

By: _____
Manager

Ann Aaroe
An Individual and Successor Trustee of the Deon Kantro Trust

_____
Ann Aaroe, An Individual

_____
Ann Aaroe, Successor Trustee

APPROVED AS TO FORM:

_____

Michael Harrington, Esq.
Finegan & Harrington, LLP

EXHIBIT A-1
MAP OF WEST AREA

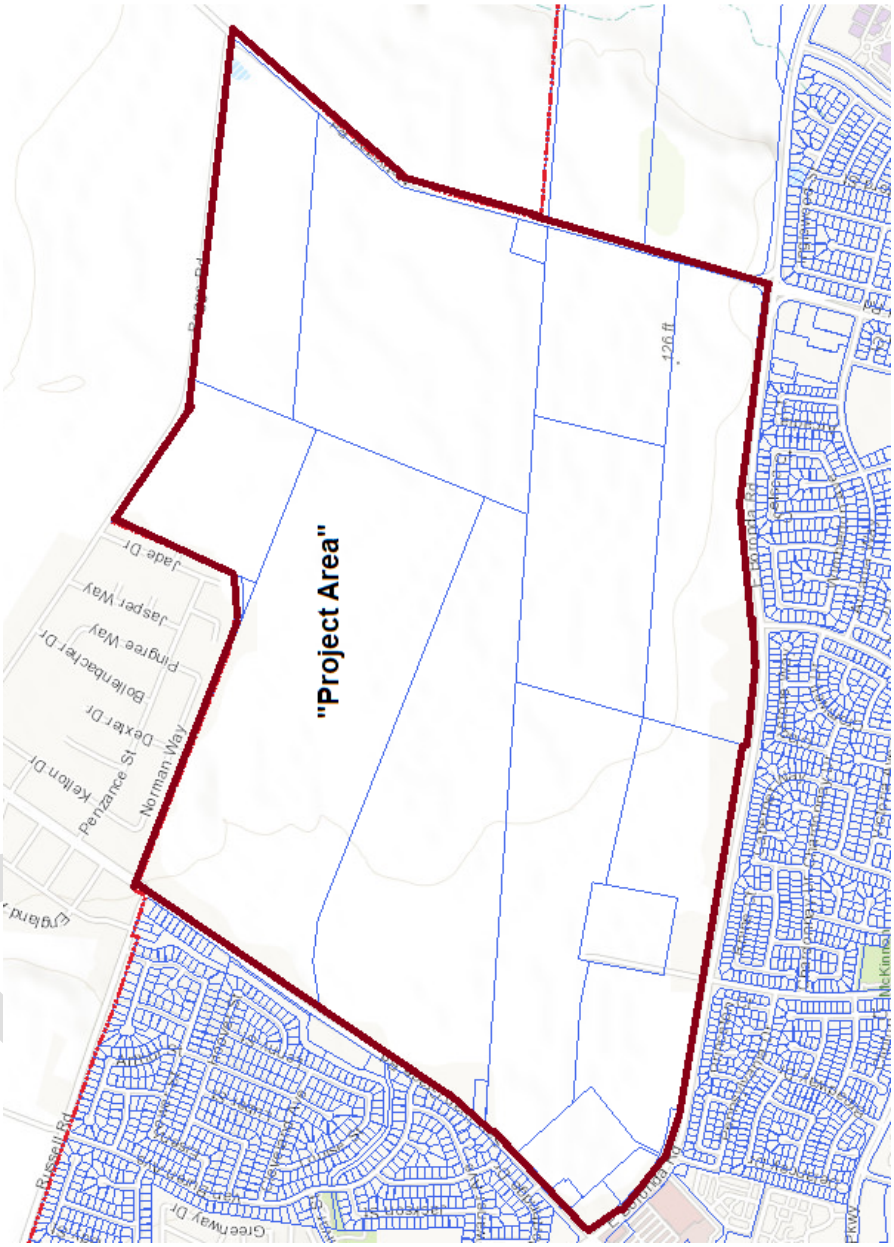


EXHIBIT A-2

MAP OF REXFORD PROPERTY

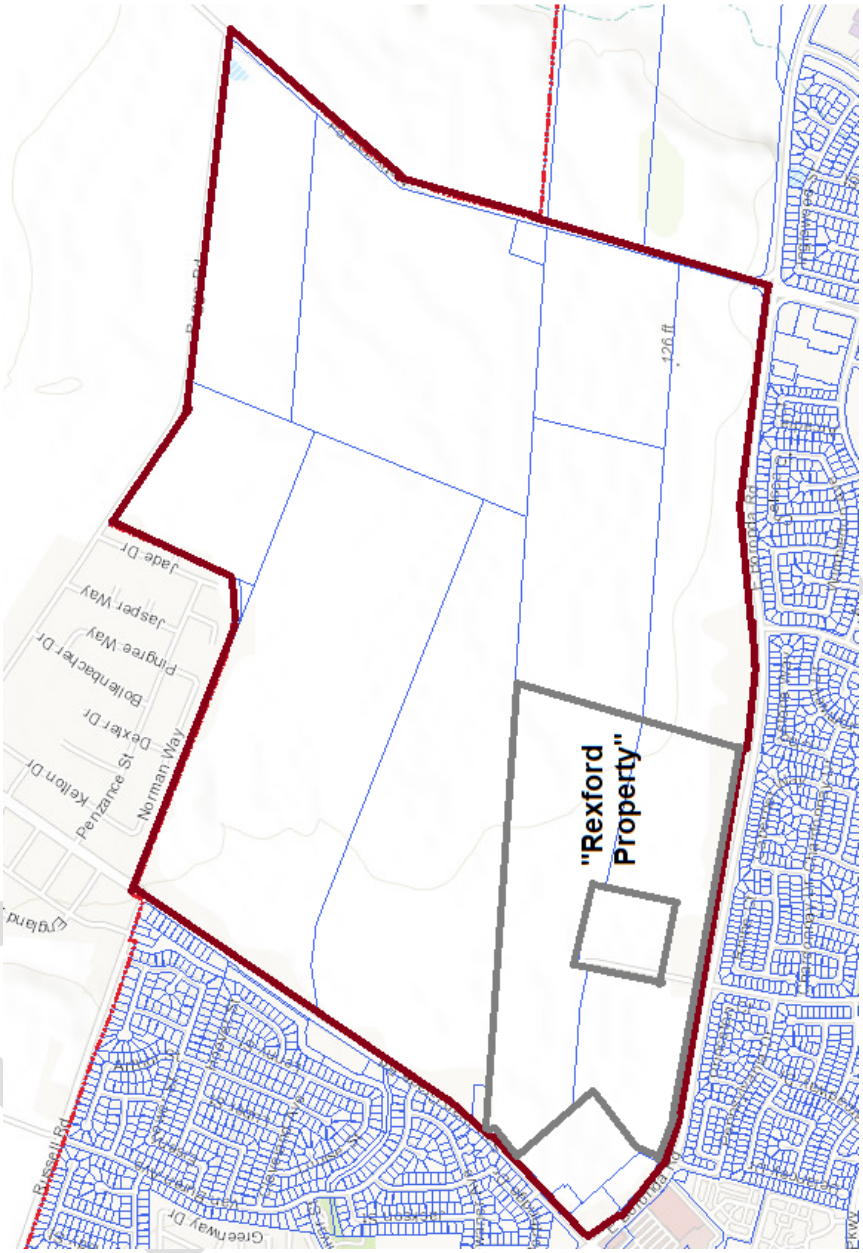


EXHIBIT A-3

MAP OF BONDESEN PROPERTY

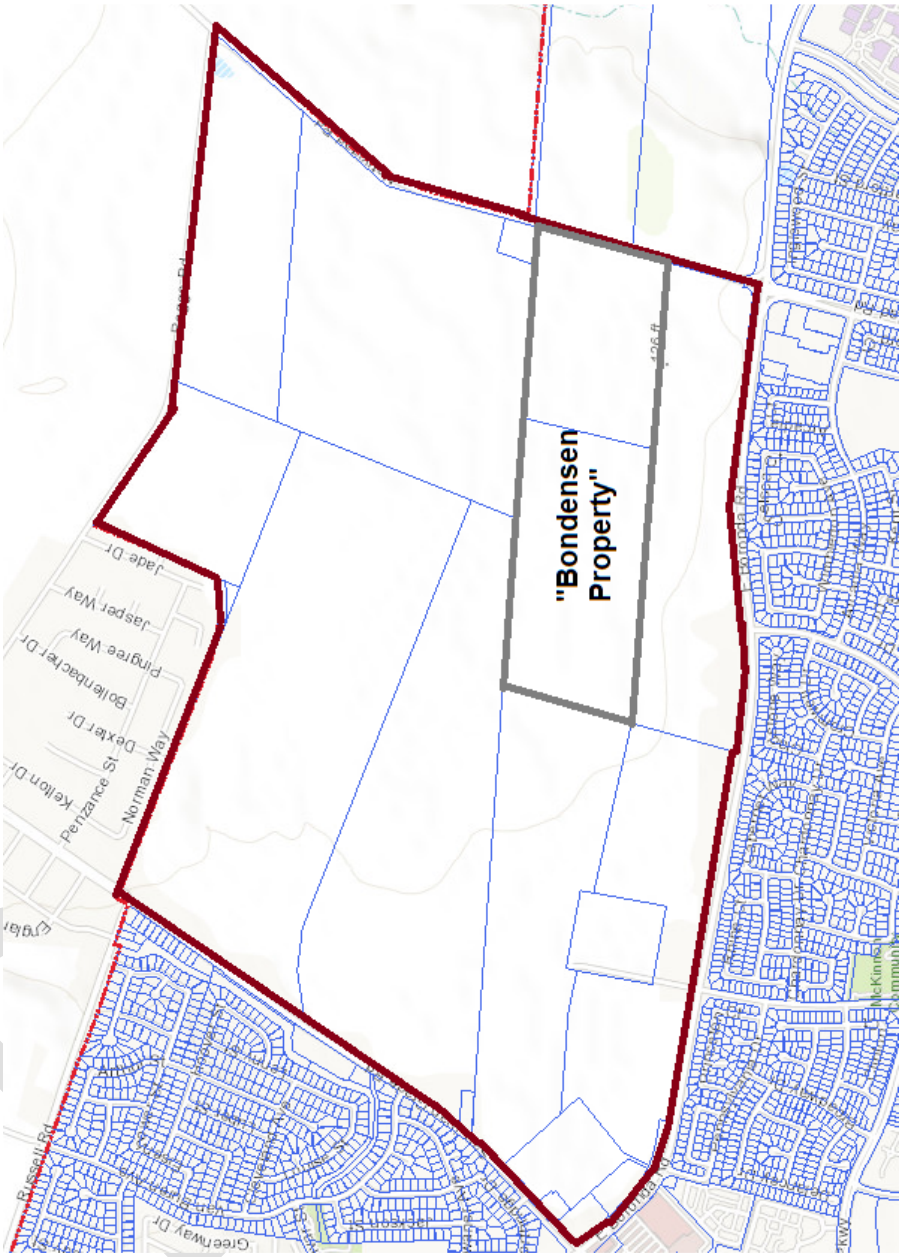


EXHIBIT A-4

MAP OF MORTENSEN PROEPRTY

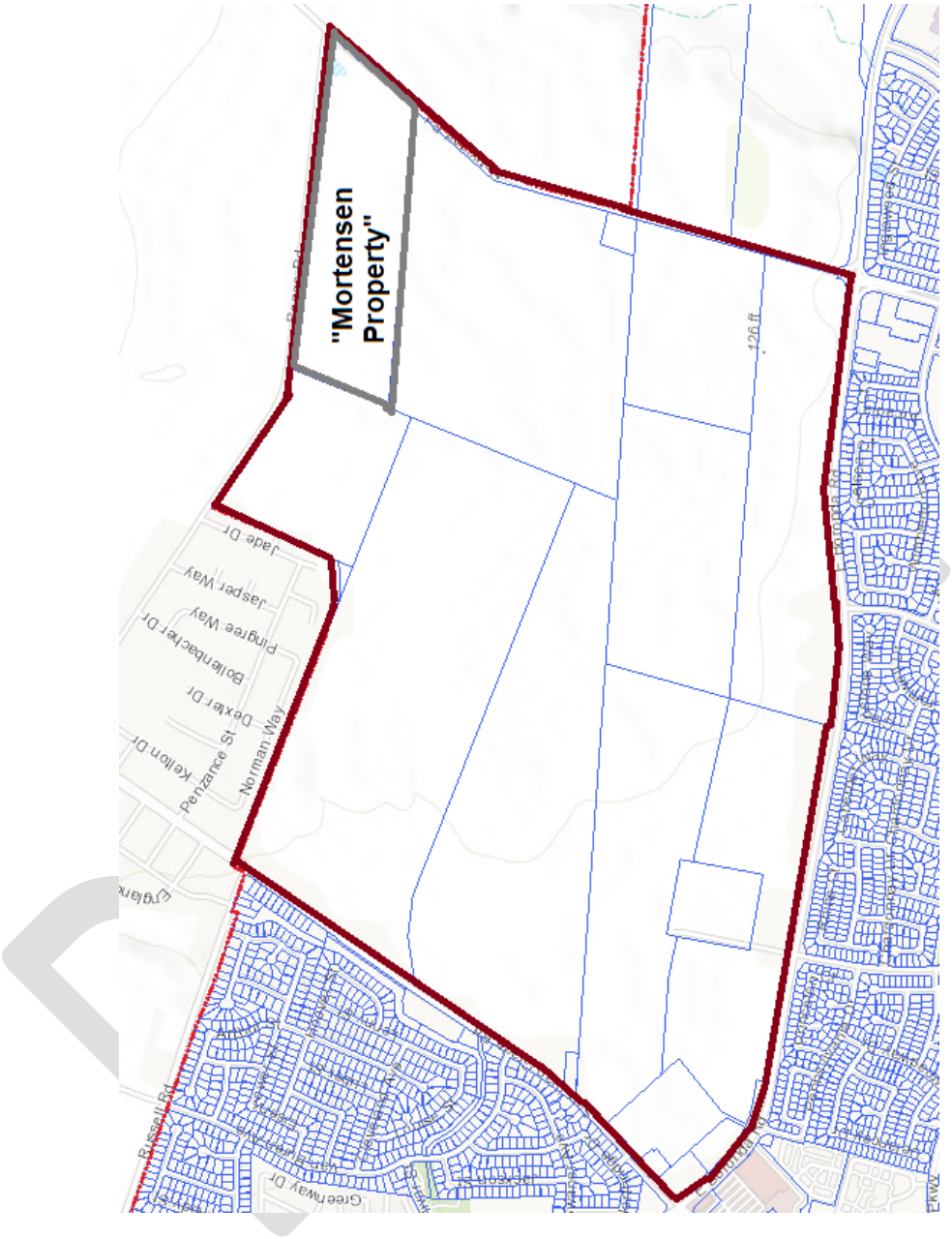


EXHIBIT A-5

MAP OF HARROD PROPERTY

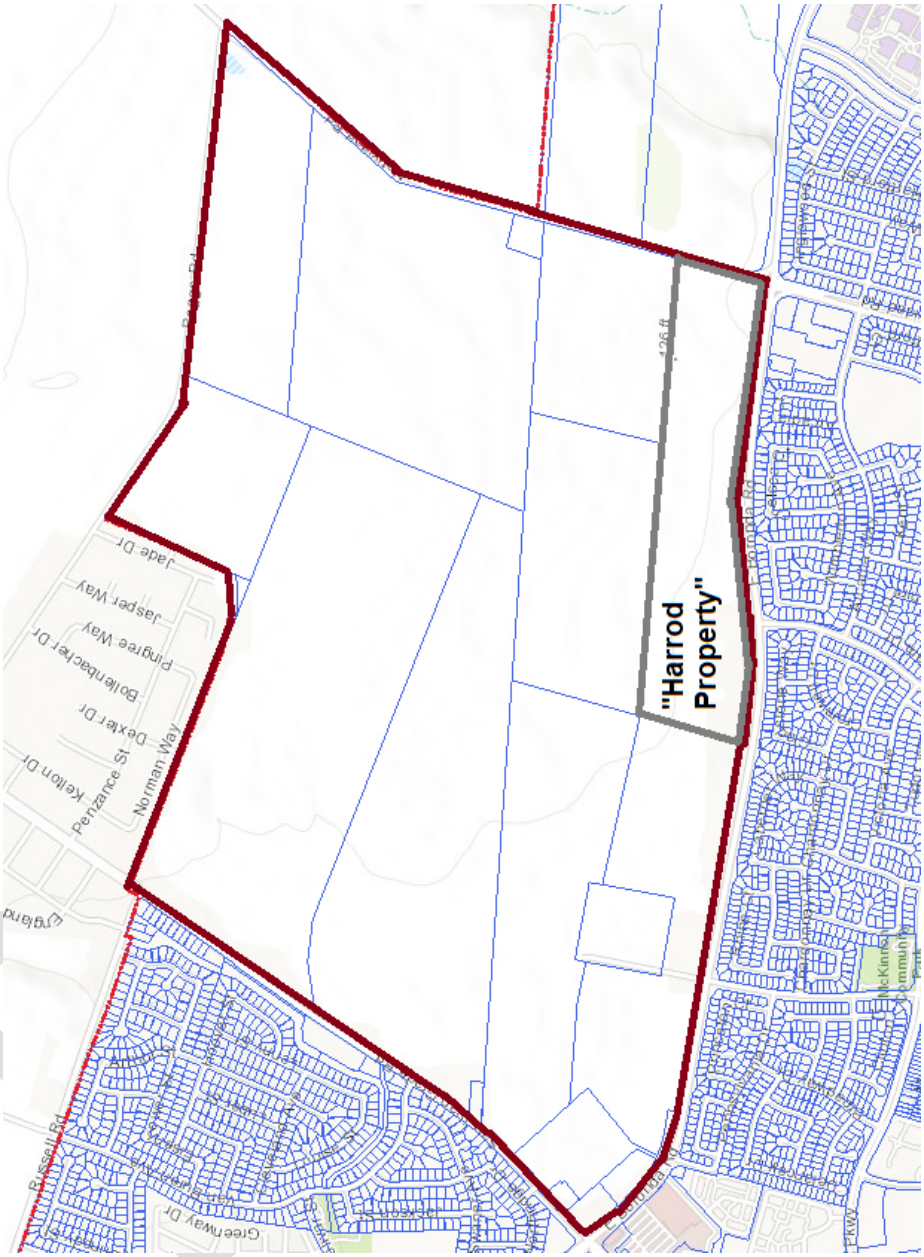


EXHIBIT A-6

MAP OF GLOBAL PROPERTY

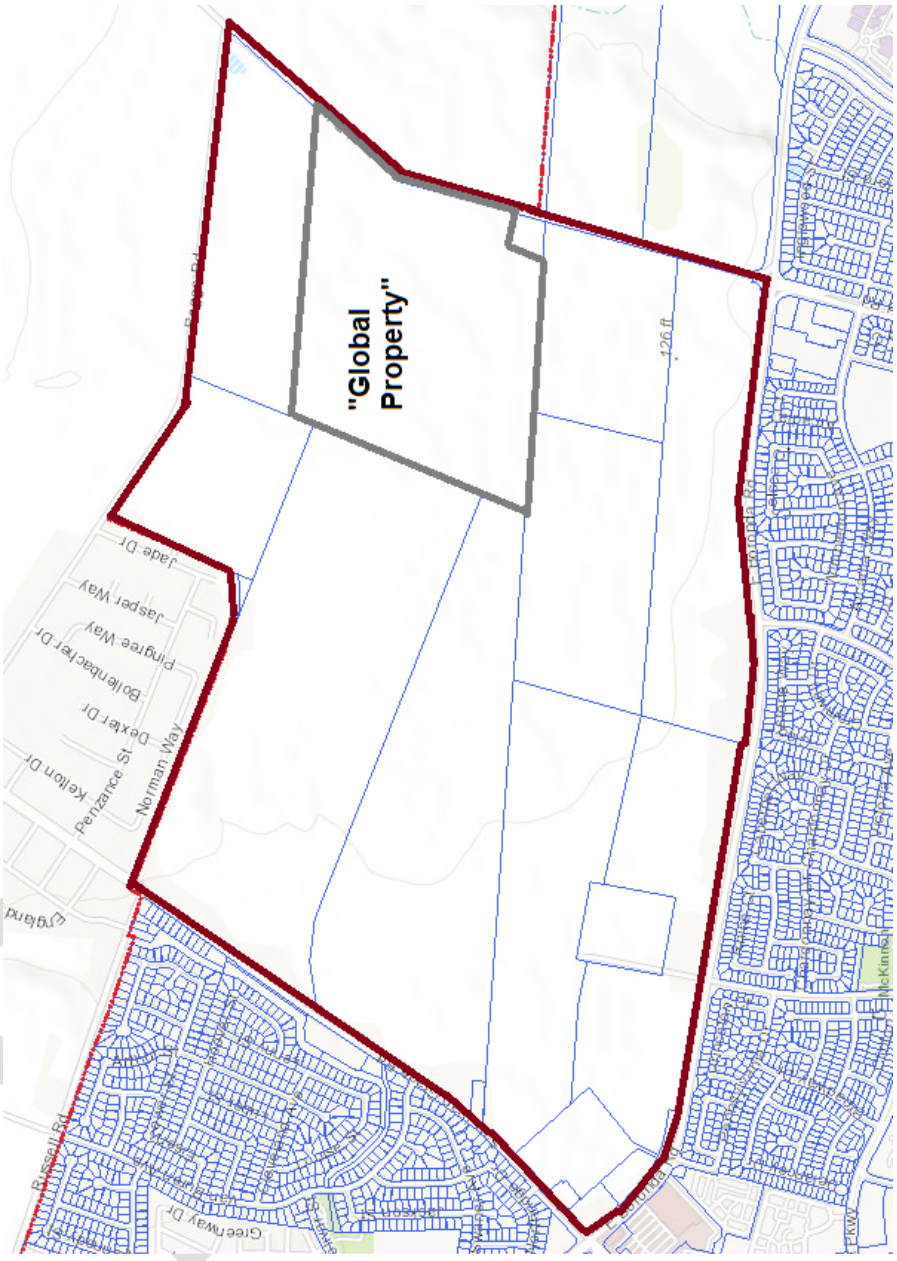


EXHIBIT A-7

MAP OF KANTRO PROPERTY

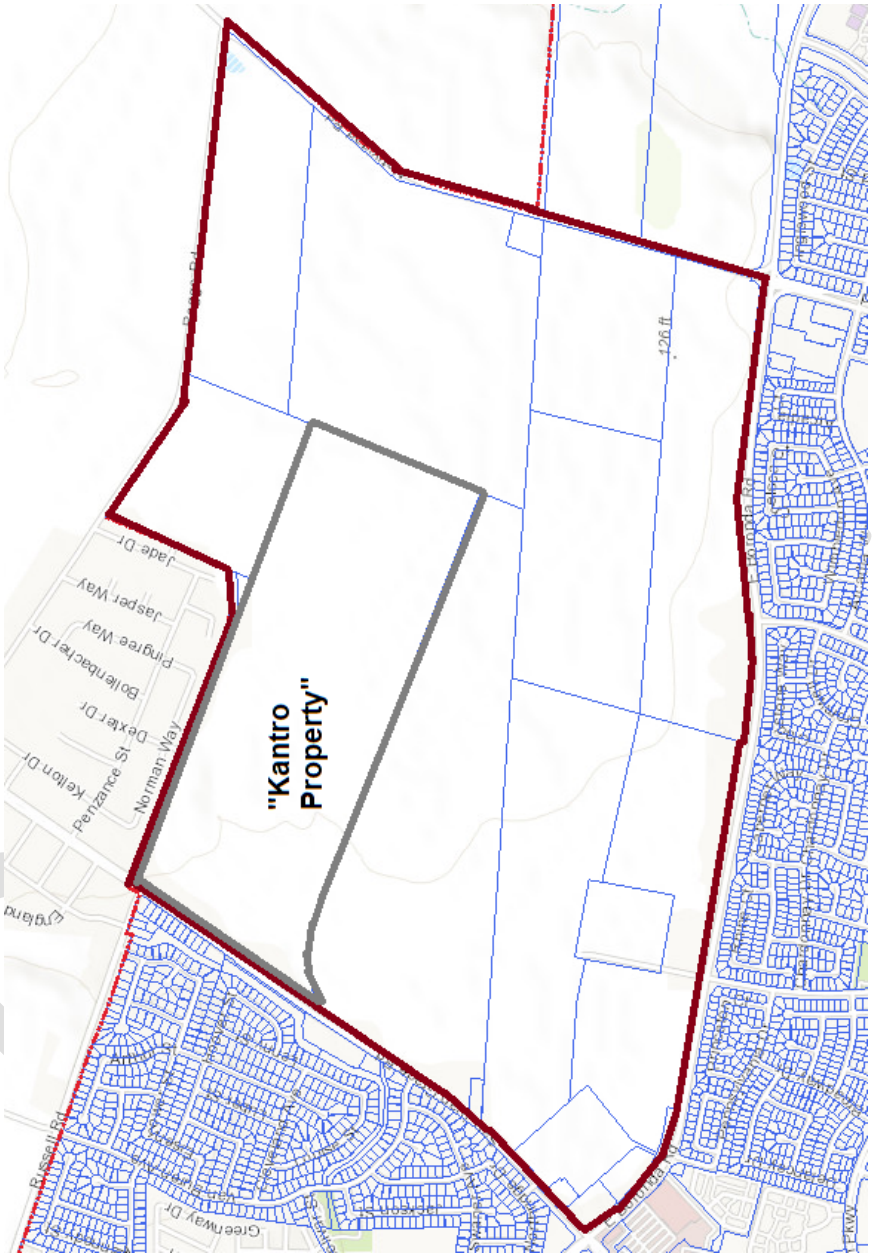


EXHIBIT B

EXACTIONS APPLICABLE TO THE PROJECT

[Subject to conforming and clarifying changes prior to execution and recordation]

1. **Development Impact Fees.** City and Developer agree that the development impact fees payable with respect to the specific land uses developed in the Project shall those listed in **Table 1** to this **Exhibit B**. The Development Impact Fees shall be the cost/rate in effect on the Effective Date of this Agreement. The Development Impact Fees set forth in Table 1 shall be automatically adjusted based on the increase or decrease in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the period ending December 31 of the preceding calendar year. Fees paid after the date of such adjustment shall be paid at the adjusted rate.

2. **Traffic Mitigation Measures.** City agrees not to impose on the Project any traffic mitigation measures other than those specifically set forth in the Project EIR.

3. **Environmental Mitigation and Implementation Measures.** The Parties understand that the Project EIR was intended to be used in connection with the Project Approvals and the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, including but not limited to California Code of Regulations, Title 14, Section 15182, the City agrees to use the Project EIR in connection with the processing of any Subsequent Project Approval to the maximum extent allowed by law.

TABLE 1 TO EXHIBIT B

DEVELOPMENT IMPACT FEES

Street Tree Fee

Public Utility Impact Fee
- **Storm Drain Fee**
- **Sanitary Sewer Fee**

Park Fee (WAPIF)

Traffic Impact Fee

Public Facilities Impact Fee

EXHIBIT C

CITY REGULATIONS APPLICABLE TO THE PROJECT

To the extent not in conflict with or not inconsistent with the Specific Plan, Parcel Map, and other Project Approvals, and except as otherwise provided for in this Agreement, the following rules, regulations and official policies in effect as of the Effective Date shall apply to the Project and Property:

A. City of Salinas General Plan, adopted September 17, 2002, in effect as of the Effective Date.

B. City of Salinas Subdivision Ordinance, Chapter 31 of the City of Salinas Municipal Code in effect as of the Effective Date.

C. City of Salinas Zoning Ordinance, Chapter 37 of the City of Salinas Municipal Code in effect as of the Effective Date.

D. City of Salinas Inclusionary Housing Ordinance (Ordinance No. 2594, June 6, 2017) and City of Salinas Inclusionary Housing Guidelines (Resolution No. 21175, June 6, 2017).

E. All other ordinances, resolutions, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the Property subject to a development agreement in effect as of the Effective Date.

F. Exactions (see Exhibit B)

EXHIBIT D
(Boronda Road WASP Project Buildout)

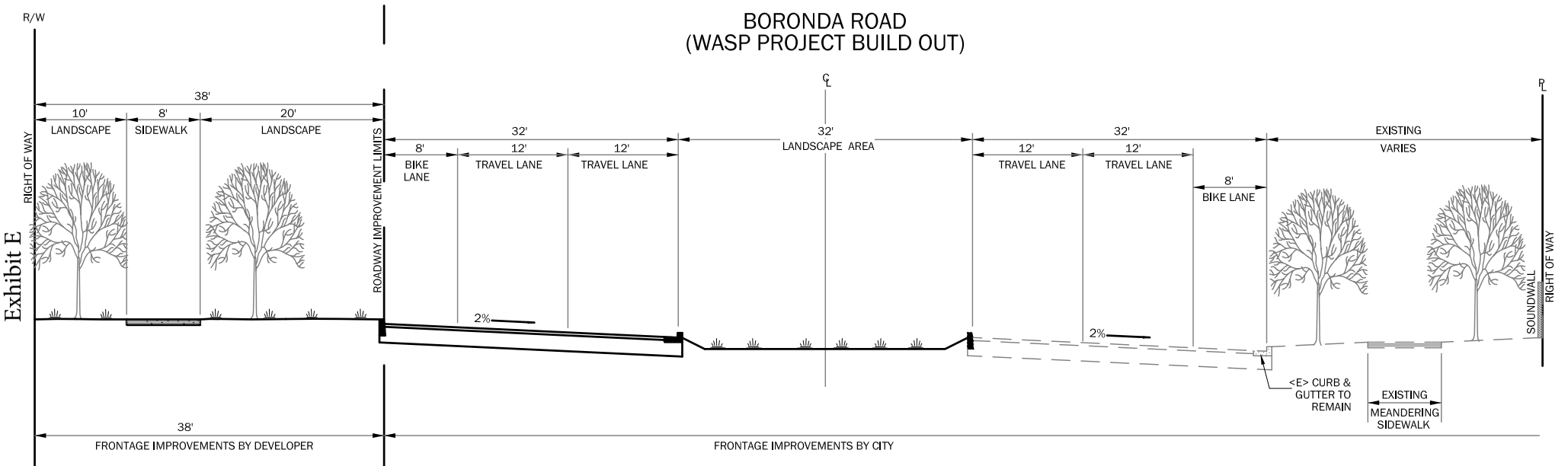
EXHIBIT E

Inclusionary Housing Ordinance and Guidelines
(Ordinance No. 2594, June 6, 2017; Resolution No. 2567)

EXHIBIT F
Development Agreement Costs and Fees

EXHIBIT G
Annexation Costs and Fees

Exhibit E


BORONDA ROAD
(WASP PROJECT BUILD OUT)
R/W
RIGHT OF WAY
38'
10'
LANDSCAPE
8'
SIDEWALK
20'
LANDSCAPE
ROADWAY IMPROVEMENT LIMITS
32'
8'
BIKE LANE
12'
TRAVEL LANE
12'
TRAVEL LANE
2%
℄
32'
LANDSCAPE AREA
32'
12'
TRAVEL LANE
12'
TRAVEL LANE
8'
BIKE LANE
2%
EXISTING
VARIES
<E> CURB & GUTTER TO REMAIN
EXISTING MEANDERING SIDEWALK
SOUNDWALL
RIGHT OF WAY
℄
38'
FRONTAGE IMPROVEMENTS BY DEVELOPER
FRONTAGE IMPROVEMENTS BY CITY

CITY OF SALINAS
INCLUSIONARY HOUSING GUIDELINES

Adopted June 6, 2017
City Council Resolution No. 21175

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INTRODUCTION

A. PURPOSE

Since 1992, the City of Salinas has had an Inclusionary Housing Ordinance (Ordinance) to ensure that new development in the City would provide housing affordable to a range of income levels consistent with the City's General Plan Housing Element (Housing Element) goals and policies. As part of the City's 2015-23 Housing Element update, the City Council authorized direction under "*Action H-8: Inclusionary Housing*" to update the Ordinance along with a nexus study. These Inclusionary Housing Guidelines (Guidelines) incorporate provisions of the most recently adopted 2017 Ordinance.

The Ordinance prescribes City policy for affordable housing. However, it does not include fully detailed instructions for administration, which allows more flexibility in implementing the Ordinance. Instead, the Ordinance called for the City Council to adopt updated Guidelines.

These Guidelines implement the Ordinance adopted by the Salinas City Council (Article 3 of Chapter 17 of the Salinas Municipal Code (Sections 17-6 through 17-19). They constitute the Guidelines referred to from time to time in the Ordinance.

All of the terms of the Ordinance are not repeated in these Guidelines, which supplement but do not reiterate the entire Ordinance. Applicants must also refer to the Ordinance when submitting an application. If there is any conflict between these Guidelines and the Ordinance, the Ordinance shall control.

These Guidelines are not adopted as an Ordinance. While they give direction, administration of the Ordinance will necessarily need to occur in a reasonably flexible fashion consistent with the Ordinance's purpose and provisions. The Guidelines provide this flexibility while assuring conformance to the City's vision and goals for affordable housing.

