

2016
5-11-16

ORDINANCE NO. 1118-01 (CM)

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF WATSONVILLE APPROVING DEVELOPMENT
AGREEMENT NO. DA-2-00 BETWEEN THE CITY OF
WATSONVILLE AND CLARUM HOMES, INC., A
CALIFORNIA CORPORATION, FOR THE PROPOSED 390-
UNIT PLANNED DEVELOPMENT**

**Project: Vista Montaña
Watsonville, California
[APNs 017-551-08, 09 and 11]**

WHEREAS, Clarum Homes, Inc., a California corporation, has applied for approval of a Development Agreement for the development of a proposed 390-unit Planned Development (AKA Vista Montaña) consisting of 177 small lot single family homes, 80 townhomes, 133 apartments, and a 14.5 acre park on 64 acres of land known as the Franich Property located at the corner of East Lake Avenue and Wagner Avenue (Assessor's Parcel Numbers: 17-551-08, 9 and 11), Watsonville, California; and

WHEREAS, the Planning Commission at its October 1, 2001, meeting adopted a resolution recommending approval of Development Agreement No. DA-2-00 between the City of Watsonville and Clarum Homes, Inc., a California corporation, in substantially the same form as the Development Agreement attached to this Ordinance.

**WHEREAS, NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:**

SECTION 1. APPROVAL.

That Development Agreement No. DA-2-00 between the City of Watsonville and Clarum Homes, Inc., a California corporation, a copy of which is attached hereto and

incorporated herein by this reference, is fair and equitable and is hereby ratified and approved for the proposed 390-unit Planned Development consisting of 177 small lot single family homes, 80 townhomes, 133 apartments, and a 14.5 acre park on 64 acres of land known as the Franich Property located at the corner of East Lake Avenue and Wagner Avenue (Assessor's Parcel Numbers: 17-551-08, 9 and 11), Watsonville, California.

SECTION 2. AUTHORIZATION.

That the City Manager is hereby authorized and directed to execute Development Agreement No. DA-2-00 for and on behalf of the City of Watsonville. The City Manager is also authorized to approve non-substantive changes to the Agreement, if necessary, in order to carry out the intent of the Council.

SECTION 3. PUBLICATION.

This Ordinance and the Table of Contents of Development Agreement No. DA-2-00 may be published in place of the entire text of the Development Agreement in the Watsonville Register-Pajaronian in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 4. RECORDATION.


The Development Agreement shall be recorded by the City Clerk pursuant to Government Code § 65868.5.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall be in force and take effect thirty (30) days from and after its final adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Watsonville, held on the 9th day of October, **2001**, by Council Member Phares, who moved its adoption, which motion being duly seconded by Council Member Lopez, was upon roll call carried and ordered printed and published by the following vote:

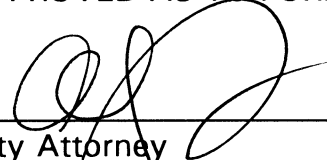
AYES:	COUNCIL MEMBERS:	Bobeda, de la Paz, Doering-Nielsen, Gomez, Lopez, Phares, Carter
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None


Charles E. Carter, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney



2001-0081156

Recorded
Official Records
County Of
SANTA CRUZ
RICHARD W. BEDAL
Recorder

REC FEE .00

08:02AM 20-Dec-2001 | BLS
Page 1 of 51

Recorded at the request of and when
recorded, return to:

**City Clerk
City of Watsonville
Post Office Box 50000
Watsonville, CA 95077-5000**

This document is recorded for the benefit
and at the request of the City of
Watsonville and is exempt from recording
fees pursuant to Government Code
Sections 6103 and 27383.

Space above for recorder's stamp

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WATSONVILLE, A
MUNICIPAL CORPORATION, AND CLARUM CORPORATION, A CALIFORNIA
CORPORATION AFFECTING THE "FRANICH PROPERTY"**

Path: C:\Documents and Settings\ajsmith\Desktop\Clarum-Franich DA - Council approved version.doc
Author: Alan J. Smith; Revision No. 2
Create date: 10/16/2001 12:21 PM
Print date: 10/16/2001 12:21 PM.

Attachment/Exhibit to
Ordinance No. 1118-01 (CM)

Clarum Development Agreement

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RECITALS

Whereas, in order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature in 1991 adopted the Development Agreement Law [stats. 1991, c. 942 (A.B. 628), 812](Section 65864, et seq. of the Government Code), and

Whereas, the Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit for the development of property in a manner not otherwise available to the contracting parties, and

Whereas, this Development Agreement relates to property generally East of East Lake Avenue, West of Bridge Street and North of the East Lake Shopping Center consisting of 73.56 acres, more or less, more particularly described in Minor Land Division ("MLD") 2-99 and described on the Site and Vicinity Map, attached hereto and identified as Exhibit "C" and incorporated by this reference, hereafter the Property, and

Whereas, Clarum's predecessor in title to the property identified herein was Anthony Franich ("Franich"), and

Whereas, on or about June 12, 1989, Franich and the Santa Cruz County Local Agency Commission executed a Memorandum of Understanding. ("Franich-LAFCO MOU"). A copy of the Franich-LAFCO MOU is attached to this Development Agreement and identified as Exhibit "A", and

Whereas, said Franich-LAFCO MOU established certain procedures for environmental review under CEQA and established certain standards for affordable housing, and

Whereas, on or about February 23, 1993, Franich and City signed a Statement of Understanding ("City-Franich SOU"). A copy of the City-Franich SOU is attached to this Development Agreement, identified as Exhibit "B" and incorporated by this reference, and

Whereas pursuant to said City-Franich SOU, Franich agreed to dedicate eight (8) acres of the Property for a community park providing said park would be named "Anthony John Franich Park", to sell up to eight (8) acres of the Property to City at fair market value for a total of sixteen (16) acres, and

Whereas, the parties acknowledge that the City-Franich SOU requires, and the City plans to develop, a major community park in the area shown on the Tentative Map containing approximately 14.5 acres, and

And whereas Government Code § 66477 and WMC §§13-4.02 require dedication of a portion of the Property for a community park as a condition precedent to development, and

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Whereas, Clarum will dedicate and City accepted eight (8) acres and Clarum sold and the City purchased at fair market value, six and one-half (6.5) additional acres of the Property all to be used as a community park pursuant to said Franich-City SOU, and

Whereas, Clarum is therefore deemed by City to have complied with said Government Code § 66477 and WMC §13-4.02 and shall not be required to pay any park fees or offer any more park dedications or other park related exactions in connection with the development, build-out, occupancy or use of the Property.

Whereas, Clarum owns in fee or controls by legally enforceable option the Property and desires to develop it for residential uses, and

Whereas, the City and Clarum have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose of the Development Agreement Law, implement the Franich-LAFCO MOU and the City-Franich SOU and will provide for lawful and desirable development of the Property, and

Whereas, development of the Property will provide needed residential housing, assist in providing necessary infrastructure, and further objectives contained in the General Plan, and

WHEREAS, the City desires to impose a one percent (1%) transfer fee on the sales of homes on the Property, after the first sale, to recapture otherwise un-recovered infrastructure costs.

Whereas, the development described in this Development Agreement is consistent with the City's General Plan as amended through and including the date of this Development Agreement, and

Whereas, the means of attaining the aforementioned objectives and the public benefit to be received as a result of development of the Property as described in this Development Agreement include, but are not limited to:

1. Dedication of and constructing City streets
2. Construction of affordable housing for the residents of the City; and
3. Deferred receipt of certain impact fees until Close of Escrow.
4. Dedicate and construct Bridge Street, a master planned roadway.

and

Whereas, this Development Agreement was not completed in time to be evaluated under the Environmental Document.

Whereas, City, in response to Clarum's application, after public hearings and appropriate environmental review, granted the following entitlements in conjunction with and as a condition concurrent to the approval of this Development Agreement.

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Planning Commission Resolution

By Resolution No. 16-01(PC) on March 19, 2001, the Planning Commission recommended approval of the Plan Development Special Use Permit and Tentative Map for the Project.

By Resolution No. 33-01(PC) on October 1, 2001, the Planning Commission recommended approval of this Development Agreement

Council Resolutions

By Resolution No. 165-01 on June 26, 2001, the Council certified the Final Subsequent Environmental Impact Report prepared for the proposed development of the Property for the City of Watsonville, as lead agency (with statement of overriding considerations) (State Clearing House Number 198810123)

By Resolution No. 166-01 (C-M) on June 26, 2001, the Council approved Tentative Subdivision Map S-5-99 for the construction of the Project subject to various conditions.

By Resolution No. 167-01 (C-M), dated June 26, 2001, the Council approved a Special Conditional Use Permit with Design Review U-89-99 and a Specific Development Plan for the Project subject to various conditions.

Ordinances:

By Ordinance No. 1110-01 on June 26, 2001, the Council re-zoned certain property described in said Ordinance from RM-2, RM-3, PL and EM-OS classifications to RM-2/PD, RM-3/PD, PL/PD and EMOS/PD in accordance with the Land Use and Community Development Element of the General Plan.

By Ordinance No. 1118 -01 (CM), on Oct. 9, 2001, the Council authorized the City Manager on behalf of the City to enter into this Development Agreement with Clarum.

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NOW, THEREFORE, the City and Clarum hereto agree as follows:

I. Parties

THIS DEVELOPMENT AGREEMENT is made and entered into this 21st day of November 2001, by and between The City Of Watsonville, a municipal corporation (City) and Clarum Corporation, a California corporation ("Clarum") pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (§ 65864, et seq.) of the Government Code relating to Development Agreements.

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2. Development of the Property. (Required Term)

Subject to the provisions of this Agreement, the City hereby grants to Clarum the present right to construct residential improvements described on the Tentative Map in accordance with the provisions of this Development Agreement. Except as otherwise specified in this Development Agreement, the Existing Land Use Regulations as modified by PD approval described above shall control the design and development of the Property

3. Density or Intensity of Use. (Required term)

The Property may be used to construct not less than the number of Lots and rental units described in the Tentative Map. Future changes of the City's General Plan, Municipal Code, ordinances, policies or regulations that purport to (i) directly or indirectly limit the nature, scope or extent of the Project as approved, or (ii) impose additional fees, exactions or conditions upon the development of the Project, shall not be applied except as provided in this Development Agreement. City shall cooperate with Owner and shall undertake such action as may be necessary to ensure this Agreement remains in full force and effect.