B. RELATION TO OTHER AFFORDABLE HOUSING PROGRAMS

The Ordinance is designed to work together with other programs that provide affordable housing in the City of Salinas. Numerous developers since the inception of the first Ordinance, which was adopted in 1992, have created affordable housing when they have obtained federal, state, and local government grants and other assistance. Developers may also provide affordable housing to obtain a density bonus. As required by state density bonus law, developers may receive a density bonus for providing affordable units required by the Ordinance.

When the City implements other affordable housing programs, it will attempt to utilize the same administrative procedures as specified in these Guidelines, to the extent reasonable and consistent with the legal requirements of the other programs. It may also modify the practices authorized in these Guidelines when inclusionary units receive other sources of assistance subject to different regulations and statutes.

C. DEFINITIONS

The terms used in these Guidelines have the same meaning as in the Ordinance.

D. RESPONSIBLE CITY STAFF

The Ordinance is administered by the City of Salinas Community Development Department Housing Division, located at:

City of Salinas Permit Center
65 W. Alisal Street, 2nd Floor
Salinas, CA. 93901

Phone: (831) 758-7334
Fax: (831) 775-4258
E-mail: housingwebmail@ci.salinas.ca.us

SECTION ONE
PROVIDING INCLUSIONARY HOUSING IN RESIDENTIAL PROJECTS

This section of the Guidelines describes how developers and applicants comply with the Ordinance. Part A describes the projects subject to the Ordinance. Part B describes the basic requirements. The Ordinance is implemented primarily through two documents: the Affordable Housing Plan and the Inclusionary Housing Agreement. The Affordable Housing Plan, described in Part C, is submitted with a planning application and describes how the project will comply with the Ordinance. The Inclusionary Housing Agreement, described in Part D, is a contract between the City and the developer that is recorded against the property to ensure that the inclusionary housing is built as proposed in the Affordable Housing Plan. Part E describes how the City will ensure that the inclusionary housing is built.

A. PROJECTS SUBJECT TO THE INCLUSIONARY HOUSING ORDINANCE

The Ordinance applies to any project that requires any development permit and will create ten or more dwelling units or lots through either new construction or additions or alterations to existing structures. This includes:

(1) New construction of at least ten units of for-sale housing;

(2) Subdivision of property into ten or more lots; and

(3) Additions or alterations to existing structures to create ten or more new dwelling units.

A "dwelling unit" for purposes of the Ordinance includes a "dwelling unit" and "single room occupancy housing" as defined in the Salinas Zoning Ordinance (Chapter 37 of the Salinas Municipal Code).[1] If buildings that are not considered to be "dwelling units," such as motels and hotels, are remodeled to create ten or more dwelling units, then they are subject to the Ordinance. However, the Ordinance only applies to newly created units or lots. For example, if five units are added to an existing five-unit building, for a total of ten units, the Ordinance will not apply, because only five units are being newly created.

The City considers concurrent applications on contiguous parcels under the same ownership or submitted by the same applicant (or controlled by the same applicant or owner) to be one residential development for purposes of the Ordinance.

Exemptions

The following projects are exempt from the Ordinance:

- Projects creating fewer than ten additional dwelling units or lots.

Note: “Dwelling unit” means a room or suite of two or more rooms with internal circulation, designed for use by one family for living or sleeping purposes, and having only one kitchen or kitchenette. (Salinas Municipal Code Section 37-10.280).
“Single room occupancy housing” means a residential facility with individual secure rooms, of a smaller size than normally found in multi-family dwellings, which may have kitchen and bathroom facilities, and which are rented to a one- or two-person household on a long-term basis. (Salinas Municipal Code Section 37-10.430).

- Residential developments located in the Downtown Area, unless the City Council by Resolution determines that, based on market conditions, the provisions of this article will be applied in the Downtown Area. Downtown Area means the area within the boundaries of the Central City Overlay District as defined per Zoning Code 37-40.300. The Downtown Area exemption applies to adaptive reuse and new construction developments.
- Projects exempt under provisions of the Subdivision Map Act, except that those projects must comply with the Ordinance in effect on the date that they were deemed complete.
- One-hundred percent (100%) affordable low-income housing projects with either a deed restriction, restrictive covenant or regulatory agreement no less than 30 years.
- Proposed developments that have met certain milestones and comply with the requirements of the predecessor Ordinance. See the Ordinance for more information. These include:
    - Projects exempt under the terms of a development agreement
    - Residential developments exempted by Government Code section 66474.2 or 66498.1
    - Residential developments that have submitted a complete planning or building permit application along with full payment of required application fees to the City prior to the effective date of the Ordinance.

B. OPTIONS FOR PROVIDING INCLUSIONARY UNITS

On-site inclusionary housing requirements apply only to ownership (for-sale) housing developments of ten units or greater. Rental developments instead pay an affordable rental housing impact fee. A developer of rental housing may opt to voluntarily provide affordable rental housing in exchange for a City-provided benefit, as described in the Ordinance, and a developer of for-sale housing may opt to pay in-lieu fees.