4. Phasing.

and Exhibit E *as*

The Project will be developed in four (4) phases as described in the Phasing Plan on page 1 of the Tentative Map and then only as set forth on and subject to the Tentative Map Conditions of Approval. Each of the four phases described on the Tentative Map will be the subject of a separate and discrete Final Subdivision Map, Subdivision Improvement Agreement and bonding requirements set forth in said Subdivision Improvement Agreement.

City and Clarum agree to use best efforts, at no expense to City, and due diligence to obtain "tax credit" based funding for construction of the apartments in Phase 3 by August 31, 2002. If no allocation for such funding is available by such time then both City and Clarum agree to again use best efforts, at no expense to City, and due diligence to obtain "tax credit" based funding for construction of the apartments in Phase 3 by August 31, 2003. Clarum also agrees to commence construction within five (5) months of the award of such tax credit financing for said apartments. Clarum thereafter agrees to diligently and continuously prosecute the construction of said tax credit apartments through completion. Establishment of H.U.D. "Revitalization standing" is part of the City's due diligence obligation however, the City shall not be required to submit an application for revitalization funding to H.U.D. City shall issue no building permits for any portion of Phase 4 until and unless completion and inspection by City of foundations of Phase 3 tax credit apartments. If no Certificate of Occupancy for the Phase 3 tax credit apartments is issued within seventeen months of the commencement of construction then the City shall not thereafter issue building permits or inspect any other lot or unit in the Project.

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All improvements to Bridge Street will be included in the Subdivision Improvement Agreement for Phase 1 and all of such improvements for Bridge Street will also be bonded as part of Phase 1. All such Bridge Street improvements and all rough grading for the entire subdivision will occur in Phase 1 and all of such grading shall be bonded as part of Phase 1.

Failure to complete on and off site construction and obtain all Certificates of Completion on the tax credit financed apartments by the completion deadlines set forth above, the Affordable Housing Agreements, the Tentative Map Conditions of Approval or as extended under 7.4.3 below, shall, except as excused or extended in writing by City, be deemed a material default and breach by Clarum of this Agreement.

5. Maximum Height/Minimum Setbacks (Required Term)

The maximum height and size of the buildings, fences, retaining and other walls constructed on the Property shall be consistent with applicable RM-2, RM-3, PL and EMOS zoning except as modified by the Special Conditional Use Permit and Planned Development Overlay Zoning approvals identified in this Development Agreement.

Minimum setbacks for all structures on Lots shall be as shown on the Tentative Map.

6. Obligations of Clarum

6.1 Payment of Fees

It is the intent of Clarum and City to modify standard fees otherwise applicable to the Project, but only as expressly set forth herein. The City will impose all usual and customary fees incident to the processing of improvement and development plans and to the development of the Property and the Project, except those specifically excluded and/or specifically modified by the terms of this Development Agreement. The impact and connection fees applicable to the project are set forth in the List of Fees attached to this Development Agreement and identified as Exhibit D.

6.1.1 CREDITS

Clarum shall be entitled for a credit of \$340,000 for infrastructure related costs associated with construction of the affordable units for which the City is responsible. This \$340,000 shall be credited to fees and costs associated with the Apartments..

Clarum is also entitled to a drainage fee credit of \$18,018.50 per acre for that portion of the Property being developed. The exact area for which the credit applies is not yet determined because engineering calculations cannot be performed until the improvement plans are complete.

Developer shall provide, at its sole expense, all storm water facilities required to accommodate storm water runoff from the project including storm water detention, storage and facilities

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necessary to convey storm water runoff from upstream tributary areas through the project up to and including the connection of said conveyance facilities to the City's storm water sewer system at the existing terminus of Bridge Street. Developer shall also provide, as a part of the project, additional storm water detention capacity to accommodate the storm water runoff from the upstream tributaries areas. However, Developer shall receive a credit toward project storm water impact fees in an amount equal to the incremental, additional construction cost of providing said additional storm water detention capacity to accommodate upstream tributary areas. The magnitude and scope of the additional detention storage shall be determined using accepted engineering practices for determining respective storm water runoff rates and volumes from the project and upstream tributary areas.

6.1.2 WHEN FEES DUE.

The respective fees imposed are due on the dates or upon occurrence of the events set forth below. If no date for payment is provided for a fee lawfully imposed pursuant to this Development Agreement, such fee shall be due and payable on the date or upon the event as is customary with similar developments within the City of Watsonville. All Water Construction Fees, Water Meter Drop-In Fees, Area C Storm Drain Fees, Ground Water Impact Fees, Traffic Impact Fees, Fire Impact Fees, Public Facility Impact Fees and Ground Water Impact Fees are due and shall be paid at Close of Escrow of the Lots to which such fees apply.