Basic Options

The Ordinance in Section 17-9 and 17-10 provides three standard on-site inclusionary options for developers who elect to provide housing on site. A key part of any application for a residential development is for the applicant to select the appropriate inclusionary option. The table below summarizes the three standard on-site options.

Applicants may also choose alternatives to the standard on-site options as described in Section 17-13 of the Ordinance. These alternatives must be reviewed and approved by the City Council.

TABLE 1: SUMMARY OF STANDARD ON-SITE INCLUSIONARY OPTIONS

	Option 1	Option 2	Option 3
	20%	**15%**	**12%**
Very low Income (50% of median)	4% Ownership or rental	Not Required	8% Rental
Lower Income (80% of median)	8% Ownership or rental	Not Required	4% Rental
Median Income (100% of median)	Not Required	6% All must be ownership	Not Required
Moderate Income (120% of median)	4% All must be ownership	6% All must be ownership	Not Required
Workforce Income (160% of median)	4% All must be ownership	3% All must be ownership	Not Required

To use one of the options that has a rental housing component, developers must meet certain conditions, as described in Section C describing the Affordable Housing Plan.

Number of Units Required

In computing the total number of inclusionary units required on-site in a residential development, fractions of one-half (1/2) or greater are rounded up to the next highest whole number, and fractions of less than one-half (1/2) are rounded down. For example, a 53-unit development choosing option three would provide 47 market-rate units and 6 affordable units (53 x .12 = 6.36, rounded down to 6). A 55-unit development would provide 48 market-rate units and 7 affordable units (55 x .12 = 6.60, rounded up to 7).

In-Lieu Fees and Rental Housing Impact Fees

Developers of rental housing are required to pay a rental housing impact fee unless they voluntarily elect to mitigate the impact by providing affordable rental housing. If an applicant chooses to pay rental housing impact fees, the applicant will also make twelve percent (12%) of the units within the development available to Section 8 Housing Choice Voucher (Section 8) Program participants so long as the Section 8 Program is in effect. Units within the development that are offered to Section 8 Program participants should represent a unit and bedroom mix and be properly disbursed throughout the development. The applicant will include the proposed placement of the Section 8 Program units within the development as part of the Affordable Housing Plan which is to be reviewed and approved by the City. Developers of for-sale housing may elect to satisfy their affordable housing obligation by paying an in-lieu fee. All housing fees are deposited into the City's inclusionary housing trust fund. The City Council from time to time will adopt in-lieu fees and rental housing impact fees, which may be increased annually based on

increases of an established index. Full details regarding the dollar amounts and calculation of the in-lieu fees and rental housing impact fees are included in the City's adopted fee resolution. The fee is charged per square foot of residential development. In-lieu fees are due when building permits are issued.

Generally, the fee is based on the square footage of the buildings, not counting parking. For apartments, hallways, elevators and stairs are excluded from the calculations.

Specifically, for Single-Family Detached Homes, Townhomes, and Condominiums, Residential Floor Area includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking. For Apartments, Residential Floor Area includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for covered porches, patios, or other outdoor space, amenities and common space, parking, elevators, stairwells or stairs between floors, hallways, and between- unit circulation.

Other Alternatives

There are a number of alternatives available for developers that require City Council review and approval. These alternatives are described in the Ordinance in Section 17-13. Below is a list of alternatives:

1. Land Dedication
2. Partnerships
3. Off-Site Construction
4. Transfers of Surplus Inclusionary Units
5. Other Options

Land Dedication

Developers may dedicate land instead of providing affordable units. Among other conditions, the land must be appropriate for and zoned to allow development of the required inclusionary units. The land must have the infrastructure to serve the development and no unmitigated environmental hazards. The site must also comply with the City's fair housing goals by not tending to cause racial segregation.

Additionally, if the land is transferred to the City rather than to an affordable housing developer, the City must be allowed to sell or lease the property with the proceeds from the sale of the land deposited into the affordable housing trust fund. (The City's preference is not to sell the land, but rather to see affordable housing built on it.)

Off Site Production

Within the Future Growth Area, the affordable units may be built on a site different from the site of the Residential Development. Among other conditions, the alternative site must be located in the Future Growth Area and zoned appropriately for the proposed number of units. The units

must be completed prior to or concurrently with the market-rate development. The land must have the infrastructure to serve the development and no unmitigated environmental hazards. The site must also comply with the City's fair housing goals and not increase racial segregation.

Partnerships

Developers may contract with an experienced affordable developer to construct all or part of the inclusionary units. Per the Ordinance, the City Council must be assured that the required inclusionary units will be built in a timely fashion, that the affordable housing developer has the capability to develop the project, that the construction and permanent financing will be secured for the construction of the units within a reasonable time, and that the proposal otherwise meets the conditions described in Section 17-11 of the Ordinance.

Surplus Unit Transfers

Developers within the Future Growth Area may elect to produce more affordable housing than otherwise required and generate credits that can be used to offset future affordable housing obligations within the Future Growth Area. The credits may be used by the developer that produced them or sold to other developers. Credits expire after five years, but developers may request one five-year extension. All the affordable units must be located in the Future Growth Area.

Affordable units used for credits must match the tenure, affordability level and bedroom count of the units that would otherwise be required. However, deeper affordability or larger units are permitted. For example, if a developer produced four surplus for-sale, affordable housing units at 120% of the Area Median Income, the credits could not be used to meet a rental obligation nor could they be used to satisfy an obligation for units at a lower affordability level (e.g. 100% of AMI). However, they could be used to satisfy an obligation for units at a higher affordability level (e.g. 160% of AMI).

Developers must notify the City using the appropriate City-supplied form when selling Credits.

Other Options

A developer may propose an option not listed in the Ordinance as part of the Affordable Housing Plan. It may be approved by the City Council if it provides substantially the same or a greater level of affordability and the same number of units as required by the basic options. Alternatively, a developer may propose to provide fewer units with deeper affordability.

Nondiscrimination

The City of Salinas, through its Inclusionary Housing Ordinance upholds the purposes and policies of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968. The City adheres to HUD's program requirements to take steps to proactively overcome historic patterns of segregation, promote fair housing choice and foster inclusive communities for all. The City is purposefully incorporating the same policies within its Inclusionary Housing Ordinance. Inclusionary Housing will meet the goals, wherever possible, to reduce segregation and increase integration; deter racially and ethnically concentrated areas of poverty; increase access to education, employment, low-poverty, transportation, and environmental health, among other critical assets.

Standards for Inclusionary Units

Section 17-12 of the Ordinance describes the standards for the inclusionary housing units. In addition, the following standards apply.

Interior Design Standards – Inclusionary units may have different interior finishes (i.e. the finishes do not need to be like-for-like) and features than market-rate units in the same residential development, as long as the finishes and features are functionally equivalent to the market-rate units and are durable and of good quality. For example, if the market units include a refrigerator and dishwasher, similarly sized appliances must be provided in the affordable units. All material and appliances must be new.

Exterior Design Standards - The exterior finishes of the inclusionary units must be consistent with the exterior design of all market-rate units. An observer should not be able to differentiate the inclusionary units from market-rate units by looking at the exterior of the building. Affordable units must meet the same parking standards as market-rate units, unless a parking incentive is requested under state density bonus law.

The inclusionary units must have the same amenities as the market-rate units, including the same access to and enjoyment of common open space and facilities in the residential development.

Generally, inclusionary units should be of the same construction type and have the same proportion of units with each number of bedrooms as the market-rate units. For example, if the market-rate units are single-family, three-bedroom homes, the affordable units must be three-bedroom, single-family homes. However, the Ordinance provides some flexibility. Developers may satisfy their obligation for moderate income units through duplexes, townhomes, or small (12 unit or less) multifamily buildings, so long as at least 50 percent of the units in the multifamily development must be market-rate. Developers may satisfy their workforce housing obligation through small lot single-family homes, even if the market-rate units are on large lots.

The City Council may allow rental units to be grouped as necessary so that state and federal financing sources, including low income housing tax credits, may be used, so long as the Affordable Housing Plan contains a management plan that ensures to the satisfaction of the City that the units will be well managed.

The City Manager or designee may choose to develop more detailed interior finish or exterior design standards.

All inclusionary units must also meet the standards in Table 2.

TABLE 2: Minimum Standards for All Inclusionary Units

	Single-Room Occupancy	Studio	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Minimum Size (sq. ft.)	250	500	650	900	1,100	1,275
Minimum No. Bathrooms*	¾	1	1	1	1 ¾	1 ¾

*A full bathroom includes sink, toilet, and tub with shower. A ¾ bath includes a sink, toilet, and tub or shower.

C. AFFORDABLE HOUSING PLAN

Preparation of an Affordable Housing Plan is the first step in complying with the Ordinance.

Timing of Submittal of Affordable Housing Plan

The City's goal is to ensure that inclusionary housing is considered early in the planning process and included as part of any master planning. An Affordable Housing Plan must be submitted with the first application for a planning approval of any residential development with ten or more units or lots. The first application may include an application for a specific plan, general plan amendment, zoning, prezoning, development agreement, planned unit development permit, tentative map or minor subdivision, conditional use permit, site plan review, or building permit.

No application for a residential development will be deemed complete unless accompanied by an Affordable Housing Plan, or unless an Affordable Housing Plan has been previously approved for the development. The application for an Affordable Housing Plan must be accompanied by any processing fee adopted by resolution of the City Council. If a project requires no planning approval, the Affordable Housing Plan must be submitted with an application for a building permit.

No Affordable Housing Plan is required if the applicant, as part of its first application, states that it has opted to pay rental housing impact fees or for-sale housing in-lieu fees to meet the requirements of the Ordinance

Contents of Affordable Housing Plan

The required contents of the Affordable Housing Plan are specified in Exhibit A and in the Ordinance Section 17-16. The City Manager or designee is authorized to make changes in Exhibit A from time to time when necessary to ensure that residential developments comply with the Ordinance. When the City accepts a proposal from a developer to build affordable rental units, the Plan must include certain provisions, as described in Exhibit A, to ensure compliance with the Costa-Hawkins Act. The Affordable Housing Plan need be only at the same level of detail as the application for a residential development. For instance, an Affordable Housing Plan that is submitted as part of a specific plan application would generally describe the construction phases for the specific plan, describe the City's inclusionary requirements, and explain how the requirements would be met in each phase of design and construction. An Affordable Housing Plan for a tentative map would indicate which inclusionary option (Option 1, 2, 3 or alternative) the developer is selecting, the location and type of the affordable units, tenure and level of affordability, and phasing, but might not include design details or specify number of bedrooms and unit size if they had not yet been determined for the rest of the development. Where the initial Affordable Housing Plan is not at sufficient detail to determine compliance with the Ordinance, the City may require additions to the Plan as part of later planning approvals, or as part of the Inclusionary Housing Agreement.

If the residential development includes fewer than 10 units, the Affordable Housing Plan must include all contiguous property under common ownership or control. “Common ownership or control” means that the contiguous property is owned or controlled (including by an option to purchase or a purchase agreement) by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns

ten percent (10%) or more of the interest in the property, as the property that is proposed for the residential development.

One of the most critical parts of the Affordable Housing Plan is the phasing of the inclusionary units in relation to the construction of market-rate units. Normally, each construction phase designated by the developer will contain the required inclusionary units for that construction phase, although different phasing may be approved if there is adequate security to ensure that the required inclusionary units will be built. For instance, a developer may choose to build extra inclusionary units in an early phase so that there may be a smaller number of inclusionary units for the other phases of construction.

Approval of Affordable Housing Plan

The Affordable Housing Plan is usually reviewed along with the required planning application and approved at the same time and by the same approval body that has authority to approve the planning application. For instance, if the project can be approved by the Planning Commission, the Affordable Housing Plan can also be approved by the Planning Commission. The Affordable Housing Plan will be approved if it conforms to the provisions of the Ordinance.

City Council approval is required if the applicant requests approval of any alternative listed in Section 17-13, including any of the following:

1. Land Dedication
2. Partnerships
3. Off-Site Construction
4. Transfers of Surplus Inclusionary Units
5. Other Options

After an applicant submits an Affordable Housing Plan to the City, the City will review it and notify the applicant within 30 days whether or not it is complete. The Department's decision regarding completeness and conformance may be appealed directly to the City Council within 10 days of the Department's decision by following the procedures for notice and hearing of an appeal specified in Sections 37-60.1270 – 37.60.1310 of the City's Zoning Ordinance.

Minor modifications to an approved Affordable Housing Plan may be approved by the City manager as provided in Section 17-16(d), if the modification is consistent with the original Affordable Housing Plan and conditions of approval. Other modifications must be processed as an amendment to the project approval.

D. INCLUSIONARY HOUSING AGREEMENT

The City will attach a condition of approval to all projects subject to the Ordinance requiring that an Inclusionary Housing Agreement be recorded prior to the approval of any final or parcel map, or issuance of any building permit (see Ordinance Section 17-16).

The Inclusionary Housing Agreement is a recorded contract between the City and the property owner describing the inclusionary units and income categories and explaining in detail how the units will be marketed and sold or rented. Its purposes are to ensure that the developer is aware of the implementation requirements and that the requirements are enforceable. The Inclusionary

Housing Agreement is recorded against all of the property that is part of the residential development and provides notice of the Agreement to future owners of the property.

Contents

Exhibit B lists the items that will be included in an Inclusionary Housing Agreement. The City Council, by resolution, will approve standard forms to be used. The City Manager or designee is authorized to vary the form of the Agreement to ensure that it is consistent with the Affordable Housing Plan approved by the City for the residential development. All property included in the project and, for projects with fewer than 10 units, all contiguous property under common ownership or control must be included in the Plan.

In some cases, where a project consists of rental units that are to be built in a single phase, the City and the developer may be able to agree on the terms of a rent regulatory agreement (discussed in Section Five) applying to the inclusionary rental units before any building permit is issued or a final or parcel map is recorded. In those cases, a rent regulatory agreement may be recorded in place of an Inclusionary Housing Agreement, so long as the rent regulatory agreement includes provisions for the timing of construction of the inclusionary units in relation to the construction of the market-rate units.

Covenant Running With the Land; Superior Position

The Inclusionary Housing Agreement must be executed and recorded against the entire residential property included in the project and, if included in the Affordable Housing Plan, any contiguous property under common ownership or control prior to or concurrently with the approval of any final or parcel map or issuance of any building permit for the residential development. The Agreement shall be recorded as a covenant running with the land and shall be recorded in first position, superior to other liens and encumbrances, except for:

(1) Liens to secure payment of real estate taxes and assessment, not delinquent;

(2) Non-monetary matters affecting the title which do not unreasonably impact the security of the Inclusionary Housing Agreement;

(3) A lien or regulatory agreement of a local, federal, or state governmental agency, provided that both of the following conditions are met:

   a. The public agency is providing financing or other assistance for the housing development; and

   b. The statute or regulation governing the financing or assistance from that agency does not permit the City's Inclusionary Housing Agreement to be senior to the agency's agreements; and

(4) Short-term financing (such as construction loans) when approved on a case-by-case basis by the City Manager and provided that subordination of the Inclusionary Housing Agreement serves the City's interest in creating affordable housing.

By City Council resolution, the City Manager or designee is authorized to implement this section and to execute Inclusionary Housing Agreements on behalf of the City.

Termination

The Inclusionary Housing Agreement may only be terminated as follows:

(1) *For-sale units:* The Inclusionary Housing Agreement may be terminated against the market-rate units as the inclusionary units in the construction phase are completed, or as otherwise approved by the City in the Affordable Housing Plan.

The Agreement will not be terminated against an individual inclusionary unit until close of escrow, when the City's equity-sharing agreement and deed of trust are recorded against the individual unit.

(2) *Rentals (for developments that choose to provide units):* Normally the Inclusionary Housing Agreement is replaced by a rent regulatory agreement when the property is ready for occupancy, and the Agreement is terminated after the rent regulatory agreement is recorded against the property. The rent regulatory agreement applies to the entire property, because the location of the inclusionary units within the complex may change over time. Where specific apartments are designated as inclusionary rental units, however, the appropriate conditions for termination of the Agreement will be determined as part of the approval of the Affordable Housing Plan for the project.

If, before construction begins, a rent regulatory agreement is recorded in place of an Inclusionary Housing Agreement, the rent regulatory agreement will not be terminated after construction is completed and will continue to restrict the property for the term of the agreement.

The City will record a release of the Inclusionary Housing Agreement at the time it is terminated.

E. COORDINATION WITH PERMIT CENTER FOR ISSUANCE OF BUILDING PERMITS AND APPROVAL OF FINAL INSPECTIONS

The Ordinance includes "concurrency requirements." These specify that a certain number of building permits must be issued for inclusionary units before the developer can be issued building permits or final inspection approvals for market-rate units.

Based upon the inclusionary option selected by the developer and the terms of the Inclusionary Housing Agreement, City Building Permit Center staff will maintain records sufficient to monitor both building permit issuance and final inspection approvals to ensure compliance with the Ordinance. Following receipt by the developer of required land use entitlements, the City Planning Division will advise the City's Permit Center staff of the pending project and work with them to coordinate the issuance of building permits.

Payment of Rental Housing Impact Fees and In-Lieu Fees

Where the developer has elected to pay rental housing impact fees or in-lieu fees rather than construct affordable units, the fees will be collected by the Building Permit Center staff prior to issuance of each building permit for the project based on the fees in effect at the time the building permit is issued.

Building Permits and Occupancy – Concurrent Construction Requirements

A Building Permit Specialist will track the issuance of building permits by construction phase, noting the number of both inclusionary and market-rate unit permits. Building permits will only be issued for market-rate units according to the terms of the recorded Inclusionary Housing Agreement. However, the City may issue permits for inclusionary units earlier than specified in the plan.

The concurrency requirements are as follows:

The City may issue building permits for 70 percent of the market-rate units within a residential development before issuing any building permits for inclusionary units, and may approve certificates of occupancy or final inspections for 70 percent of market-rate units before approving any final inspections for inclusionary units. After this point, a developer may be issued building permits and receive final inspections for market-rate units after a proportional number of inclusionary units have been issued building permits or have received a final inspection.

For example, if a developer proposes a 100-unit development, and uses option 1, they are obligated to provide 20 inclusionary units, which means there will be 80 market-rate units. The City may issue building permits for 56 market-rate units (70% x 80) before issuing any building permits for inclusionary units, and may approve occupancy of 56 market-rate units before approving occupancy of any inclusionary units.

The City has the option to grant additional flexibility for timing when developers partner with an experienced non-profit affordable housing provider. At its sole discretion, the City may issue building permits for 100 percent of market rate units within a residential development before issuing building permits for any inclusionary units if the developer is partnering with an experienced non-profit affordable housing provider.

At times, the required affordable housing units may not be equally divisible into the income categories as specified in the Ordinance. In this case, the affordability levels are described in the following table.