6.2 *Reimbursement Agreement for Park Improvements.*

Clarum intends to dedicate eight (8) acres of the Property for the community park to comply with the terms of the City - Franich Statement of Understanding, and has sold to the City approximately 6.5 additional acres of the Property, to be used as part of the community park. Clarum shall not be required to pay any other park fees, and no other dedications or exactions shall be required, in connection with the development, build-out, maintenance, occupancy or use of the Property for park or recreational purposes, or for the acquisition of park lands, pursuant to California Government Code Section 66477, or any ordinance enacted by the City of Watsonville pursuant thereto.

6.3 *Transfer Fees.*

In connection with its approval of the Project, City is requiring that purchasers of individual lots or homes on the Property be obligated upon each subsequent resale by such purchasers to pay to City one percent (1%) of the gross sales price actually paid (the Transfer Fee). Accordingly, Clarum agrees to execute and record an agreement encumbering the Property before filing the final map for the Property, in form reasonably acceptable to the City Manager of the City and Clarum, which (i) notifies each home purchaser of such obligation, (ii) provides for the City's

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right to record a lien in the event of non-payment, which shall be subordinate to all existing and future deeds of trust recorded against the Property for the purpose of acquisition or sale of any portion thereof, and (iii) provides the City with an enforceable mechanism for assuring payment of the fee, which may include, but is not limited to the right, under power of sale or otherwise, to foreclose its lien in the event of nonpayment. Subject to the foregoing, (i) Developer shall have no obligation to City in connection with payment of such Transfer Fees, (ii) Developer makes no warranty or representation concerning the collection of such Transfer Fees by City, and (iii) City hereby releases Developer from all claims, costs, causes of action, liability, damages, including reasonable attorneys fees and court costs, which may arise in connection with the collection of Transfer Fees by City.

6.4 Dedications and Reservations (Required Term).

The following property interests shall be dedicated to the City for public use subject to the terms and conditions contained in this Development Agreement.

1. An easement over Parcel "C" (the Well Lot) as shown on Phase 1 of the Tentative Map;
2. Fee ownership of the Drainage Canal Lot as shown on Phase 1 of the Tentative Map located along the northerly and easterly boundaries of the project which Drainage Canal Lot is as shown on the Tentative Map consisting of 5.8 acres, more or less.
3. Fee or easement interests in Bridge Street extension, pedestrian and bicycle paths, emergency vehicle access and all interior streets and rights-of-way identified as such and as shown on the Tentative Map;
4. Public utility easements for pedestrian and equestrian trails, water main, storm drain, sanitary sewer, electric power, natural gas, overhead power transmission lines, cable television and telephone as may be reasonably required by the appropriate utility and/or as set forth on the Tentative Map or the Tentative Map Conditions of Approval.

6.4.1.1 LIGHTING, LANDSCAPE AND MAINTENANCE ASSESSMENT DISTRICT

In the manner and as required by the Tentative Map Conditions of Approval, Developer will facilitate and pay for the creation of a Lighting and Landscape Maintenance Assessment District which based on an economic analysis which will set a minimum standard and scope of maintenance which is no less than that set in the Landscape Improvement Plan which Plan will be submitted by Developer and approved by the Council pursuant to customary and usual City standards as part of the development process.

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6.4.2 IMPROVEMENT OF STREETS AND RIGHTS-OF-WAY

The improvement of all streets and rights-of-way within the Project designated on the Tentative Map shall be the responsibility of Clarum and shall be constructed in accordance with specifications set forth in the Tentative Map and the Public and On-Site Improvement Plan. Clarum shall pay for all costs associated with the improvement of interior streets and rights-of-way.

6.4.3 CONDITIONS OF DEDICATION

Clarum shall deed or dedicate (at City's option) all required public lands, whether by easement or in fee, in the following condition, before the City shall be required to execute any signature indicating approval of the Final Map:

1. Free and clear of all liens.
2. Insured with an American Land Title Association Title Policy satisfactory in form and amount to the City Attorney.
3. The dedication shall be shown on the Tentative and Final maps and by a separate deed shall be without cost to or credit from the City.

The dedication of Bridge Street shall occur within the time limits set forth in the Tentative Map Conditions of Approval

6.4.4 OFF-SITE IMPROVEMENTS

All Off-Site improvements as to each phase shall be completed in strict compliance with the Phasing Schedule described above by Clarum at Clarum's own expense pursuant to the Tentative Map, and are due on or before the time City will issue a Certificate of Completion on any Lot in the phase. Except for not more than five single family detached dwellings and one townhouse building (three Town House dwellings), all required improvements to A Street shall be completed prior to issuance of the first Certificate of Completion for Phase One (1).

6.5 *Housing Requirements*

To comply with Chapter 14-46 of the Watsonville Municipal Code (hereinafter called the "Affordable Housing Ordinance"), the Franich-LAFCO MOU and the City-Franich SOU, Clarum shall develop one hundred ninety-six (196) units of affordable housing as part of the Project (the "Affordable Units") and shall sell at least half of the remaining units in the Project (the "Market Rate Units") at prices that do not exceed 120% of the median home sales price in Watsonville. The affordable ownership housing shall consist of fifty-two (52) detached single family homes and ten (10) town homes that will be sold to eligible home buyers (the "Affordable Ownership Units") plus one hundred thirty-four (134) rental apartment units (the "Apartments").