Option 1 (20% mixed ownership and rental)	Option 2 (15% all ownership)	Option 3 (12% all rental)
The first two required inclusionary units shall be affordable to lower income households.	The first required inclusionary units shall be affordable to median income households.	The first required inclusionary units shall be affordable to very low income households.
The third required inclusionary unit shall be affordable to very low income households.	The second and third required inclusionary unit shall be affordable to moderate income households.	The second required inclusionary unit shall be affordable to low income households.
The fourth required inclusionary unit shall be affordable to moderate income households.	The fourth required inclusionary unit shall be affordable to median income households.	The third required inclusionary unit shall be affordable to very low income households.
The fifth inclusionary unit shall be affordable to workforce income households.	The fifth required inclusionary unit shall be affordable to workforce income households.	All additional required inclusionary units shall be provided in the same order as above.
All additional required inclusionary units shall be provided in the same order as above.	All additional required inclusionary units shall be provided in the same order as above.	

This table refers to the overall obligation, but not the timing of unit production, which will be specified in the affordable housing plan. Additionally, developers may substitute a lower income unit for a higher income unit requirement at any time.

Development in Phases

The City shall not be obligated to issue building permits or approve final building inspections requested by a developer if inclusionary units are not being issued building permits or final inspections in accordance with the recorded Inclusionary Housing Agreement.

SECTION TWO
ESTABLISHING AFFORDABLE PRICES AND RENTS

This section describes how to calculate affordable prices and rents (for rental developments that choose to participate).

A. AFFORDABLE PRICES AND AFFORDABLE RENTS

The City uses the State Department of Housing and Community Development (HCD) income limits as published annual for Monterey County based on household size for its inclusionary housing units. In calculating affordable rents, the City uses Section 8 Housing Voucher utility allowances as published by the Housing Authority of the County of Monterey (HACM).

Affordable sales prices for inclusionary units in residential projects will be determined by the City when the marketing plan is submitted for the inclusionary units in a construction phase. The City will determine property taxes, homeowner's insurance, and other factors using available market information. The interest rate used will be the rate published by the Federal National Mortgage Association (FNMA) for a 30-year fixed rate first mortgage, unless the developer has obtained a commitment for permanent financing for the inclusionary units at another rate. The permanent financing must meet the standards for purchase money loans included in Section Three.

Exhibit C shows the methodology that will be used by the City to calculate affordable sales prices. Exhibit D shows the methodology that will be used by the City to calculate affordable rents. Exhibits C and D are designed to be consistent with the Ordinance.

SECTION THREE
MARKETING AND SELECTION OF BUYERS AND RENTERS

This section describes which households are eligible for inclusionary housing, explains City preferences for homebuyers and renters, and contains standards for marketing inclusionary units and for selecting eligible households to purchase or rent the inclusionary units.

A. ELIGIBLE HOMEBUYERS AND RENTERS

Inclusionary units are reserved for very low, low, median, moderate, or workforce-income households who meet the eligibility criteria in this section when the inclusionary units are rented or sold. Applicants for inclusionary ownership and rental units shall be solicited as necessary to maintain an adequate number of applications in each of the following applicant pools:

Very low income and lower income households occupy for-sale or rental inclusionary units, while for-sale inclusionary units are occupied by median income, moderate income, and workforce income households.

Definition of a Household or Family

A household, or family, is a group of individuals living together based on personal relationships. A person is not eligible to buy or rent an inclusionary unit if they are listed as a dependent on the tax return of a person who is not part of the household occupying the inclusionary unit. For instance, students claimed as dependents by their parents cannot purchase or rent an inclusionary unit.

Calculating Household Size

A household is comprised of one or more persons who may or may not be related based on personal relationships. An unborn child can be counted in family size once there is medical confirmation of pregnancy. An adoption process will be counted in family size with verification of the adoption process being underway. A child will be considered part of the household when the child lives with a single parent at least 75 percent of the time or, where there is joint custody, at least 50 percent of the time. The applicant will need to submit a copy of the divorce decree or child custody agreement as verifiable documentation. If a divorce is in process, it may not be possible to qualify an applicant because family size and financial status are unclear.

If a family member is permanently absent from the household (for instance, a spouse who is in a nursing home or legally separated), that the person is no longer a member of the household for purposes of the Ordinance.

Documentation acceptable to the City's Planning Manager will be required to substantiate that the household member is no longer residing with the rest of the household.

Income Limits

Income limits for very low, lower, median and moderate-income households, adjusted for household size, are as shown for Monterey County and published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision. In the event that these income limits are no longer published periodically in the California Code of Regulations, the City Manager or designee will determine an alternate method of computing income limits for very low, lower, median, and moderate-income households.

Income limits for workforce-income households are computed by multiplying by two the income limits for lower income households in Monterey County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as determined by the City if income limits are no longer published periodically.

Determining Household Income

Applicants' household annual gross income shall be calculated in accordance with the Technical Guide for Determining Income and Allowances for the HOME Program published by the U.S. Department of Housing and Urban Development (HUD), as it may be amended (the HOME Guide), and 24 CFR 5.609.

A copy of the HOME Guide is available for download here:

http://portal.hud.gov/hudportal/documents/huddoc?id=19754_1780.pdf

24 CFR 5.609 is available to be viewed here:

https://www.gpo.gov/fdsys/pkg/CFR-2016-title24-vol1/xml/CFR-2016-title24-vol1-sec5-609.xml

Exhibit E provides the definitions of what is included and excluded from the determination of annual gross income in accordance with the U.S. Code of Regulations. In summary, gross household income is the sum of all the income for every adult, 18 years or older, living in the unit. Sources of income include all wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation, net income from a business or profession or from the rental of real or personal property, interest and dividends, payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, payments in lieu of earnings, public assistance, alimony and child support received, and any other sources of income.

Documentation to Verify Sources of Income

The gross annual incomes of all household members age 18 or older are considered when determining eligibility. The types of income to be verified and the type of documentation that will be requested will include:

- 2 months most recent pay stubs

- Signed copies of federal tax returns for the three most recent years
- W2 forms for the most recent year
- 1099 forms for the most recent year 2 mos. most recent pay stubs
- Self-employed, the net income from the operation of the business
- 3rd party verification of employment
- Bank statements for the last two consecutive months (used to verify that the applicant has enough assets for the down payment and closing costs, but does not exceed the maximum asset limit of $75,000)
- Other sources of earnings such as child support, alimony, social security, etc.

All income documentations is based primarily on the applicant's income for the past year as evidenced by the documents listed above and additional verification, if requested, as listed below. Income calculations will not factor in any speculative or uncertain projection of lower or higher future earnings, such as calculations of bonuses and overtime, than was earned in the previous year. Where major changes have occurred in life circumstances since the applicant's last year of employment, including only such major changes as retirement, job loss, or disability or death of a wage earner, the City may deduct the projected income losses from the applicant's income for the past year.

Additional income verification may also be requested as follows:

Source of Income	**Documentation**
Salaries and wages	Verification from employer
Business income	Verification of income by a certified public accountant or bookkeeper including most recent quarterly profit/loss statement. For self-employed individuals or sole proprietor's, the City may use the most recent 1099 and tax returns.
Interest and dividend income	Current bank statements or dividend statements
Retirement and insurance income	Verification from source
Unemployment and disability income	Verification from source
Welfare assistance	Verification from source
Alimony, child support, gift income	Verification from source
Armed forces income	Verification from source
Other	Verification from source

Household income includes all payments from all sources received by all adult members of the household. The income of minors (household members less than 18 years old) and live-in aides is excluded.

For self-employed persons, the *net* income from the operation of the business is considered as the annual income, excluding deductions for capital expenditures and depreciation. Similarly, *net* income from property rental is considered as annual income, also excluding deductions for capital expenditures and depreciation.

Assets

There are limits to the amount of net assets that are used for eligibility for inclusionary for-sale and rental units. For households applying for inclusionary rental units, the limit is equal to the maximum household income limit adjusted for household size. For households applying to be an owner of an inclusionary unit, the maximum household asset limit is $75,000. Net assets only include liquid assets that do not incur a drawdown fee or penalty. Retirement accounts such as 401K and IRA accounts are not included as part of net assets.

The following chart contains the types of assets to be verified and the type of documentation that will be requested.

Assets	Documentation
Checking account, savings account, mutual fund, money market fund, certificates of deposit (C.D.)	Copies of two most recent statements
Stocks, including options	Copy of most recent stock certificate or proof of purchase and statement of current value; for stock prices attach a copy of recent dated newspaper or online source that shows the value of each company's stocks
Bonds, including savings bonds	Copies of most recent document
Trust	Copies of most recent document
Gift	Signed gift letter by all parties
Personal Loan	Letter or loan agreement
Down payment assistance	Copy of agreement
Other	Verification from source

Co-Applicants

The City or its designee will accept one application per household. A co-applicant is defined as an adult member of the household whether related or unrelated who intends to be a co-owner of the inclusionary unit. The combined income and assets of all adult members of the household (including co-applicants) to purchase or rent an inclusionary unit must not exceed the maximum income limits per household size and asset limitation for the program. All co-applicants must go

through the same process as the applicant and must agree to comply with the program requirements.

Lender Preapproval

All prospective purchasers of inclusionary units must receive a preapproval letter from a residential lender for a loan that meets the City's standards for purchase money loans, which are described in Part E (Process for Sale of Inclusionary Units).

Homebuyer Education

Before purchasing an inclusionary home, all homebuyers must attend a City-approved homebuyer education class. These classes must cover the home buying process, terms of the City agreements, property maintenance, good neighbor practices, available financing, occupancy standards, loan closing, refinancing, predatory lending, credit and budgeting, and homeowner responsibilities. Prospective homebuyers may be found eligible before attending a homebuyer education class, but must present proof of attendance before closing escrow on their home.

Purchase of Inclusionary Units by Nonprofit Sponsors

In some instances, a nonprofit affordable housing sponsor may wish to purchase an inclusionary unit for occupancy by eligible persons who may require enhanced services. Examples may include use of a home for disabled persons or persons transitioning from homelessness. At any time prior to the marketing of the inclusionary units for sale, a nonprofit sponsor may request approval from the developer to purchase an inclusionary unit for affordable housing purposes. If the request is approved by the developer, at the developer's sole discretion, the nonprofit sponsor shall provide to the City Manager or designee written approval from the developer and information as may be required by the City to ensure that the unit will be used for affordable housing purposes, such as evidence of the sponsor's 501(c)(3) status, residents to be served, funding of operations, and similar information. Appropriate recorded agreements will be applied to the property at the time of sale to ensure that the occupants are income-eligible and that the home continues to be used for affordable housing purposes. No more than two inclusionary units may be purchased by nonprofit sponsors per development phase. The City will not subsidize the purchase of these units with federal or other funds unless specifically authorized by action of the City Council.

Ineligible Applicants - Conflicts of Interest

The following individuals are not eligible to purchase or rent inclusionary housing units in Salinas.

Planning Commissioners, City Councilmembers, and Certain City Staff

- Any member of the Salinas Planning Commission or City Council.

- Employees, other officials (not including City Council Members or Planning Commissioners), consultants and employees of consultants who have policy making authority or influence regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program.

- Any person having any equity interest in a project that includes inclusionary units, or who is the applicant, including but not limited to a developer, partner, landowner, investor, or applicant (together the "Developer"). Officers and employees of the Developer are also ineligible.

- Any person considered to have a conflict of interest by the California Government Code, the regulations of the Fair Political Practices Commission, or Chapter 2A of the Salinas Municipal Code is ineligible to rent or purchase an inclusionary unit.
- Relatives of Planning Commissioners, City Council Members, Certain City Staff and Persons with an Equity Interest are also ineligible. For the purposes of eligibility, relatives are defined as spouses, children, parents, grandparents, brother, or sister, or a person in an equivalent position due to marriage (for instance, son-in-law and daughter-in-law), or anyone who may be claimed as a dependent.

Ineligible individuals shall not be added to any wait lists for affordable housing maintained by the City.

B. OCCUPANCY STANDARDS

To ensure the City's limited inclusionary units are used efficiently, a household must be of a size equal to the number of bedrooms in the inclusionary unit. Any household found eligible to purchase or rent an inclusionary unit must have the following minimum household size:

Number of Bedrooms	Minimum Household Size
SRO	1
One	1
Two	2
Three	3
Four	4

Disabled persons who require additional bedrooms may submit a request to the City for a larger home as a reasonable accommodation from these occupancy standards. (Disabled persons may also be entitled to other accommodations unrelated to the City's inclusionary housing policies.)

C. PREFERENCES FOR SALE AND RENTAL OF INCLUSIONARY UNITS

The City of Salinas has established preferences for rental or purchase of inclusionary units. First priority is given to those displaced by City actions. Second priority is given to those displaced by private market actions, while third priority is given to those who live or work in Salinas when they submit an application. Any other eligible household may purchase or rent an inclusionary unit if there are no households with priority.

If a residential development is receiving governmental financial assistance that does not permit these preferences, or requires different preferences, then the City's preferences will be modified as needed to conform to the terms of the other program.

The City will periodically review its preferences to ensure they are compliant with fair housing laws.

Households Displaced by City of Salinas Actions

First priority for an inclusionary unit must be given to a household displaced from a residence in the City by action of the City of Salinas. Proof of this priority can be established by submittal of a letter from the City of Salinas stating that the household will be or has been displaced due to the actions of the City. Owner-occupants displaced by the City through the enforcement of health and safety or other codes shall not qualify for this priority. This priority expires 12 months from the date of the displacement.

Renter Households Displaced by Private Sector Actions

Second priority for an inclusionary unit must be given to a renter household displaced from a residence in the City of Salinas due to either:

a. Conversion of renter-occupied units to condominiums; or

b. Demolition of an existing dwelling.

Proof of this priority can be established by a letter from the City of Salinas stating either that the City has approved conversion of the residence to a condominium; or that the City has approved a demolition permit for the residence. This priority expires 12 months from the date the tenant is required to move out of the dwelling unit.

Salinas Residents and Employees

Third priority is given to households that reside in, or are employed within, the City of Salinas when they submit an application.

Residency in the City may be established by a driver's license, utility bill showing residency in the City, income tax returns, voter registration, or other written documentation of residency.

Employment in the City requires paid labor in the City of Salinas or work for an employer located in the City of Salinas of at least 20 hours/week. Employment may be part time, seasonal, contractual, self-employment, temporary, or household employment. Employment may be established by a W-2 form from a business located in the City; income tax returns; 2 mos. pay stubs; cancelled check from employer; or employment verification form.

First-Time Homebuyers

For ownership units, within each of the above three preference categories, preference will be given to households that qualify as first-time homebuyers. A first-time homebuyer is a person who has not owned a home during the three-year period prior to the purchase of the inclusionary unit. A mobile home not on a permanent foundation is not considered a “home” for the purpose of this subsection.

A first-time homebuyer also includes a displaced homemaker. A displaced homemaker is an adult who has been legally separated from his or her spouse or domestic partner in the last three years, has no current ownership interest in a home, and has not had an ownership interest in his or her primary residence during the past three (3) years, except with his or her spouse or domestic partner. First-time homebuyer status is verified by a review of three years of federal income tax returns.

D. MARKETING OF INCLUSIONARY UNITS

All developers of inclusionary units must undertake a marketing effort targeted at eligible households.

Nondiscrimination

All inclusionary units must be marketed in a manner consistent with the federal Fair Housing Act, the California Fair Employment and Housing Act, the Unruh Act, and the Equal Credit Opportunity Act, and all materials must have a fair housing statement or logo. No person may be excluded from participation in, or denied the benefit of, or be subject to discrimination under any activity related to the sale or rental of the inclusionary units on the basis of his or her religion, age, race, color, creed, gender, sexual orientation, marital status, familial status, physical or mental disability, national origin, ancestry, source of income, or participation in Section 8.

Marketing Plan

The City must approve a marketing plan before it will issue any occupancy permits for either the inclusionary units or the market-rate units subject to the concurrency requirement in a building phase. Developers are urged to submit a marketing plan at least 90 days prior to their estimated completion date for their first phase of development and at least 60 days prior to their estimated completion date for subsequent phases. All marketing plans must contain the following:

(1) A description of the marketing that will be done for the inclusionary units, such as press releases, direct mailing, and advertising (including internet advertising). The City requires that all inclusionary units be advertised in The Californian and El Sol. The City will provide a list of organizations that must be notified and informational flyers must be available at City Hall and at the offices of the Housing Authority of the County of Monterey (or of a similar organization acceptable to City). The Fair Housing logo must be used on all marketing material.

(2) A one-page informational flyer in both English and Spanish suitable for advertising the availability of the inclusionary units, including a telephone number, fax number and e-mail address for interested applicants to contact for additional information.

(3) A copy of all marketing materials and materials to be given applicants (see list below). The City encourages the preparation of Spanish-language materials where appropriate.

(4) The process for accepting applications, including the number of phases and deadline for applications in the current phase of the project. Developers should allow a generous amount of time (at least 45 days) for applicants to submit complete applications, given the complexity of the process.

(5) For projects with more than 10 inclusionary ownership units in the current phase, the developer must arrange for at least two informational workshops for potential applicants, one in the evening during the week and one on a weekend. At least

one workshop must be conducted in Spanish, or in both Spanish and English.

For projects with fewer than 10 inclusionary ownership units in the current phase, the developer must arrange for information to be distributed in an appropriate forum, based on the developer's agreement with the City.

(6) The method to be used to verify City preferences (unless the preferences are modified by the developer's use of another source of financing) and to determine applicant eligibility (income and, for ownership units, lender preapproval letter).

(7) For projects with rental inclusionary units, a copy of the proposed lease or rental agreement and an explanation of any other criteria to be used by the manager to select tenants. For instance, the manager may require a minimum credit score. The marketing plan also describes the utilities to be paid by the tenant so that the maximum affordable rent can be determined. (See further description in Part F below).

(8) For projects with for-sale inclusionary units, a description of any financing to be made available to applicants, down payment assistance programs available, information needed to calculate the maximum sales price, and the unrestricted fair market value of the inclusionary units. (See further description in Part E below).

(9) A requirement that the developer's sales staff meet with the City's Housing Staff to receive training on the selection process and, for ownership units, the City homebuyer documents.

It is important that the developer's sales or management staff understand the application process and the restrictions placed on the inclusionary units by the City. In the case of for-sale inclusionary units, before entering into any purchase and sale agreement for the units, the developer's sales staff must receive training so that they understand and can explain the City's equity-sharing program, option to purchase, and other City restrictions such as the owner-occupancy requirement (further described in Section Four).

In the case of rental inclusionary units, it is important that the developer's management staff understand the consequences of future increases in income. Before entering into any lease or rental agreement for the inclusionary units, the developer's rental staff must receive training so that they can understand and explain the City's requirements and the consequences of future increases in income (further described in Section Five).

Each applicant for an inclusionary unit will receive a packet of information that includes:

- Developer application form approved by the City. The form will include such information as residency or employment certification; household composition; household income and assets; and, for homebuyers, form pre-approval lender letter;

- Explanation of the process used to select homebuyers or renters, as applicable;
- Eligibility requirements;
- The income level(s) and occupancy standards for the various units;
- Description of City preferences;
- Description of inclusionary units available, including number of bedrooms and general location;
- Price or rent of inclusionary units;
- Contact information for sales or rental office; and
- (For homebuyer units) the borrower's disclosure supplied by the City.