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6.5.1 SEPARATE AFFORDABLE HOUSING AGREEMENTS.

In order to comply with the City's Affordable Housing Ordinance, City and Clarum shall enter into two separate Affordable Housing Agreements: an "Ownership Housing Agreement" that will regulate the development and sale of the Affordable Ownership Units and a "Rental Housing Agreement" that will regulate the development and operation of the Apartment Units.

6.5.2 DESCRIPTION OF AFFORDABLE HOUSING AGREEMENT(S).

Before recording any Final Map for the Project, Clarum shall allow the Ownership Housing Agreement to be recorded as an encumbrance on the title to the Property at or before the time the Final Map is recorded. Such Ownership Housing Agreement shall provide, inter alia, for restrictions on the sale, resale and occupancy of the ownership units, local marketing obligations, procedures and obligations regarding possible inability to sell said affordable ownership units within certain time limits, the duration of the affordability restrictions on the ownership units, covenants running with the land to enforce such agreement, a deed of trust to enforce the affordability restrictions and liquidated damages for a violation of said Ownership Housing Agreement.

At or before the time the Final Map for Phase 3 of the Project is recorded, Clarum shall allow the Rental Housing Agreement to be recorded as an encumbrance on the title to the parcel or parcels on which the Apartments will be built. The Rental Housing Agreement shall provide, inter alia, for restrictions on the rent and occupancy of the Apartment units, local marketing obligations, the duration of the affordability restrictions on the Apartments and covenants running with the land to enforce such agreement.

Except where this Development Agreement, the Ownership Housing Agreement and/or the Rental Housing Agreement specify otherwise, the development, marketing, sale, resale, rental and management of the Affordable Units shall be governed by the Affordable Housing Ordinance.

6.5.3 LOCAL AND BILINGUAL MARKETING

Clarum shall make reasonable efforts to sell and rent both Affordable Units and Market Rate Units to households who live and work within the Watsonville City limits. In order to ensure compliance with State and Federal fair housing laws, Clarum shall employ a reasonable number of English-Spanish bilingual staff or a firm with a reasonable number of English Spanish bilingual staff to market the Units and shall prepare and use English Spanish bilingual marketing materials for the Units.

Clarum shall work cooperatively with the City to advertise locally and English Spanish bilingually the sale and rental of both the Affordable Units and Market Rate Units. Clarum shall

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cooperate with and fund the City's mailing of advertisements for the Project to Watsonville residents prior to Clarum conducting other advertising or marketing. Clarum shall also conduct both a presale of the Affordable Ownership Units and Market Rate Units and a preview of the Apartments to Watsonville residents for at least a two (2) week period before accepting any purchase offers reservations or applications from non-residents.

6.5.4 LOTTERIES FOR HOME BUYERS AND TENANTS

Clarum shall conduct lotteries to select the buyers and initial tenants for the Affordable Units. If the City, in its sole judgment, determines that the demand for the Affordable Units is sufficient to warrant a lottery. The City shall have the right to review and approve the rules and procedures of the lottery, including whether a lottery or lotteries should only be conducted for selected target income levels or components of the Project. Clarum shall accept the City's determination concerning the need for a lottery. Clarum shall sell and rent Affordable Units to eligible households in the order they were selected in the lottery.

6.5.5 RESTRICTIONS ON RESALE OF AFFORDABLE OWNERSHIP UNITS

On or before the close of escrow for each Affordable Ownership Unit, Clarum shall require the buyer to sign

- an agreement prepared by the City in which the buyer 1) acknowledges that they have received and read a disclosure that describes the resale, occupancy and other restrictions that apply for the unit they are purchasing and 2) accepts and agrees to comply with those restrictions.
- a Declaration of Covenants and Restrictions, as described in the Affordable Housing Ordinance, and
- a Deed of Trust, as described in the Affordable Housing Ordinance.

In addition, Clarum shall ensure that the Declaration will be recorded with a priority higher than any and all financial encumbrances on the unit.

6.5.6 PRIORITY FOR DISPLACED TENANTS

Clarum shall cooperate with and support the City's efforts to improve the community by giving households displaced as a result of code enforcement, community development or redevelopment activities within the City of Watsonville ("Displacees") a priority to rent Apartments. Clarum shall give eligible Displacees a priority for renting units in the Apartments as they become available.

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6.5.7 INABILITY TO SELL AFFORDABLE OWNERSHIP UNITS

Clarum shall follow the procedures and comply with the requirements of Section 14-46.15 of the Watsonville Municipal Code when marketing and selling the Affordable Ownership Units. Section 14-46.15 (g) shall apply if Clarum is unable to sell an Affordable Ownership Unit. Clarum shall pay an in-lieu fee of \$30,000 prior to the City releasing an Affordable Ownership Unit from the requirements of this Development Agreement, the Ownership Housing Agreement and/or the Affordable Housing Ordinance.