E. PROCESS FOR INITIAL SALE OF INCLUSIONARY UNITS

***Step* 1.** The developer submits a marketing plan with the information described in Part D above to the City for approval either 90 days prior to completion of the first inclusionary unit, in the first phase of a project, or 60 days before completion of the first inclusionary unit, in subsequent project phases. In addition to the information described in Part D, the marketing plan includes the following:

(1) A description of the financing terms to be made available to applicants for inclusionary units. If applicable, the developer identifies a lender or lenders willing to provide competitively priced purchase money mortgages meeting the City's standards explained below. However, the developer cannot require prospective buyers of inclusionary units to use the identified lender for permanent financing.

(2) A request that the City calculate the maximum initial sales prices for the for sale inclusionary units. To enable the City to calculate the prices, the developer must describe expected homeowners' association fees plus any special assessments, such as Mello-Roos payments. The developer may also provide additional information on costs that may affect the purchase price, such as the cost of private mortgage insurance or homeowners' insurance.

If all of the inclusionary units within a phase of the project are not sold within one year, the developer may request that the City re-calculate the permitted sales prices.

(3) The process for establishing the unrestricted fair market value of the inclusionary units, in order to determine the value of the initial subsidy to the buyer. The plan should indicate when appraisals of unrestricted fair market value will be completed for the inclusionary units. Individual appraisals may not be needed where inclusionary units are reasonably similar and the appraisal to be used was completed within six months of the initial sale of the reasonably similar unit. The City may elect to complete its own appraisal of the units' unrestricted fair market value. If the City and the developer cannot agree on the property's unrestricted fair market value, the parties will select a third appraiser to determine the unrestricted fair market value, with the City and the developer sharing equally in the cost of the appraisal.

***Step* 2.** After approval of the marketing plan and determination of the sales prices by the City, the developer markets the inclusionary units consistent with the marketing plan and makes application packets available to all who request them.

***Step* 3.** After the deadline for submitting applications, the developer reviews all applications and determines if the applicant is eligible to purchase a unit, based on income and preapproval letter. The developer must verify income as described in the developer's marketing plan. The developer then groups all apparently eligible applicants by the City's preference categories (residents displaced by public action, renters displaced by private action, those who live or work in the City, all others, and within each category, first-time homebuyers), unless another financing source requires changes in these preferences.

***Step* 4.** The developer submits to the City: a) a complete listing of developer pre-screened applicants, sorted by preference group, and indicating the developer's determination of eligibility (in hard copy and in an electronic format, either in Excel or Word and also in PDF format); b) the complete file for each applicant, numbered to correspond to the list of applicants; c) the form of purchase and sale agreement; and d) preliminary DRE public report, if applicable.

***Step* 5.** The City reviews and either approves or requests changes in the developer's submittals within 30 business days. Once the list of eligible applicants is approved, the City ranks all eligible applicants by preference group on a random basis, such as by a lottery. The developer must send written notice to applicants determined to be ineligible by the City.

***Step* 6.** The developer offers units to applicants beginning at the top of the list established by the City. The developer may not pass over an applicant higher on a list in favor of another because of a higher income. Applicants are to be taken in the order ranked and given a reasonable period of time to close escrow, normally 60 days after the unit's final inspection is approved, or after the applicant is selected to purchase a unit, whichever is later. The developer may only exclude ranked applicants because the applicants were not successful in obtaining financing, were not able to demonstrate the qualifying household income included in their application, or otherwise were not eligible. The developer must send written notice to any excluded applicant within 15 days of the decision to exclude the applicant; copies of such correspondence must be provided to the City. However, developers may close escrow on inclusionary units in any order as homebuyers are able to do so.

***Step* 7.** If the applicant enters into a purchase agreement for the unit, the developer provides to the City for review: a) the copy of the loan underwriting form (Form 1008); b) estimated HUD-1 Settlement Statement; c) legal description of the inclusionary unit; and d) appraised value of the inclusionary unit at unrestricted fair market value. Provided that the documents are consistent with previous representations, the City will provide to escrow, within fourteen working days of receipt of the required documentation, executed copies of its homebuyer documents, an executed release of the Affordable Housing Agreement to be recorded with the sale of the unit, and standard escrow instructions. The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to acceptable purchase money loans listed after Step 8.

However, if the market price of the unit is equal to or below the affordable housing cost for a median, moderate, or workforce income household, no documents will need be recorded against the inclusionary units in the relevant income category. For example, if a developer is required to build two workforce housing units and the fair market value of the units is equal to or lower than

the affordable price, the developer may sell the two units for fair market value and at resale, the owners will not be required to share any equity with the City. The City will, however, require verification that the unit was, in fact, sold at the affordable price.

The City may require more than fourteen working days to review the application if the documents provided show a significant change in the homebuyer's situation since the City's initial review of the file or if the City desires to obtain its own appraisal of unrestricted fair market value. IF THE PACKET IS INCOMPLETE, THE SALE CANNOT PROCEED UNTIL ALL NEEDED DOCUMENTS ARE PROVIDED.

***Step* 8.** If required to be recorded, the title company returns to the City a copy of the executed and recorded option to purchase and equity-sharing agreement, deed of trust, and request(s) for notice of default and the original executed copy of the City's promissory note and buyer's disclosure.

***Step* 9.** Within 21 days of completing the sale or rent of all inclusionary units, the developer shall notify all remaining applicants on the waiting list that they were not selected. Applicants shall be informed that they are welcome to reapply for later phases of development or for other projects. The developer shall notify the City once completing the notification.

Acceptable Purchase Money Loans. The following are acceptable purchase money loans for inclusionary units.

(1) Fully documented 30-year fixed rate fully amortized loans.
(2) Down payment/closing cost assistance programs provided by the state, federal or other community programs may be allowed upon review and approval by the City.
(3) Fees and charges to the borrower for the purchase money loan(s) must be reasonable and consistent with industry standards.

Homebuyers may have one or more purchase money loans, but each loan must meet the standards listed in (1) – (3).

Not Acceptable Purchase Money Loans. The following loans are *not* acceptable purchase money loans for inclusionary units:

(1) Loans permitting negative amortization (such as so-called "option ARM" loans).

(2) Loans requiring a balloon payment.

(3) Interest only loans.

(4) So-called "no documentation" loans.

(5) Loans otherwise not meeting the standards specified under "Acceptable Purchase Money Loans."

F. PROCESS FOR INITIAL RENT-UP OF INCLUSIONARY UNITS

In rental developments, the management firm is the entity that is responsible for occupant selection and documentation.

***Step* 1.** The developer submits a marketing plan with the information described in Part D above to the City for approval either 90 days prior to completion of the first inclusionary unit, in the first phase of a project, or 60 days before completion of the first inclusionary unit, in subsequent project phases.

In addition to the information described in Part D, the marketing plan includes the form of the rental agreement or lease to be used for the inclusionary units. The rental agreement or lease must incorporate provisions conforming with Section Five regarding periodic recertification of tenant incomes and the effect of increased income on the tenant's rent and ability to remain in the unit.

The marketing plan also includes proposed maximum rents for the inclusionary units; lists all utilities to be paid by the tenant; and explains any other criteria to be used by the manager to select tenants. For instance, the manager may require a minimum credit score.

***Step* 2.** After approval of the marketing plan and rents by the City, the developer markets the inclusionary units consistent with the marketing plan and makes application packets available to all who request them.

***Step* 3.** After the deadline for submitting applications, the developer reviews all applications and determines if the applicant is eligible to rent a unit, based on income, household size, and any other criteria approved by the City as part of the project's marketing plan. The developer must verify income as described in the developer's marketing plan. The developer then groups all apparently eligible applicants by the City's preference categories (residents displaced by public action, renters displaced by private action, those who live or work in the City, all others), unless the preferences are modified by the developer's use of another source of financing.

***Step* 4.** The developer submits to the City: a) a complete listing of all pre-screened applicants, sorted by preference group (if applicable), and indicating the developer's determination of eligibility (in hard copy and in an electronic format, either in Excel or Word); and b) the complete file for each applicant, numbered to correspond to the list of applicants.

***Step* 5.** The City reviews and either approves or requests changes in the developer's submittals within 30 business days.

***Step* 6.** The developer offers units to eligible applicants beginning with the first preference group, unless the City's preferences have been modified by the developer's use of another source of financing. Within each preference group, the developer may determine the order in which units are offered to eligible applicants. Applicants selected to rent an inclusionary unit must agree to sign the rental agreement or lease. Should the initial lease-up progress slowly, the developer may suggest alternate methods for consideration by City to avoid protracted vacancies in the inclusionary units.

***Step* 7.** After all of the inclusionary units are initially rented, or within 120 days of occupancy approval, whichever is earlier, the owner submits a monitoring report to the City as described in Section Five. If all of the inclusionary units have not been rented when the first report is

submitted to the City, an additional monitoring report shall be submitted after all of the inclusionary units have been rented.

Exception for Projects with Other Financing. If a rental project is financed through a program that has occupant selection and income verification requirements stricter than those of the City, the developer may ask the City to defer to those requirements and not require additional documentation. If approved by the City, the developer may send to the City copies of documentation required for other monitoring agencies in place of the documentation required by these Guidelines.

SECTION FOUR
HOMEBUYER POLICIES

This section discusses the obligations of the buyers of the inclusionary units.

A. HOMEBUYER REQUIREMENTS

Unless the fair market value of the home is equal to or below the affordable ownership cost for a median, moderate, or workforce income household, the City will require all buyers of inclusionary homes to sign the following when they purchase their home:

(1) An option to purchase and equity-sharing agreement that will place certain restrictions on the homebuyers' use of their property and provide an option to purchase to the City in the event of default or desire to sell.

(2) A promissory note in favor of the City, secured by a deed of trust, to ensure repayment at the time of resale of the initial subsidy, which is equal to the difference between the affordable price and the unrestricted fair market value of the home at the time of initial sale. On resale, the homeowner must also pay the City interest on the initial subsidy and a share of any appreciation.

(3) A disclosure to the borrower.

At the time of the sale of the home, the City will also record a request for notice of default for all other financing recorded against the property at the time of sale.

The City keeps approved standard homebuyer documents to implement the City's policies on file. The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to acceptable purchase money loans listed in Section Three (E) of these Guidelines.

Documents not in substantial conformance with the standard documents, including those designed for special situations, must be submitted to the City Council for review and approval. Minor modifications to the standard documents may be approved by the City Manager or designee if the City Manager or designee finds that the modifications are consistent with the Ordinance, Guidelines, and the Affordable Housing Plan and substantially in conformance with the standard documents.

Minimum Cash Available

The applicant(s) should have sufficient readily available assets for a minimum of 5% of the purchase price for down payment, plus closing costs and other associated fees. Gift funds can be applied toward the applicants 5% down payment assistance, a signed gift letter is required by all parties.

B. EQUITY SHARING AND INTEREST PAYMENT AT RESALE

If the documents listed in Section A above are recorded against the home, then, rather than restricting the price of homes on resale, the City allows homebuyers to sell their homes at unrestricted fair market value, but to repay the City the initial subsidy, plus interest on the initial subsidy, and a share of the home's appreciation. The repayments to the City are summarized in

this section and described in detail in the option to purchase/equity-sharing agreement and borrower's disclosure. The term of the equity-sharing agreement is 30 years. At the end of the thirty-year term, the homeowner will owe the City only the difference between the initial affordable price and the unrestricted fair market value of the unit at the time of initial sale, plus interest on that amount.

Equity-Sharing Formula and Interest Payment

Upon resale, the home is sold at unrestricted fair market value, and the homeowner pays the City the following:

(1) Initial subsidy (difference between the initial unrestricted fair market value and the purchase price paid by the homebuyer);

(2) 3% simple interest on initial subsidy; and

(3) Share of appreciation (the difference between the initial unrestricted fair market value and the sales price of the home upon resale). The share of the appreciation retained by the homeowner is 3% times the number of years of occupancy. At 30 years, a homeowner will receive 100% of the share of appreciation.

TABLE 3: SHARING OF APPRECIATION AT RESALE EXAMPLES

Share of Appreciation	Year 1	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30+
City Share	97%	85%	70%	55%	40%	25%	0%
Homeowner Share	3%	15%	30%	45%	60%	75%	100%

If the sales price of the home at resale is less than its unrestricted fair market value when it was initially purchased, then the initial subsidy to be repaid to the City will be equal to the difference between the purchase price paid by the homebuyer and the home's actual sales price. However, the City may conduct its own appraisal to verify that the home is actually being sold at unrestricted fair market value.

Valuation of Improvements

The homeowner is entitled up to a maximum of $14,000 for rehabilitation and other capital improvements that have an initial cost of $2,000 or more. The credit will be based on the valuation shown on the building permit issued for the capital improvements and will be added to the homeowner's share of appreciation at resale.

To be eligible for the credit, the capital improvements must be constructed with a building permit and be pre-approved by the City as an eligible capital expense. At resale, the building permit valuation of all pre-approved capital improvements will be added together to determine the homeowner's credit (up to the $14,000 maximum).

C. OCCUPANCY AS PRINCIPAL RESIDENCE

The inclusionary home must be the homebuyer's principal place of residence, and each homeowner must live in the home for at least ten months out of each calendar year. Annually, all homebuyers must certify to the City in writing that they are meeting this requirement.

However, if the homebuyer is required to relocate for employment or medical reasons for less than six months, the homebuyer may rent or lease the home with the approval of the City. The tenant's income cannot exceed the affordability level established for the home (very low, lower, median, moderate, or workforce), and the maximum rent that can be charged is the **lower** of: (i) rent affordable to a household at the income level of the home; or (ii) actual costs to the homeowner of principal, interest, homeowners' dues, property taxes, and insurance. The City may charge a fee for monitoring any rentals.

If a home is rented without permission, the City may sue to prevent the owner from renting out the home, and the homeowner will owe excess rents, if any, equal to the difference between the permitted rent and that charged the tenant. In addition, rental without permission or failure to occupy the home for at least 10 months out of every year constitutes a default, and the City may exercise its option to purchase the home or take any other enforcement action authorized by its agreement with the homeowner.

D. REFINANCE OF FIRST MORTGAGE

The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to a refinanced first mortgage under the following conditions:

(1) Following the refinance, the principal amount of all debt secured by the home, including the principal, accrued interest, and appreciation share on the City's note, cannot exceed either (a) 90 percent of the unrestricted fair market value of the property, or (b) the existing balance of the original first lender loan, whichever is greater.

(2) The refinanced first lender loan must meet the same standards established in Section Three for a purchase money loan.

(3) If the existing balance of the original first lender loan plus the principal, accrued interest, and appreciation share on the City's note exceeds 90 percent of the unrestricted fair market value of the property, then the new first lender loan must reduce the owner's principal and interest payments.

(4) Borrower(s) pay the City a $500 refinance fee in escrow.

So that the City may verify compliance with the conditions listed above, a request for subordination should be accompanied by the following:

(1) Preliminary title report.

(2) Signed loan application for new loan.

(3) Preliminary loan approval document from new lender that describes new loan terms and conditions.

(4) Lender's appraisal.

(5) Estimated HUD-1 Settlement Statement.

(6) Prepared subordination agreement, in a form acceptable to the City Attorney.

(7) Prepared Request for Notice of Default, in a form acceptable to the City Attorney.

The City may require that an appraisal be completed at the homebuyer's expense by an appraiser approved by the City to verify the loan-to-value ratio.

E. SUBORDINATE FINANCING

The City will not allow owners of inclusionary homes to borrow additional funds in a position junior to the City's loan (which means a third or fourth mortgage, or an equity line of credit).

F. CITY OPTION TO PURCHASE; PROPERTY TRANSFERS

The City's agreement with buyers of inclusionary homes grants the City an option to purchase the home at unrestricted fair market value if it is sold during the 30-year term of the agreement. The City may assign its option to purchase the home to another public agency, a nonprofit organization, or a household meeting income and other requirements. If the City chooses not to exercise its option, it will normally use any funds it receives from the sale (repayment of initial subsidy, equity share, and interest payments) to subsidize a resale of the home to another eligible homebuyer at an affordable price, but may choose to use the proceeds for other affordable housing purposes.

Resale Procedures

The owner of an inclusionary unit must give the City thirty days notice of the owner's intent to sell or transfer the property. The owner must complete a pest control report and allow the City to inspect the property. The City will complete an appraisal to determine the unrestricted fair market value and decide within that 30-day period whether or not to exercise its option to purchase the property at unrestricted fair market value. If the City decides to exercise its option, or to assign the option to another person, it will close escrow within 45 days after deciding to exercise its option (assuming that the seller has met the terms of the purchase agreement). The seller will pay two and half percent (2.5%) of the sales price to the City rather than a real estate commission if the City exercises its option.

If the City exercises its option, and the seller desires to dispute the property's unrestricted fair market value, the seller must complete an appraisal at the seller's expense. If the City and the seller cannot agree on the property's unrestricted fair market value, the parties will select a third appraiser to determine the purchase price, with the City and seller sharing equally in the cost of the appraisal.

If the City decides not to exercise its option, then the homeowner may sell the property on the open market at unrestricted fair market value. The seller will pay a one percent (1%) sales price to the City at close of escrow to offset the administrative expenses relating to the inclusionary program. At least 15 days but not more than 45 days before the close of escrow, the seller must

give the City the following documentation to ensure that the unit is being sold at unrestricted fair market value:

(1) Final sales contract.

(2) A declaration from the seller and buyer stating that the sales contract represents all consideration for the home.

(3) Name of title company and escrow holder.

If the City's appraisal was completed more than six months before the close of escrow or if the sales price is less than 95% of the City's appraisal of unrestricted fair market value, the City may complete another appraisal to verify that unit is being sold at unrestricted fair market value.

After close of escrow, the seller must give the City a copy of the HUD-1 settlement statement showing all payments made from escrow.

On any sale of the property, whether through exercise of the City's option or sale on the open market, the homeowner must repay the initial subsidy, accrued interest, and the City's share of appreciation.

Permitted Transfers

No permission from the City is required for the following transfers, but all owners of the inclusionary unit remain bound by the resale agreement and City note:

(1) a good faith transfer by an owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the property;

(2) a transfer between spouses as part of a dissolution proceeding, or between domestic partners as part of the dissolution of a domestic partnership;

(3) a transfer by an owner into an inter vivos trust in which owner is the beneficiary;

(4) transfers by will or inheritance to an existing spouse, child, or domestic partner of the owner following the death of owner, providing that any inheriting child executes a new option to purchase and equity-sharing agreement, promissory note, and deed of trust with a 30-year term; and

(5) a transfer by operation of law on the death of a joint tenant.

A "domestic partner" is defined in Section 297 of the California Family Code. An individual is considered a domestic partner of the owner by presenting the Declaration of Domestic Partnership filed with the California Secretary of State.

The homeowner must provide the City with notice of these permitted transfers at least fifteen days before they occur, except that if a transfer occurs due to inheritance or to the death of an owner, the City must be notified within 30 days.

G. DEFAULT

The City's option to purchase the inclusionary unit may also be exercised if the homebuyer is in default for any reason. The most common reasons for default include:

(1) Failure to occupy the property as the principal residence of the owner, or renting the property without the City's permission.

(2) Non-permitted transfer of the property without notification to the City.

(3) Foreclosure on another deed of trust or mortgage.

(4) Bankruptcy.

(5) Misrepresentation when acquiring the home.

(6) Placing an additional encumbrance on the property without City approval.

If the homeowner is in default, the City will normally give the homeowner the opportunity to cure the default, unless there is a need to act immediately, such as in the case of foreclosure. The City may exercise its option to buy the home at an affordable price, or may choose to cure the default or utilize other legal remedies. These include foreclosure, injunction, or any other available legal action to enforce the affordability agreements.

SECTION FIVE
RENTAL POLICIES
(FOR DEVELOPMENTS THAT CHOOSE TO PARTICIPATE IN THE INCLUSIONARY PROGRAM)

This section discusses the continuing obligations of the developer and property manager in renting, monitoring and managing the inclusionary units.

A. RENT REGULATORY AGREEMENT

After the inclusionary rental units are built, the owner and the City enter into a Rent Regulatory Agreement, which is recorded against the property in place of the Inclusionary Housing Agreement. A deed of trust may also be recorded to secure the Rent Regulatory Agreement. A Rent Regulatory Agreement will have a term of 30 years and includes the following:

(1) Identification of inclusionary units.

(2) Occupancy requirements for inclusionary units.

(3) Allowable rents; procedure for setting initial rents, annual monitoring, and increasing rents.

(4) Provisions for initial verification and annual monitoring of tenant incomes.

(5) Procedures for initial marketing and rental of vacant inclusionary units.

(6) Management and maintenance procedures.

(7) Definitions of default and remedies for default, including default for inadequate maintenance and nuisances on the property.

(8) Provisions for a monitoring fee to be paid to the City.

The Rent Regulatory Agreement may be subordinated *only* to:

(1) Liens to secure payment of real estate taxes and assessments, not delinquent;

(2) Non-monetary matters affecting the title which, at the discretion of the City Manager or designee, do not unreasonably impact the security of the Rent Regulatory Agreement; and

(3) A lien or regulatory agreement of a local, federal, or state governmental agency, provided that both of the following conditions are met:

a. The public agency is providing financing or other assistance for the housing development; and

b. The statute or regulation governing the financing or assistance from that agency does not permit the City's Rent Regulatory Agreement to be senior to the agency's agreements.

B. MANAGEMENT PLAN

In addition to the Rent Regulatory Agreement, each project that has inclusionary units must prepare a Management Plan. While the Rent Regulatory Agreement is recorded against the property, the Management Plan is not and is intended to provide a greater level of detail than the Rent Regulatory Agreement. It must include the information specified for the rental marketing plan described in Section Three above, plus the following information:

(1) A brief history of the management entity and its previous experience managing other affordable rental complexes.

(2) Plan for maintaining occupancy of and marketing vacant inclusionary units.

(3) Means to select and verify the eligibility of applicants for vacant inclusionary units and to verify the City's preference categories (unless another government subsidy program modifies the preferences).

(4) Means to recertify annually the incomes of tenants in inclusionary units.

(5) Means to maintain a waiting list for vacancies.

(6) Provisions for annual reporting to the City of rents and tenant incomes.

(7) Non-discrimination and fair housing/non-discrimination provisions.

(8) Maintenance standards and house rules to be included in tenant leases.

(9) Contact information for use by the City, including a telephone number, e-mail address, and list of persons responsible for communication with the City.

(10) Form of the rental agreement or lease to be used for the inclusionary units. The owner shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, except as otherwise required by the inclusionary Ordinance and these guidelines and/or other government subsidy programs. In particular, the rental agreement or lease must incorporate provisions required by this Section Five regarding periodic recertification of tenant incomes, the effect of increased income on the tenant's rent and ability to remain in the unit, and the tenant's obligation to comply with all monitoring requirements. A rental agreement or lease for inclusionary units will normally have at least a 12-month term.

The Management Plan must also provide that apartments be leased or rented in compliance with all federal, state, and City fair housing laws and regulations. Eligible applicants for inclusionary units shall not be discriminated against based on participation in rent subsidy programs, such as Section 8, or based on source of income.

If a project is financed through a program that requires a management plan that includes the above information, the City may elect to receive a copy of that management plan and not require an additional plan. If the other management plan contains some but not all of the above information, the City may limit its requirements to the information it needs.

C. RENTAL OF VACANT INCLUSIONARY UNITS

Whenever an inclusionary unit becomes available, the manager shall immediately notify the City. The owner of rental inclusionary units may fill vacant units in one of two ways:

(1) Selecting households that are qualified based on income and household size, so long as the owner complies with the marketing requirements included in the project's approved Management Plan, if any; or

(2) Selecting income-eligible households from the Section 8 voucher waiting list available from the Housing Authority of the County of Monterey.

D. CHANGES AND ADJUSTMENTS TO RENTS

Rents may be raised only once every twelve months based on increases in area median income, adjusted for assumed household size, as published periodically by the California Housing and Community Development Department in the California Code of Regulations, Title 25, Section 6932, or successor provision. Notices of rent increases must be provided to the City and to the tenants of the rental inclusionary units at least 30 days before the effective date of the rent increase, or as otherwise required by any law or subsidy program.

Rental Rate Determination

The City or its agent will determine the rental rate for inclusionary units by income level and household size. The rents will be determined based on the annual HCD published income limits and section 50053 of the California Health and Safety Code.

Annual rent (inclusive of fees and utilities) for very low-income units cannot exceed 30% of 50% of the area median income adjusted for the size of the household appropriate for the unit. Annual rent (inclusive of fees and utilities) for low-income units cannot exceed 30% of 60% of the area median income adjusted for household size appropriate for the unit.

Rent includes all charges related to occupancy of the unit including utilities, parking fees, fees for use of common facilities and other fees and charges. If utilities are not paid by the property owner, the rent for the inclusionary units must be adjusted downward to allow for a utility allowance calculated in accordance with the utility allowances published by the Housing Authority of the County of Monterey.

E. ON-GOING MONITORING

The manager of all inclusionary rental units must provide an annual report to the City by March 1 of each year. The annual report includes the following information:

(1) Income and household size of all households residing in inclusionary units;

(2) Identification of all inclusionary units by income category (very low, low, or moderate) and number of bedrooms within the development;

(3) Monthly rent charged for each inclusionary unit and any additional charges, including utilities, parking, and any other costs; and

(4) Percentage vacancy of inclusionary units during the previous year.

If a project is financed through an affordable housing program requiring annual reports that include the above information, the City may elect to defer to those requirements and not require additional monitoring reports. If approved by the City, the management firm may send to the City copies of the annual report required for other monitoring agencies.

The City may at its option perform additional monitoring of the inclusionary rental units, including review of management records, performance of an audit, contacts with tenants, and other reasonable monitoring to ensure compliance with the Inclusionary Housing Ordinance. For residential multi-family projects that include inclusionary rental units in their development the City will charge the owners an annual monitoring fee of $200/per unit for the duration of their regulatory term.

Occupancy Conditions

The approved tenant(s) must occupy the inclusionary rental unit during the entire term of the lease. If an additional occupant (roommate, family member, etc.) moves into the inclusionary unit, he/she will be considered part of the existing household. In such cases, the inclusionary tenant must notify the City or its agent prior to the move in date, and the entire household (including the new occupant) will be reevaluated to determine eligibility, include household income requirements. If the tenant(s) fail to receive approval from the City for any changes in occupancy or if the tenant(s) subleases the property, the tenant household will no longer be eligible to occupy the inclusionary unit.

Owning Property

The applicant(s) cannot own a home and/or be on title of a property in order to qualify for a inclusionary rental unit.

Annual Re-Certification of Income

At least once a year, the property owner shall requalify BMR tenants to verify that they are eligible to remain in inclusionary rental units. On an annual basis, requalification shall be based upon the inclusionary tenant's household income, as determined by HOME Part 5 income standards.

F. EFFECT OF INCREASED TENANT INCOMES

The manager must annually monitor the income of tenants in inclusionary units.

If annual monitoring shows that the income of a tenant household occupying a very low income inclusionary unit exceeds fifty percent (50%) of area median income, but not eighty percent (80%) of area median income, as adjusted for household size, the tenant household may remain in the unit at a rent that is affordable to lower income households. After that tenant household vacates the unit, it must again be rented to an eligible very low income tenant household at a rent that is affordable to very low income households.

If the income of a tenant household occupying either a very low income or a lower income inclusionary unit exceeds eighty percent (80%) of area median income, but does not exceed one hundred percent (100%) of area median income, adjusted for household size, then the tenant's rent may be raised to an affordable rent based on thirty percent (30%) of the household's actual income.

If the income of a tenant household occupying either a very low income or a lower income inclusionary unit exceeds one hundred percent (100%) of area median income, then the tenant household must be given six months' notice to vacate the unit. To avoid displacing these households, the owner may, at the owner's option and with the City's approval, allow the tenant to remain in the original unit at a market rent and designate the next newly vacated unit as the replacement inclusionary unit within the appropriate income category.

If the terms of another governmental subsidy restrict the owner's ability to raise the tenant's rent or to require the tenant to vacate the unit (for instance, for a tax credit project), then the City will modify its rent regulatory agreement so that these provisions are consistent among the various programs.

Unit Affordability	**Homeowner Income**	**Pricing**
Very Low Income	Below 50% of the area median income	Very Low Income pricing
Very Low Income	Between 50 and 80% of the area median income	Low Income pricing
Very Low Income	Between 80% and 100% of the area median income	30% of actual income
Very Low Income	Above 100% of area median income	Must vacate unit within 6 months or pay market prices
Low Income	Below 80% of the area median income	Low Income pricing
Low Income	Between 80% and 100% of the area median income	30% of actual income
Low Income	Above 100% of the area median income	Must vacate unit within 6 months or pay market prices

G. SALE OF INCLUSIONARY RENTAL UNITS AND CONVERSION TO CONDOMINIUMS

Any inclusionary rental units to be converted to condominiums, or which are initially rented despite a recorded condominium map, must be sold to households within the same affordability range as required for the inclusionary rental unit. In other words, a lower income rental unit must be sold at a price affordable to lower income households. Homebuyer documents ensuring the continued affordability of the unit must be recorded at the time of sale, and converted units must otherwise comply with all requirements applicable to owner-occupied inclusionary units.

Approval of Marketing Plans and sales are required prior to the sale of any rental inclusionary unit in the same manner as specified in Section Three above for sales of new inclusionary units to homebuyers.

State law (Government Code Section 66427.1) and Article VII, Chapter 31, of the Salinas City Code require that existing tenants be given the right of first refusal to purchase their apartment on the terms available to other tenants if it is converted to a condominium. An existing tenant in an inclusionary unit should be given the choice of purchasing their apartment at the restricted price, subject to all the requirements of the homebuyer program; or purchasing a market-rate unit in the condominium on the same market-rate terms available to other buyers. All condominium conversions and sales must comply with all other applicable State statutes and City Ordinances and policies.

SECTION SIX
SALINAS INCLUSIONARY HOUSING TRUST FUND

The Inclusionary Housing Trust Fund is a separate City fund established for the specific purpose of providing the City with funds to assist in the development, rehabilitation, or preservation of housing that is affordable to very low income, lower income, median-income, moderate income, and workforce income households in the City of Salinas. All in lieu fees, rental housing impact fees, promissory note repayments, shared appreciation payments, monitoring fees, penalties, and interest generated by inclusionary units or by monies in the Fund shall remain in the Fund. Monies in the Fund may be used for property acquisition, development assistance, construction, financing, rent subsidies, and other uses, and for other activities required to provide affordable housing, such as homebuyer education and the costs of administering programs to develop, rehabilitate, or preserve affordable housing.

In expending monies from the Fund, priority shall be given to affordable housing that is of a type, or made affordable at a cost or rent, for which there is a need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance.

EXHIBIT A
AFFORDABLE HOUSING PLAN CONTENTS

The Affordable Housing Plan need be only at the same level of detail as the application for a residential development. However, in every case except Specific Plans, the Affordable Housing Plan must indicate which inclusionary option (either Option 1, 2, 3 or alternative) the developer is selecting. No Affordable Housing Plan is required if the developer indicates in the initial application the developer's intent to pay rental housing impact fees or in-lieu fees.

Where the initial Affordable Housing Plan is not at sufficient detail to determine compliance with the Ordinance, the City may require additions to the Affordable Housing Plan as part of later planning approvals, or as part of the Affordable Housing Agreement. The Affordable Housing Plan must include:

1. Total number of dwelling units in the residential development: _____
2. Inclusionary option selected (One, Two, Three or Alternative): _____
3. Total number of inclusionary units provided: _____
4. Preliminary financial pro forma or other feasibility analysis, if an alternative is selected
5. Project Schedule and Timelines; phasing of construction of inclusionary units in relation to market-rate units
6. For each unit type or model home type, show the number of units, number of bedrooms, square footage, and tenure. This table may be expanded and duplicated for large and/or complex projects. If the project will be phased, complete a separate table for each phase of the project.
7. Site plan showing location of inclusionary units in the development. If the project will be phased, show the location of each phase. If the project consists of a multifamily building or buildings, provide a floor plan showing the location of the units in the structure, or, provide a narrative description sufficient for City to evaluate compliance with dispersal and other requirements.
8. If the project will be phased, describe the construction and completion schedule for the inclusionary units in relation to the market-rate units.
9. Describe the proposed design of the inclusionary units. (If designs are not being provided for the market-rate units as part of this planning application, designs for the inclusionary units may be submitted when they are submitted for the market-rate units.)
10. List any public subsidies or public financing that will be used for the inclusionary units. If public subsidies or public financing will be used, please provide a description of the financing type, the required length of affordability, and means to keep units affordable if different from the standard City affordability provisions.
11. If rental inclusionary units are proposed, complete the attached form.
12. For rental inclusionary units, describe:
    a. Means to be used to verify tenant incomes both at occupancy and annually.

b. Financing mechanism for on-going administration and monitoring.

13. Is the project requesting a density bonus, incentives, concessions or waivers? If so, please provide information as required by section 37-50.060 of the Zoning Ordinance.

14. If the project is requesting an alternative, provide a description of the alternative explaining how the alternative complies with each of the requirements for that alternative contained in Section 17-13.

SAMPLE AFFORDABLE HOUSING PLAN UNIT SUMMARY TABLE

INCOME LEVEL OF BUYERS	TYPE OF UNIT (single-family detached, townhouse or other attached, multifamily)	TENURE (rental or for-sale)	NUMBER OF UNITS	NUMBER OF BEDROOMS	SQUARE FOOTAGE	NUMBER OF BATHROOMS (Describe fixtures)	LAUNDRY FACILITIES (Unit hookups, or total number on-site)
Market-Rate Units							
Workforce Income							
Moderate Income							
Lower Income							
Very Low Income							

REQUEST TO PROVIDE AFFORDABLE RENTAL HOUSING

_____
Date

(a) I have proposed a project for _____ residential units located at (address and assessor's parcel number):

_____ _____
Address *Assessor's Parcel Number*

(b) The proposed project at the above address is subject Article 3, Chapter 17 of the Salinas Municipal Code related to affordable housing.

(c) To comply with Chapter 17, the project proposes to provide ____ units of rental housing affordable to ____ very low ___ lower income households by providing:

___ Affordable rental units in a rental residential development in conformance with Section 17-10.

___ Affordable rental units in a for-sale residential development in conformance with Section 17-9.

___ Affordable rental units in off-site affordable housing in conformance with Section 17-13(a).

(d) To comply with Chapter 17, the development proposes that each rental affordable unit will be subject to a rent regulatory agreement with a term of 30 years and will be rented to very low or low income households, as proposed in item (c) above, at affordable rents consistent with Health and Safety Code Section 50053 and regulations adopted by the California Department of Housing and Community Development (California Code of Regulations Title 25, Sections 6910 through 6924) or successor provisions.

(e) All proposed rental affordable units will not be subject to Civil Code Section 1954.52(a) nor any other provision of the Costa Hawkins Rental Housing Act (Civil Code Sections 1954.51 et seq.) inconsistent with controls on rents, because, pursuant to Civil Code Sections 1954.52(b) and 1954.53(a)(2), I hereby agree to the limitations on rents contained in subsection (d) above of this affidavit in consideration for the following direct financial contribution or any form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code):

___ Waiver of Salinas rental housing impact fee in the amount of $_____;

___ Other direct financial contribution (please specify amount and source of funds: _____);

___ Density bonus, incentive, waiver, or other regulatory incentive of a form specified in Government Code §65915 *et, seq.* (please specify: _____);

___ Development agreement with City.

(f) I will enter into an agreement with the City to be recorded against the affordable rental property providing for the limitations on rents contained in subsection (d) above of this affidavit.

(g) I am a duly authorized officer, agent, or owner of the subject property.

_____
Date

_____
Signature

_____
Name (Print), Title

EXHIBIT B
INCLUSIONARY HOUSING AGREEMENT CONTENTS

All Inclusionary Housing Agreements should include the following:

A. Legal description of the entire property

B. Location of the inclusionary units

C. Development schedule in relation to the market-rate units; implementation of concurrency requirements

D. Type and tenure of units (single-family, condominium, townhouse, etc.; rental or ownership)

E. Number of bedrooms, bathrooms, and square footage of inclusionary units

F. Unit design and appearance

G. Level of affordability and length of affordability

H. Procedures for marketing the units

I. If for-sale units:

1. Provisions for recording restrictions against individual units as the inclusionary units are sold, if required
2. Use of City Council resolution to set initial affordable sales prices when units are ready for occupancy
3. Procedures for selecting initial buyers and verifying incomes and preferences, including first-time homebuyer status.
4. Mechanism for terminating the Inclusionary Housing Agreement once homebuyer restrictions are recorded against title.

J. If rentals:

1. Provisions for recording permanent rent regulatory agreement
2. Use of City Council resolution to set initial affordable rentals when units are ready for occupancy
3. Procedures for selecting initial renters and verifying incomes and preferences
4. Mechanism for terminating the Inclusionary Housing Agreement once the rent regulatory agreement is recorded against title
5. Provisions for ongoing monitoring.

K. If approved as part of Option 3, timing of payment of in-lieu fees, dedication of land, or construction by a non-profit sponsor. Mechanism for terminating or modifying the Inclusionary Housing Agreement once the fees have been paid and the land has been dedicated; or inclusionary units constructed by the non-profit sponsor.

L. Provisions for payment of City fees

M. Provisions for minor and substantive amendments

N. Remedies in the event of default.

EXHIBIT C
CALCULATION OF AFFORDABLE RENTS

ASSUMED HOUSEHOLD SIZE:

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR +
Number of Persons	1	2	3	4	5	1 additional person for each additional bedroom

AFFORDABLE RENTAL HOUSING COSTS:

Very Low Income: 30% times 50% of the monthly area median income adjusted for family size appropriate to the unit

Lower Income: 30% times 60% of the monthly area median income adjusted for family size appropriate to the unit

UTILITY ALLOWANCES:

Utility allowances will be the Section 8 utility allowances published annually by the Housing Authority of the County of Monterey. To determine the rent that may be charged to tenants of inclusionary units, the monthly utility allowance is deducted from the affordable rent if the tenant pays for utilities. Any mandatory fees charged for use of the property must also be deducted from the affordable rent.