Notwithstanding Section 14-46.15 (g)(1), Clarum shall list or place Affordable Ownership Units for sale on the multiple listing service (hereinafter the "MLS") only if the City is required to release an Affordable Unit from the affordability restrictions pursuant to Section 14-46.15 (g). If Clarum places Affordable Ownership Units on the MLS, Clarum shall pay a 3% or higher real estate sales commission to real estate brokers who sell Affordable Units.

6.5.8 INABILITY TO SECURE TAX CREDITS FOR APARTMENTS

If Clarum is unable to secure an allocation of Federal or State Low Income Housing Tax Credits (LIHTC) or Farmworker Housing Assistance Program funds from the California Tax Credit Allocation Committee (TCAC) within twenty four (24) months after signing this Agreement, Clarum and the City shall re-evaluate the terms of the Rental Housing Agreement and consider whether it is necessary to renegotiate portions of the Development Agreement and/or the Rental Housing Agreement to enable that the Apartments to be built. Clarum and City furthermore agree that the following conditions shall apply to the Apartments and that any modifications to this Development Agreement or the Rental Housing Agreement that are requested because Clarum is unable to secure an allocation of Tax Credits shall be in any event limited as follows:

- the site for the Apartments shall not be subdivided into more than two parcels,
- if the Apartments are developed on two separate parcels, the units on the two parcels shall be owned and operated by the same entity or operated and managed as a single project in a manner that is acceptable to the City,
- at least fifty percent (50%) of the units shall have three (3) or more bedrooms,
- no more than fifty percent (50%) of the units shall be restricted to occupancy by farm workers,
- if Clarum receives an allocation of tax credits, all of the units in the Apartments shall be affordable to and occupied by households whose incomes do not exceed at least 60% of the area median income,
- if Clarum does not receive an allocation of Tax Credits for all of the units in the

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Apartments, the number of units listed in Table below, shall be affordable to and occupied by households whose incomes do not exceed each target income level listed in said Table,

There shall be a proportional distribution of units that are affordable at each target income level for each product (i.e., two bedroom, three bedroom and four bedroom units).

**DISTRIBUTION OF APARTMENT TABLE:
UNITS BY TARGET INCOME LEVEL**

Target Income Level	Distribution of Units	
	Number of Units	Percent of Units
City Very Low Income Households	8	6%
City Low Income Households	41	30%
City Median Income Households	63	48%
County Moderate Income Households	22	16%

6.5.9 RIGHT TO PURCHASE APARTMENTS

In consideration of the assistance provided to the Project by the City of Watsonville and to acknowledge the severe shortage of affordable housing within the City, Clarum agrees to provide the City the right to purchase the Apartments for their fair market value if and when the Clarum either 1) wishes to sell the Apartments or 2) is at risk of losing the Apartments through a Trustee's Sale. The specific terms and procedures for the City's right to purchase shall be set forth in a separate agreement that will be recorded against the title to the Apartments.

6.5.10 SALES PRICES FOR MARKET RATE UNITS

Clarum shall, by May 31 of each year, calculate and submit to the City of Watsonville a report of the median home sales price for all single family homes, town houses and condominiums located within the Watsonville City limits which closed escrow during the twelve months preceding May 1 of the preceding year period together with a true and complete copy of the sales data upon which its calculation of the median home sales price is based. This calculation shall be based on all new and existing single family homes, town homes and condominiums sold during the twelve month period except: 1) deed restricted affordable housing units and 2) properties of more than one dwelling unit. Clarum shall include in its calculation of the median home sale price, both sales data that is reported by the MLS (as defined in section 6.5.7 above) and sales data that is obtained from other reliable sources, including the Office of the County Recorder and developers of new housing subdivisions.

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The City shall review the median home sales price and home sales data provided by Clarum. If, and only if the City determines such information and calculations to be reliable, it shall administratively adopt the median home sales price which shall then be effective from July 1 of such year until June 30 of the following year.

6.6 Covenants, Conditions and Restrictions

6.6.1 SFD CC&Rs.

Immediately upon filing of the Final Map of Phase 1 and recordation, Clarum shall execute and record the SFD Covenants, Conditions, and Restrictions in a form and with content satisfactory to the City Manager and the City Attorney. Notwithstanding any other provision of this Development Agreement, the proper execution and recording of such SFD Covenants, Conditions, and Restrictions satisfactory to the City is a condition precedent to the City's obligation to issue building permits for the Project. However, Developer shall be issued not more than five building permits for single family detached model homes without being required to record said SFD CC&Rs. Such SFD CC&Rs shall encumber all single-family detached Lots in the Project and obligate Clarum or any Successors and Lot owners to do all the things necessary or appropriate to record the SFD CC&Rs which SFD CC&Rs shall contain provisions requiring the following:

1. No additions to or remodeling of a structure which extends beyond the original footprint.
2. Satisfactory provisions to create obligations and a method to amortize and pay for the maintenance and repair of any exterior fences and walls, any driveways and sidewalks, front yard landscaping and street trees.
3. Anti-graffiti coatings on perimeter and /or sound walls and fences.
4. Prohibition of exterior parking and/or storage of recreational vehicles or boats for more than one week total per year.
5. Requirement that garage interiors not be converted to, used for any purpose which materially interfere with parking of the number of motor vehicles for which the garage was designed and that no temporary storage shall be allowed which would interfere with the parking of said number of vehicles.
6. Architectural review which shall include regulation of exterior paint colors.
7. An express waiver and release in favor of the City of Watsonville from claims and or/ remedies based on noise or light coming from the adjacent community park.
8. A personal injury and property damage waiver in favor of the City of Watsonville and users of the community park for conduct associated with the public use of the community park.