EXHIBIT D
CALCULATION OF AFFORDABLE SALES PRICES

ASSUMED HOUSEHOLD SIZE:

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR +
Number of Persons	1	2	3	4	5	1 additional person for each additional bedroom

AFFORDABLE OWNERSHIP HOUSING COSTS:

Median Income: 30% of 90% of the area median income, adjusted for family size appropriate to the unit.

Moderate Income: 30% of 110% of the area median income, adjusted for family size appropriate to the unit.

Workforce Income: 30% of 150% of the area median income, adjusted for family size appropriate to the unit.

AFFORDABLE OWNERSHIP SALES PRICE ASSUMPTIONS:

Homeowners' Insurance	0.25% of Appraised Value
Homeowners' Association Fees	Project Specific (if required)
Private Mortgage Insurance (PMI)	0.5% of Mortgage (if required)
Property Taxes and Property Assessments	1.25% of Sales Price
Loan Terms	30 yr. Fully Amortized Principal + Interest, FNMA Interest Rate %
Downpayment	5.0% of Sales Price

EXHIBIT E
HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS

Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the Code of Federal Regulations

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 2004)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income: Qualify as assistance under the TANF program definition at 45 CFR 260.31; and Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: ▸ the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; *plus* the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

EXHIBIT E
HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS

Part 5 Exclusions

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Disabled Persons	Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-basedrental assistance (24 CFR 5.671(a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	a. Amounts received under training programs funded by HUD. b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set side for use under a Plan to Attain Self-Sufficiency (PASS). c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time. e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of $480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.

EXHIBIT E
HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS

Part 5 Exclusions

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations

17. Other Federal Exclusions	Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including: • The value of the allotment made under the Food Stamp Act of 1977; • Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); • Payments received under the Alaskan Native Claims Settlement Act; • Income derived from the disposition of funds to the Grand River Band of Ottawa Indians; • Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; • Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program; • Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721); • The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands; • Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal workstudy program or under the Bureau of Indian Affairs student assistance programs; • Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, OlderAmerican Community Service Employment Program); • Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation,M.D.L. No. 381 (E.D.N.Y.); • Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments; • The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990; • Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, state job training programs and career intern programs, AmeriCorps); • Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation; • Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990; • Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran; • Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and • Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

ORDINANCE NO. 2594 (N.C.S.)

AN ORDINANCE OF THE CITY OF SALINAS AMENDING ARTICLE III OF ARTICLE 17 (HOUSING) OF THE SALINAS MUNICIPAL CODE RELATING TO THE PROVISION OF INCLUSIONARY HOUSING

BE IT ORDAINED BY THE COUNCIL OF SALINAS:

SECTION ONE: Finding and Declarations.

The city council of Salinas finds and declares as follows:

a) Although Salinas has historically included much of the housing affordable to Monterey County's workforce, housing costs have escalated sharply, increasing faster than incomes for most groups in the community. In 2014, the Salinas Metropolitan Statistical Area (MSA) ranked as the fifth least affordable region in the United States. There is a severe shortage of adequate, affordable housing for extremely low, very low, lower, median, moderate, and workforce income households, as evidenced by the following:

(1) According to the Salinas housing element, 12.7 percent of Salinas households are extremely low income households; 15.6 percent of Salinas households are very low income households; and 19.1 percent are lower income households. In 2014 only 16.7 percent of the homes sold in the Salinas MSA were affordable to a household earning the area's median income, and prices have risen rapidly since then. Median rents are not affordable to extremely low, very low, and lower income households, which together comprise almost half the city's population.

(2) Because of the shortage of affordable housing in Salinas, half of the households in the city overpay for housing. The housing element found that forty-nine percent of Salinas households who own their homes pay more than thirty percent of income for housing, and twenty-four percent pay more than fifty percent of their income for housing. Fifty-two percent of renter households pay more than thirty percent of income for housing, and twenty-four percent of renter households pay more than fifty percent of their income for housing. These households are overpaying for their housing, according to standards of the United States Department of Housing and Urban Development, and the percentage of those overpaying has substantially increased since 2000, when thirty-one percent of Salinas owners and forty percent of Salinas renters paid more than thirty percent of their income for housing. Nearly three-quarters of lower income households are overpaying for housing. Providing decent housing at affordable costs allows households to utilize their resources for other necessary pursuits, such as education, food, investment, and saving for retirement. Providing decent rental housing at affordable costs allows households to save money to purchase a home.

(3) Many households are overcrowded. According to the housing element, Salinas households are much larger than the state average. The average household size in Salinas is 3.66, while in California the average household size is 2.90. Over seventeen percent of all households

in Salinas are overcrowded. Five percent of households in the city are severely overcrowded.

b) The 2015-2023 regional housing needs allocation for the city, mandated by California Government Code Section 65584 and prepared by the Association of Monterey Bay Area Governments, states that fifty-eight percent of new housing in Salinas should be affordable to very low, lower, and moderate income families. Federal and state government programs do not provide nearly enough affordable housing or subsidies to provide the required percentage of moderate, lower, or very low income households.

c) Goal H-1 in the city's housing element is to provide a variety of affordability levels to address existing and projected housing needs in Salinas. It is the city's policy to enhance the public welfare by encouraging a variety of housing types to give households of all types and income levels the opportunity to find suitable housing. (Policy H-1.1) It is also the city's policy to encourage the geographic dispersal of affordable housing throughout the city. (Policy H-1.6) The housing element further encourages the development of affordable housing with a focus on the needs of the local workforce (Policy H-3.1), through inclusionary housing (Policy H-3.7), and through collaborative partnerships with market-rate housing developers (Policy H-3.8). The city can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the city is affordable to households with limited incomes.

d) Action H-8, "Inclusionary Housing" in the city's housing element states that the city will continue to implement its inclusionary housing program and is in the process of updating the inclusionary ordinance, including reviewing the in-lieu fee. The city intends to review and update if necessary its inclusionary ordinance every five years. The proposed amendments to the inclusionary ordinance are intended to implement housing element action H-8. In particular, to ensure economic feasibility, the proposed amendments reduce the amount of affordable housing required in for-sale projects to 15 to 20 percent (compared with 20 to 35 percent in the city's existing ordinance), allow developers to pay an in-lieu fee as an alternative to providing the required on-site affordable units, and provide additional options that a developer may elect to meet its affordable housing requirements.

e) The amended inclusionary ordinance codified in this article will substantially advance the city's legitimate interest in providing additional housing affordable to all income levels and dispersed in residential developments in the city because all inclusionary units required by the ordinance codified in this article, including both rental and ownership units, must be affordable to very low, lower, median, moderate, and workforce income households.

f) New market-rate rental residential developments will create local-serving jobs, of whom a quantifiable number will have very low, low, or moderate incomes, and so will increase the demand for and exacerbate the shortage of housing available for households at these income levels, as demonstrated in the Housing Impact Fee Nexus Study prepared by Vernazza Wolfe Associates, Inc. in January 2016. An additional residential rental housing feasibility study was conducted by Vernazza Wolfe Associates, Inc. in March 2017. The amendments included in this ordinance allow the city to adopt a rental housing impact fee.

g) Based on the findings above, the city desires to further the public health, safety, and welfare by adopting the requirements contained in this article. Affordable units provided within a development further the community's housing element goals of maintaining both economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to include some housing affordable to very low, lower, median, moderate, and workforce income households is also reasonably related to the impacts of their projects, as demonstrated in the Nexus Study. Providing additional alternatives to for-sale developers, including payment of an in-lieu fee, ensures that developers can construct economically viable projects without public subsidies while incorporating affordable housing into their projects or assisting in providing affordable housing elsewhere in the city.

SECTION TWO: Article 3 (Housing) of Chapter 17 (Housing) of the Salinas Municipal Code is amended to read as follows:

17-6. Purpose

The purpose of this article is to:

a) Enhance the public welfare by establishing policies which require the development of housing affordable to households of very low, lower, median, moderate, and workforce incomes.

b) Assist in meeting the city's share of regional housing needs as mandated by State law.

c) Offset the demand for affordable housing that is created by new market-rate housing development.

d) Implement the housing element's goals and objectives.

17-7. Definitions

Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give this article its most reasonable application.

a) "Affordable housing plan" means a plan submitted in conformance with Section 17-16 specifying the manner in which inclusionary units will be provided in conformance with this article and consistent with the Salinas General Plan and Chapter 37 of the Salinas Municipal Code.

b) "Affordable ownership cost" means a reasonable down payment and an average monthly housing cost during the first calendar year of occupancy, including mortgage loan principal and interest, mortgage insurance, property taxes and property assessments, homeowners insurance, homeowners association dues, if any, and all other dues and fees assessed as a condition of property ownership, which does not exceed: (1) 30 percent of 50 percent of area median income for very low income households; (2) 30 percent of 70 percent of area median income for lower income households; (3) 30 percent of 90 percent of area median income for median income households; (4) 30 percent of 110 percent of area median income for moderate-

income households; (5) 30 percent of 150 percent of area median income for workforce income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, four persons in a three-bedroom unit, five persons in a four-bedroom unit, and six persons in a five-bedroom unit. The inclusionary housing guidelines may incorporate procedures for determining affordable ownership cost in accordance with this section.

c) "Affordable rent" means monthly rent, including a reasonable utility allowance and all mandatory fees charged for use of the property, which does not exceed: (1) 30 percent of 50 percent of area median income for very low income households; and (2) 30 percent of 60 percent of area median income for lower income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, four persons in a three-bedroom unit, and five persons in a four-bedroom unit. The inclusionary housing guidelines may incorporate procedures for determining affordable rent in accordance with this section.

d) "Applicant" or "developer" means a person, persons, or entity that applies for a residential development and also includes the owner or owners of the property if the applicant does not own the property on which the development is proposed.

e) "Area median income" means the annual median income for Monterey County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

f) "Attached Development" means townhomes, condominiums or unit(s) in which the physical connection of two structures share any part of a common wall or roof with no more than one hundred and twenty units.

g) "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.

h) "City Manager" means the city manager of the city or his or her designee.

i) "Common ownership or control" refers to property owned or controlled (including by an option to purchase or a purchase agreement) by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

j) "Contiguous property" means any parcel of land that is: (1) touching another parcel at any point; (2) separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property under common ownership or control of the applicant.

k) "Density bonus units" means dwelling units approved in a residential development under California Government Code section 65915 et seq. that are in excess of the maximum residential density otherwise permitted by the Salinas General Plan or zoning ordinance.

l) "Downtown Area" means the area within the boundaries of the Central City Overlay District as defined per Zoning Code 37-40.300.

m) "First approval" means the first of the following approvals to occur with respect to a residential development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

n) "For-sale residential development" means any residential development or portion of a residential development that involves the creation of one or more additional dwelling units or lots that may lawfully be sold individually. A for-sale residential development also includes a condominium conversion as described in Article VII of Chapter 31.

o) "Future Growth Area" is that incorporated area designated by the 2002 General Plan, located north of Boronda Road, and bounded by San Juan Grade Road to the west, Williams Road to the east, and Rogge Road and the future extensions of Russell Road and Old Stage Road to the north.

p) "Inclusionary housing agreement" means an agreement in conformance with Section 17.16 of this article between the city and an applicant, governing how the residential development shall comply with this article.

q) "Inclusionary housing guidelines" means the requirements for implementation and administration of this article adopted by city council.

r) "Inclusionary unit" means a dwelling unit required by this article to be affordable to very low, lower, median, moderate, or workforce income households.

s) "Lower income households" means those households whose annual income, adjusted for household size, does not exceed the low income limits, adjusted for household size, applicable to Monterey County as defined in California Health and Safety Code Section 50079.5 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).

t) "Market rate unit" means a new dwelling unit in a residential development that is not an inclusionary unit.

u) "Median income households" means households whose annual income, adjusted for household size, does not exceed area median income.

v) "Moderate income households" means households whose annual income, adjusted for household size, does not exceed the moderate income limits applicable to Monterey County as

defined in California Health and Safety Code Section 50093 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).

w) "Planning permit" means any discretionary approval of a residential development, including but not limited to a development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, planned development permit, tentative map, parcel map, conditional use permit, or special use permit.

x) "Rental residential development" means any residential development or portion of a residential development that creates one or more additional dwelling units that cannot lawfully be sold individually.

y) "Residential development" means any development project requiring a planning permit or a building permit, if no planning permit is needed, for which an application has been submitted to the city, and where the residential development would either (1) create ten or more additional dwelling units or lots; (2) convert ten or more existing rental dwelling units to condominiums; or (3) is contiguous to property under common ownership or control of the applicant where the combined residential capacity of all of the applicant's property under the General Plan designation or zoning is ten or more additional residential units or lots.

z) "Surplus inclusionary unit" means any inclusionary unit constructed as part of a residential development without city funds or nine percent low income housing tax credits, and which is excess of the numerical requirement for inclusionary units for that residential development. "City funds" include both money which originates directly from the city, such as general fund monies, and that which originates from other sources, such federal and state funds, but that the city allocates. "City funds" also include any waiver of city fees.

aa) "Unit type" means detached single-family home, duplex, triplex, townhome, or multifamily construction.

bb) "Very low-income households" means households whose annual income, adjusted for household size, does not exceed the very low income limits applicable to Monterey County as defined in California Health and Safety Code Section 50105 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).

cc) "Workforce income households" means households whose annual income, adjusted for household size, does not exceed 160 percent of area median income.

17-8. Exemptions

This article shall not apply to any of the following:

a) Projects that are not residential developments as defined in Section 17-7(x), including but not limited to those residential developments creating fewer than ten additional dwelling units or lots.

b) Residential developments which are developed pursuant to the terms of a development agreement executed prior to the effective date of this ordinance or which have otherwise received a vested right to proceed without conforming to this article under state law, provided that such residential developments shall comply with any affordable housing requirements consistent with the development agreement.

c) Residential developments exempted by Government Code section 66474.2 or 66498.1, provided that such residential developments shall comply with any predecessor ordinance in effect on the date the application for the development was deemed complete.

d) Residential developments located in the Downtown Area, unless the city council by resolution determines that, based on market conditions, the provisions of this article will be applied in the Downtown Area.

e) Residential developments that have submitted a complete planning or building permit application along with full payment of required application fees to the city prior to the effective date of this ordinance, provided that such residential developments shall comply with any approved affordable housing plan and any predecessor ordinance applicable to the development.

f) One-hundred percent affordable low-income housing projects with either a recorded deed restriction, restrictive covenant or regulatory agreement of no less than thirty years.

17-9. Basic Inclusionary Housing Options – For-Sale Residential Developments

An applicant for a for-sale residential development may elect to provide one of the basic options described in this section or elect to propose one of the options described in Section 17-13. The requirements of this section are minimum requirements and do not preclude a residential development from providing additional affordable units or affordable units with lower rents or sales prices than required by this section.

Calculations of the number of required inclusionary units shall exclude any density bonus units that are part of the residential development. Fractions of one-half or greater shall be rounded up to the next highest whole number, and fractions of less than one-half shall be rounded down to the next lowest whole number.

a) **On-Site For-Sale Inclusionary Units.** An applicant for a for-sale residential development may elect to provide on-site for-sale inclusionary units at affordable ownership cost as follows:

   (1) Option One: A minimum of four percent of the dwelling units in the residential development shall be affordable to very low income households, eight percent shall be affordable to lower income households, four percent shall be affordable to moderate income households, and four percent shall be affordable to workforce income households, for a minimum twenty percent inclusionary units total.

(2) Option Two: A minimum of six percent of the dwelling units in the residential development shall be affordable to median income households, six percent to moderate income households, and three percent to workforce income households, for a minimum fifteen percent inclusionary units total.

b) **On-Site Rental Inclusionary Units.** An applicant for a for-sale residential development may elect to provide on-site rental inclusionary units at affordable rent as follows:

(1) Option One: A minimum of eight percent of the dwelling units in the residential development shall be affordable to very low income households and four percent shall be affordable to lower income households, for a minimum twelve percent inclusionary units total.

(2) Option Two: If an applicant elects Option One under Section 17-9(a) above, the applicant may elect to provide the very low income units and the lower income units as rental units rather than for-sale unit, so that a minimum of four percent of the dwelling units in the residential development shall be available to very low income households at affordable rent, eight percent shall be available to lower income households at affordable rent, four percent shall be available to moderate income households at affordable ownership cost, and four percent shall be affordable to workforce income households at affordable ownership cost, for a minimum twenty percent inclusionary units total. Under this option, an applicant may elect to pay rental housing impact fees in order to satisfy the rental obligation.

(3) To ensure compliance with the Costa-Hawkins Residential Rent Control Act (Civil Code Section 1954.50 *et seq.*), the city may approve on-site rental inclusionary units only if the applicant agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or a form of assistance specified in Density Bonus Law (Government Code Section 65915 *et seq.*).

(4) Any rent regulatory agreement for rental units in a for-sale residential development shall include provisions for sale of the inclusionary units and relocation benefits for tenants of the inclusionary units if the owner of the residential development later determines to offer the inclusionary units in the residential development for sale at affordable ownership cost.

c) **Payment of In-Lieu Fees.** An applicant for a for-sale residential development may elect to pay in-lieu fees as described in Section 17-14 and adopted from time to time by resolution of the city council.

17-10. Basic Inclusionary Housing Options – Rental Residential Developments

An applicant for a rental residential development may elect to provide one of the basic options described in this section or elect to propose one of the options described in Section 17-13. The requirements of this section are minimum requirements and do not preclude a residential development from providing additional affordable units or affordable units with lower rents or sales prices than required by this section.

a) **Payment of Rental Housing Impact Fees.** An applicant for a rental residential development may elect to pay rental housing impact fees as described in Section 17-14 and adopted from time to time by resolution of the city council. If an applicant chooses to pay rental housing impact fees, the applicant will also make twelve percent of the units within the development available to section 8 housing choice voucher program participants so long as the section 8 housing choice voucher program is in effect.

b) **On-Site Rental Inclusionary Units.** An applicant for a rental residential development may elect to provide on-site rental inclusionary units at affordable rent as follows:

(1) A minimum of eight percent of the dwelling units in the residential development shall be affordable to very low income households and four percent shall be affordable to lower income households, for a minimum twelve percent inclusionary units total.

(2) Calculations of the required number of inclusionary units shall exclude any density bonus units that are part of the residential development. Fractions of one-half or greater shall be rounded up to the next highest whole number, and fractions of less than one-half shall be rounded down to the next lowest whole number.

(3) To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the city may approve on-site rental inclusionary units only if the applicant agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(4) An applicant may submit a request to provide different on-site rental percentages and affordability levels in order to comply and satisfy the requirements of the California tax credit allocation committee 4% or 9% low-income housing tax credit programs. Submittal of such request must be reviewed and approved by the city.

c) The city may require on-site rental inclusionary units at such time as current appellate case law in Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2nd Dist. 2009) 175 Cal.App.4th 1396, is overturned, disapproved, or depublished by a court of competent jurisdiction or modified by the state legislature to authorize control of rents of inclusionary units

17-11. Timing of Construction of Inclusionary Units

a) The city may issue building permits for seventy percent of the market rate units within a residential development before issuing building permits for any inclusionary units. Following issuance of seventy percent of building permits for the market rate units, the inclusionary units shall be constructed in proportion to construction of the market rate units. No building permit shall be issued for any additional market rate unit unless a proportional number of building permits have been issued for inclusionary units, and no certificates of occupancy or final inspections shall be issued for any additional market rate units unless a proportional number of certificates of occupancy or final inspections have been issued for inclusionary units. For example, if inclusionary units constitute twenty percent of the remaining units to be built in

the development after seventy percent of the market-rate units are issued building permits, inclusionary units must constitute twenty percent of the remaining building permits issued.

b) Notwithstanding Section 17-11 (a), the city, at its sole discretion, may issue building permits for 100 percent of market rate units within a residential development before issuing building permits for any inclusionary units if the developer is partnering with an experienced non-profit affordable housing provider. If the applicant elects to propose one of the alternatives described in Section 17-13, the applicant shall propose a phasing plan for construction of inclusionary and market rate units as part of the affordable housing plan.

c) Specific proposed timing of construction of inclusionary and market rate units shall be included in all affordable housing plans.

17-12. Standards for Inclusionary Units

a) Inclusionary units shall be dispersed throughout the residential development, with the same unit types as the market rate units, except for the following:

(1) Inclusionary units affordable to workforce income households may have smaller lots than market rate units.

(2) Inclusionary units affordable to moderate and median income households may built in attached developments. However, at least fifty percent of the units in the attached development must be market rate units.

(3) Rental inclusionary units may be clustered as needed in multifamily or other housing types to provide eligibility for state and federal funding, including housing tax credits, if the affordable housing plan includes a management plan satisfactory to the city, and if approved by the city council.

b) At a minimum, the inclusionary units shall have the same proportion of units with each number of bedrooms as the market rate units (the same proportion of one-bedroom units, of two-bedroom units, etc.).This does not preclude a developer from providing inclusionary units with more bedrooms than is required by this ordinance.

c) Inclusionary units must meet the following minimum standards:

(1) Single Room Occupancy: 250 sf, ¾ bath

(2) Studio: 500 sq. ft., 1 bath

(3) 1 bedroom: 650 sq. ft., 1 bath

(4) 2 bedroom: 900 sq. ft., 1 bath

(5) 3 bedroom: 1100 sq. ft., 1.75 baths

(6) 4 bedroom: 1275 sq. ft., 1.75 baths

A full bathroom includes sink, toilet, and tub with shower. A 0.75 bath includes a sink, toilet, and tub or shower.

d) The quality of exterior design and overall quality of construction of the inclusionary units shall be consistent with the exterior design of the market rate units in the residential development and shall meet all site, design, and construction standards included in Title 17 (Buildings and Construction), Title 19 (Subdivisions), and Title 20 (Zoning) of this Code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the city council, and the inclusionary housing guidelines.

e) lnclusionary units may have different interior finishes and features than market rate units in the same residential development, as long as the finishes and features are functionally equivalent to the market rate units and are durable and of good quality and comply with the inclusionary housing guidelines. The city may adopt more detailed interior finish or construction standards in the inclusionary housing guidelines.

f) The inclusionary units shall have the same access to and enjoyment of common open space and facilities in the residential development as the market rate units.

17-13. Developers' Compliance Options

As an alternative to the basic inclusionary housing options described in Sections 17-9 and 17-10 of this article, a developer may elect to propose one of the options included in this section. The city at its sole discretion may offer additional incentives or subsidies to achieve more inclusionary units, greater affordability, or more rental units. All options included in this section must be approved by the city council.

a) **Off-Site Construction**. For residential developments within the Future Growth Area, the inclusionary housing requirements of this article may be satisfied by the construction of inclusionary units on a site different from the site of the residential development if the proposal meets all of the following criteria:

(1) The inclusionary units must be built within the Future Growth Area.

(2) The off-site location will not tend to cause racial segregation.

(3) Access to public transportation shall be equal to or better than that available to the residential development.

(4) The proposed site has a General Plan and zoning designation that authorizes residential uses and is zoned at a density to accommodate at least the required number of inclusionary units.

(5) The proposed site is suitable for development of the inclusionary units in regard to configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.

(6) Any hazardous materials and geological hazards shall be mitigated to the satisfaction of the city. The site shall not be located in a 100-year flood plain. If federal or state funds are proposed to finance the off-site development, the site must meet all required federal or state, as applicable, environmental standards.

(7) The construction schedule for the off-site inclusionary units shall be included in the affordable housing plan and the inclusionary housing agreement. The off-site inclusionary units shall be constructed prior to or concurrently with the market rate units in the residential development consistent with the proposed construction schedule.

b) **Partnership**. An applicant may elect to contract with another developer with experience in building and managing affordable housing to construct all or some of the required inclusionary units. The inclusionary housing agreement shall contain specific assurances guaranteeing the timely completion of the required inclusionary units, including satisfactory assurances that construction and permanent financing will be secured for the construction of the units within the schedule shown in the affordable housing plan.

c) **Dedication of Land**. The inclusionary housing requirements of this article may be satisfied by the dedication of land in lieu of constructing inclusionary units within the residential development if the proposal meets all of the following criteria:

(1) Marketable title to the site is transferred to the city, or an affordable housing developer approved by the city, prior to the commencement of construction of the residential development.

(2) The location will not tend to cause racial segregation.

(3) Access to public transportation shall be equal to or better than that available to the residential development.

(4) The proposed site has a General Plan and zoning designation that authorizes residential uses and is zoned at a density to accommodate at least the required number of inclusionary units.

(5) The proposed site is suitable for development of the inclusionary units in regard to configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria, including, but not limited to, the cost of construction arising from the nature, condition, or location of the site.

(6) Any hazardous materials have been mitigated to the satisfaction of the city prior to transfer of title. The site is not located in a 100-year flood plain. The site meets all required federal and state environmental standards.

(7) Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, is available at the property line and has adequate capacity to serve the maximum allowable residential development.

(8) If the property is to be transferred to the city, the deed transferring title does not require the city to construct affordable housing on the site, but allows the city to sell, transfer, lease, or otherwise dispose of the dedicated site at the city's sole discretion. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the city shall be deposited into the inclusionary housing trust fund described in Section 17-17. However generally, it is the city's policy to use the dedicated land for affordable housing.

(9) If the site is to be transferred to an affordable housing developer, the construction schedule for the inclusionary units shall be included in the affordable housing plan and the inclusionary housing agreement.

d) **Transfers of Surplus Inclusionary Units**. For residential developments within the Future Growth Area, the inclusionary housing requirement of this article may be satisfied by the use of surplus inclusionary units if the proposal meets all of the following criteria:

(1) A developer who completes construction and makes available one or more surplus inclusionary units at an affordable rent or affordable ownership cost may utilize those surplus inclusionary units to satisfy the developer's future inclusionary housing requirements within the Future Growth Area for a period of five years after approval of occupancy for the surplus inclusionary unit. During the last year of the first five-year period, developers may apply for one five-year extension, which may be granted at the sole discretion of the city council.

(2) A developer who completes construction and makes available one or more surplus inclusionary units at an affordable rent or affordable ownership cost may alternatively sell or otherwise transfer the surplus inclusionary credit to another developer within the Future Growth Area in order to satisfy, or partially satisfy, the transferee's inclusionary housing requirements.

(3) Any surplus inclusionary unit proposed to meet the inclusionary housing requirements of another residential development must have the same tenure (rental or ownership) and at least as many bedrooms as the required inclusionary unit and otherwise meets all requirements of Section 17-12.

(4) The city may develop more detailed implementation standards and requirements for credits and transfers as part of the inclusionary housing guidelines.

e) **Other Options.** A developer may propose an option not listed above to comply with inclusionary housing requirements. Such proposals shall be made in the affordable housing plan, shall be considered by the city in accordance with this article and the inclusionary housing guidelines, and may be approved by the city if the alternative method of compliance either provides substantially the same or greater level of affordability or the amount of affordable

housing as would be required by the basic options listed in Sections 17-9 and 17-10, or provides fewer units with deeper affordability.

17-14. In-Lieu Fees and Rental Housing Impact Fees

a) The city council may from time to time adopt by resolution housing in-lieu fees for for-sale residential developments and rental housing impact fees for rental residential developments.
b) Payment of in-lieu fees and rental housing impact fees shall be due at the issuance of building permits for the residential development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

c) All in-lieu fees and rental housing impact fees shall be deposited in the inclusionary housing trust fund.

17-15. Continuing Affordability and Initial Occupancy

a) The city council, by resolution, shall approve standard documents to ensure the continued affordability of the inclusionary units approved in each residential development. Prior to approval of the final or parcel map for any residential development, or issuance of any building permit, the inclusionary housing agreement shall be recorded.

b) Rental regulatory agreements shall be recorded against all rental inclusionary units prior to occupancy. For for-sale inclusionary units, shared appreciation documents or other documents approved by the city council shall be recorded against each inclusionary unit prior to sale. However, if the price of the market rate units in that phase of the residential development is equal to or below the affordable ownership cost for a median, moderate, or workforce income household, then no documents need be recorded against the inclusionary units in the relevant income category.

c) The term of affordability for all inclusionary units shall be thirty years. A longer term of affordability may be required if the residential development receives a subsidy of any type, including but not limited to loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

d) All promissory note repayments, shared appreciation payments, or other payments collected under this section shall be deposited in the city's inclusionary housing trust fund.

e) Any household that occupies an inclusionary unit must occupy that unit as its principal residence.

f) No household may begin occupancy of an inclusionary unit until the household has been determined to be eligible to occupy that unit. The city council, by resolution, may establish guidelines for determining household income, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

g) Any person who is a member of the city council or the planning commission, and their immediate family members, and any person having any equity interest in the residential development, including but not limited to a developer, partner, investor, or applicant, and their immediate family members, is ineligible to rent, lease, occupy, or purchase an inclusionary unit. The city council, by resolution, may establish guidelines for determination of "immediate family members."

17-16. Affordable Housing Plan Submittal and Inclusionary Housing Agreement.

a) An affordable housing plan shall be submitted as part of the application for first approval of any residential development. No application for a first approval for a residential development may be deemed complete unless a complete affordable housing plan is submitted. If the residential development includes fewer than 10 units, the affordable housing plan shall include all contiguous property under common ownership and control. However, the applicant shall not be required to construct any dwelling units upon the contiguous property until an application is proposed for that property. No affordable housing plan shall be required if the applicant proposes to pay in-lieu fees or rental housing impact fees to satisfy the requirements of this article.

b) For each construction phase, the affordable housing plan shall specify, at the same level of detail as the application for the residential development: the inclusionary housing option selected, the number, unit type, tenure, number of bedrooms and baths, approximate location, construction and completion schedule of all inclusionary units, and phasing of inclusionary units in relation to market rate units. If an option listed in Section 17-13 is selected, additional information shall be submitted to verify that the proposal meets the requirements of that section.

c) The affordable housing plan shall be reviewed as part of the first approval of any residential development. The affordable housing plan shall be approved if it conforms to the provisions of this article. A condition shall be attached to the first approval of any residential development to require recordation of the inclusionary housing agreement described in subsection (e) of this section prior to the approval of any final or parcel map or building permit for the residential development.

d) A minor modification of an approved affordable housing plan may be granted by the city manager if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.

e) Following the first approval of a residential development, the city shall prepare an inclusionary housing agreement providing for implementation of the affordable housing plan and consistent with the inclusionary housing guidelines. Prior to the approval of any final or parcel map or issuance of any building permit for a residential development subject to this article, the inclusionary housing agreement shall be executed by the city and the applicant and recorded against the entire residential development property to ensure that the agreement will be enforceable upon any successor in interest. If the affordable housing plan included contiguous

property under common ownership or control, and affordable housing will be required on the property under common ownership or control when that contiguous property is developed, the inclusionary housing agreement shall also be recorded against that contiguous property under common ownership or control and shall require compliance with this article upon development of that contiguous property at such time as there are planning permit applications that would authorize a total of ten or more residential units for the residential development and the contiguous property under common ownership or control.

f) The city council, by resolution, may establish fees for the ongoing administration and monitoring of the inclusionary units, which fees may be updated periodically, as required.

17-17. Inclusionary Housing Trust Fund.

a) All in-lieu fees, rental housing impact fees, monitoring and other fees, promissory note repayments, shared appreciation payments, or other funds collected under this article shall be deposited into a separate account to be designated as the inclusionary housing trust fund.
b) The monies in the inclusionary housing trust fund and all earnings from investment of the monies in the inclusionary housing trust fund shall be expended exclusively to provide housing affordable to very low income, lower income, median income, moderate income, and workforce income households in the city of Salinas.

17-18. Waiver

a) Notwithstanding any other provision of this article, the requirements of this article may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that applying the requirements of this article to the proposed residential development would take property in violation of the United States or California Constitutions.

b) Any request for a waiver, adjustment, or reduction under this section shall be submitted to the city concurrently with the affordable housing plan. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.

c) The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:

(1) That the applicant will provide the most economical inclusionary units feasible, meeting the requirements of this article and the inclusionary housing guidelines.

(2) That the applicant is likely to obtain housing subsidies when such funds are reasonably available.

d) The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings based upon the advice of the city attorney and based on substantial evidence.

17-19. Implementation and Enforcement

a) The city council may adopt inclusionary housing guidelines, by resolution, to assist in the implementation of all aspects of this article.

b) The city attorney shall be authorized to enforce the provisions of this article and all inclusionary housing agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on inclusionary units by civil action and any other proceeding or method permitted by law. The city may, at its discretion, take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this article.

c) Failure of any official or agency to fulfill the requirements of this article shall not excuse any applicant or owner from the requirements of this article. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this article have been satisfied.

d) The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION THREE: SEVERABILITY

If any clause, sentence, section, or part of this article, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this article on other persons or entities. It is hereby declared to be the intention of the city council that this article would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part not been included herein, or had such person or entity been expressly exempted from the application from the application of this article.

SECTION FOUR: EFFECTIVE DATE.
This ordinance shall take effect and be in force thirty (30) days after its adoption by the city council.

SECTION FIVE: PUBLICATION.

The Clerk of the City of Salinas published a notice in The Californian, a newspaper of general circulation printed and published in Monterey County and published and circulated in the City of Salinas, within ten (10) days from its adoption.

The foregoing ordinance was duly introduced and read before the City Council of the City of Salinas, County of Monterey, at the regular meeting of the City Council held on 16th day of May 2017, and adopted at a regular meeting of said Council held on the 6th, day of June, 2017, by the following vote:

AYES: Councilmembers: Barrera, Craig, Davis, De La Rosa, McShane, Villegas and Mayor Gunter

NOES: None

ABSTAIN: None

ABSENT: None

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Class	City Attorney	City Manager	Community Development Dir	Finance Director	Lib/Community Svc Dir	Planning Manager	Public Works Director	Senior Planner	Grand Total
Loaded Hourly Rate	$ 156.31	$ 183.12	$ 129.66	$ 136.52	$ 121.53	$ 101.19	$ 119.87	$ 71.95	
Meetings	18	15	17	17	15	18	18	18	
2 hrs per meeting	2	2	2	2	2	2	2	2	
Review time	10	2	7	5	4	10	10	10	
Other Time								41	
Total Cost for Staff Time	7,190	5,860	5,316	5,324	4,132	4,655	5,514	6,260	**44,251**

(# meetings x 2 hrs) + review and other hrs.) x hourly rate

CITY OF SALINAS
FUTURE GROWTH AREA
ACCOUNTS RECEIVABLE
June 30, 2017-Matsui's Acreage updated

	Acreage	*% Total Acres*	*% Participating*	*Expenditures thru 06/30/12*	*Payments thru 06/30/12*	*Payments from 2008 Trust Acct*	*Interests/ Adjustments*	*Amount Due 06/30/17*
Participating:								
East								
Global as Investments					(31,810.83)			(31,810.83)
Wayland/Hardy	461.52	18.78%	21.04%	585,105.68	(533,509.78)	(16,401.00)	(18,769.95)	16,424.95
Andrus	302.72	12.32%	13.80%	383,782.27	(123,073.28)	(10,754.70)	29,065.93	279,020.22
	764.24			968,887.95	(688,393.89)	(27,155.70)	10,295.98	263,634.34
West								
Glover/Barbara Emlay					(296.11)		(952.79)	(1,248.90)
Rexford	158.59	6.45%	7.23%	201,057.18	(184,455.43)	(6,399.00)	(6,747.68)	3,455.07
Sabrana-Nucci Ranch	117.95	4.80%	5.38%	149,534.61	(128,815.27)	(4,759.00)	(2,467.10)	13,493.24
Kantro	154.04	6.27%	7.02%	195,288.78	(182,298.20)	(6,214.00)	(3,419.23)	3,357.35
Bondesen	99.55	4.05%	4.54%	126,207.47	(120,664.58)	(4,016.00)	(2,022.73)	(495.84)
Harden Foundation (Harrod)	72.58	2.95%	3.31%	92,015.45	(74,366.43)	(2,927.00)	(2,951.00)	11,771.02
Madalora	108.32	4.41%	4.94%	137,325.90	(140,779.90)	(4,369.00)	9,598.66	1,775.66
Mortensen	53.94	2.20%	2.46%	68,384.04	(69,513.66)	(2,174.70)	1,600.74	(1,703.58)
	764.97			969,813.43	(901,189.58)	(30,858.70)	(7,361.13)	30,404.02
Central								
Christensen	151.39	6.16%	6.90%	191,929.17	(118,670.89)	(6,817.67)	14,543.24	80,983.85
Creekbridge	297.54	12.11%	13.56%	377,215.17	(294,294.77)		(18,614.19)	64,306.21
Matsui	215.33	8.76%	9.82%	272,991.00				272,991.00
	664.26			842,135.34	(412,965.66)	(6,817.67)	(4,070.95)	418,281.06
Subtotal Participating	**2,193.47**		**100.00%**	**2,780,836.72**	**(2,002,549.13)**	**(64,832.07)**	**(1,136.10)**	**712,319.42**
Non-Participating:								
East								
Matsui	53.25	2.17%						
Shibata	53.25	2.17%						
Gabilan Knights	16.98	0.69%						
Carlon	11.46	0.47%						
Clark	13.44	0.55%						
Calleros	5.61	0.23%						
First Free Will Baptist	10.43	0.42%						
	164.42							
West								
SUHSD	37.91	1.54%						
Piffero	0.78	0.03%						
Santa Rita Union School D	11.46	0.47%						
Glover	1.71	0.07%						
	51.86							
Central								
Avila	0.51	0.02%						
Settrini	46.74	1.90%						
	47.25							
Subtotal Non Participating	263.53							
Total	2,457.00	100.00%						