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The SFD CC&Rs shall also provide that if Clarum or any Successor owner or occupant of any portion of the subdivided lands refuses, neglects or fails to perform the obligations of the SFD CC&Rs, the City may enforce the SFD CC&Rs as a third party beneficiary or as a covenant running with the land and recover the cost of such enforcement, including reimbursement for staff time and attorneys fees, from the responsible party.

6.6.2 TOWN HOUSE CC&Rs

Immediately upon filing of the Final Map of Phase 1 and recordation, Clarum shall submit Town House CC&Rs in a form and with content satisfactory to the City Manager and the City Attorney for approval. Notwithstanding any other provision of this Development Agreement, the approval of such Town House CC&Rs in a form satisfactory to the City is a condition precedent to the City's obligation to issue building permits. However, Developer shall be issued not more than building permits for three model Town Houses without being required to record said Town House CC&Rs. The Town House CC&Rs shall encumber all town house Lots in the Project and obligate Clarum, any Successors and Lot owners to do all the things necessary or appropriate with regard to the following:

1. Repair, maintenance, and replacement of all detention basins and storm water retention facilities within the subdivision if such facilities are not otherwise maintained, for example, by a Lighting and Landscape Maintenance Assessment District.
2. Repair, maintenance, and replacement of all fences and walks, driveways and sidewalks, landscaping and street trees in the front yard of private lots, in any common area, and within public rights-of-way abutting and within the subdivision (including any fencing or walls);
3. The use of anti-graffiti coatings on all bordering, retaining and/or sound walls within the Project.
4. Prohibition of exterior parking and/or storage of recreational vehicles or boats for more than one week total for more than one week total per year.
5. Requirement that garage interiors not be converted to, used for any purpose which interfere parking of the number of motor vehicles for which the garage was designed and that no temporary storage shall be allowed which would interfere with the parking of said number of vehicles.
6. Architectural review which shall include regulation of exterior paint colors.
7. An express waiver and release in favor of the City of Watsonville from claims and or/ remedies based on noise or light coming from the adjacent community park.
8. A personal injury and property damage waiver in favor of the City of Watsonville

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and users of the community park for conduct associated with the public use of the community park.

9. Specific maintenance standards for elevations, patio areas, patios, walk ways and other such areas which are adjacent to or visible from the community park.
10. Maintain the Environmental Management Open Space area in accordance with an approved Landscape Plan, pay for, and provide for formation of and operation of an LLMAD.
11. Establish a method satisfactory to the California Department of Real Estate to impose upon owners of Lots within the subdivision the financial obligation to pay for the cost of maintenance, repair and necessary replacement of items 1-4.

The Town House CC&Rs shall also provide that if Clarum or any Successor refuses, neglects or fails to perform the obligations of the Town House CC&Rs, the City may enforce the Town House CC&Rs as a third party beneficiary or as a covenant running with the land and recover the cost of such activity, including reimbursement for staff time and attorneys fees, from the responsible party.

6.7 Reimbursement for Development Agreement Expense of City.

Clarum agrees to reimburse City for expenses incurred by City directly relating to this Development Agreement, including attorneys fees, recording fees, publishing fees and reasonable City staff and outside consultants costs not otherwise included within application fees. Such reimbursable expenses and fees however shall not exceed \$20,000, excluding Environmental Review and Civil Engineering expenses.

This Development Agreement may be terminated, at City's option, if the fees provided for in this section, as well as any other processing fees owed by the applicant to the City for the Project are not paid to the City after fifteen (15) days' written notice. Upon payment of all expenses, Clarum may request, and the City shall issue, written acknowledgment of payment of such fees. Clarum shall reimburse the City \$250 for each such request exceeding one per month. Such reimbursement shall be paid within thirty (30) days of presentation from the City of Watsonville to Clarum of a written statement of charges. Should any such fees be incurred after the date this Development Agreement is executed, such fees shall also be paid within thirty (30) days of presentation from the City of Watsonville to Clarum of a written statement of charges. Fees not paid when due to City shall be subject to a one time five (5) percent late penalty charge if not paid within thirty (30) days and shall thereafter bear interest at the rate of eleven (11) percent per annum until collected.

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6.8 Third Party Legal Challenge to Approvals.

If any legal action or special proceeding is commenced by any person or entity challenging this Development Agreement, or any provision herein, any of the actions involved with approving this Development Agreement, or challenging any other governmental review, analysis, decision or action identified in this Development Agreement, Clarum and City, agree to cooperate with each other in good faith to defend said lawsuit.

City may however elect to tender (as provided below) the defense of any such class of lawsuit filed by a third person or entity, to the extent of any claims therein based on alleged defects in the procedures or compliance with applicable laws under which the Project was reviewed and/or approved and, if tendered by City, Clarum shall defend, indemnify and hold City harmless from such claims, including but not limited to attorneys' fees. In the event of such tender, City shall have the right to approve or reject Clarum's selection of counsel, which right shall not be unreasonably withheld. If, upon such tender, it reasonably appears to the City that a conflict of interest would exist in the joint representation of the City and Clarum by the same attorney, then City may require Clarum to hire and pay for a separate attorney without such conflict of interest to defend the City alone from the claims made against the City.

City's tender of defense hereunder shall be made in a writing specifically identifying the lawsuit and the claims for which defense and indemnification hereunder are sought by City, which writing shall be delivered to Clarum as soon as practicable. Provided that City has so tendered the defense of such claim, Clarum shall defend, hold, harmless, and indemnify City, its elected officials, officers, appointed officials, and employees from all damages, costs, and expenses incurred in the defense of such claims, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in connection therewith. Neither Clarum nor City shall settle without the consent of the other, which consent shall not be unreasonably withheld. City and Clarum shall keep the other informed of all material developments involving the resolution of any such claims.

6.9 Permitted Uses and Development Standards

The Property may be used for a residential subdivision as described in the Special Conditional Use Permit and, the Tentative Map, and the Planned Development Overlay. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards, implementation program for processing of subsequent entitlements and other conditions of development for the Property shall be those set forth in this Development Agreement, the exhibits and references incorporated herein. In the event of any

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conflict between this Development Agreement, including Approved Plans, and any other Existing Land Use Regulations, the terms and provisions of this Development Agreement shall prevail.

The City and Clarum intend that this Development Agreement, together with all exhibits attached hereto, serve as the definitive and controlling document for all subsequent actions, discretionary or ministerial, relating to the development of the Project and that only in the rare instances, if any, that a development issue is not expressly or impliedly addressed hereby shall any other Existing Land Use Regulations be applied in the decision thereon.

6.10 Private Undertaking.

City and Clarum agree that the Project is a private development and that City has no ownership interest in the Project except as authorized in the exercise of its governmental functions and except for any financing and lien rights as described in this Development Agreement.

6.11 Term of Development Agreement

This Development Agreement shall commence upon the Effective Date of the Adopting Ordinance and shall continue in force for a period of five (5) years or until issuance of a Certificate of Occupancy of all units shown on the tentative or final maps, whichever first occurs, unless this Development Agreement expires, is extended, modified or terminated by circumstances set forth in this Development Agreement or by mutual consent of the parties hereto.

6.12 Rights of Clarum.

During the term of this Development Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Clarum is assured, and City agrees, that the development rights, obligations, terms and conditions specified in this Development Agreement including Exhibits and documents incorporated by reference, including without limitation, the terms and conditions thereof set forth in the exhibits attached hereto and may not be changed or modified by the City except as may be expressly permitted by, and in accordance with, the terms, conditions and remedies set forth in this Development Agreement, including the Exhibits hereto, applicable law and/or as expressly consented thereto by Clarum to the extent such proposed change or modification is applicable thereto.

6.13 Consistency with General Plan

The City Council expressly finds that the approvals of the Tentative Map, Rezoning, Special

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Conditional Use Permit, and all other entitlements related, are consistent with the General Plan. City Council also finds that this Development Agreement is consistent with the General Plan.

6.14 Assignment and Assumption

The City and Clarum understand that the City has conducted a thorough investigation of the experience, training, education of Clarum's management and employees and Clarum's financial resources and is relying on such experience, training, education and financial resources of Clarum as a substantial factor in the consideration for entering into this Development Agreement. City shall therefore not be required to approve any conduct amounting to a sale, assignment, or transfer of the rights and duties contained in or arising out of this Development Agreement to any person, firm or corporation at any time during the term of this Development Agreement unless and until City has determined that the experience, training, education and financial resources of the proposed Successor satisfy City that the Successor is capable of fulfilling the remaining obligations of Clarum under this Development Agreement.

In evaluating any proposed Successor, such proposed Successor shall provide City with the following categories of documents to be used in order to determine whether such proposed Successor may be permitted by City to succeed to Clarum's interest in this Development Agreement.

1. Proposed Successor's identity and capacity, i.e. corporation, limited liability company, limited partnership, sole proprietorship or otherwise;
2. Proposed Successor's Audited and verified profit and loss statements and year-end balance statements for past three operating years (fiscal or calendar);
3. If sole proprietor, LLC or LLP, partnership, personal financials on the Proposed Successor's sole proprietor or responsible Manager;
4. Proposed Successor's most recent three-year's Federal tax returns together with two pre-signed IRS Forms 4506; one for each of the last three tax years and one for current tax year;
5. Banking references;
6. A summary of anticipated, planned, current, and completed projects with the identity of persons familiar with the project who may be contacted by City representatives.
7. The proposed Successor's comprehensive Dun & Bradstreet financial report
8. The proposed Successor's current credit report.

Each Successor shall be jointly and severally obligated and bound by the terms and conditions of this Development Agreement, and shall be the beneficiary thereof and a party thereto, but only

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with respect to the Lots, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Clarum contained in this Development Agreement, as such duties and obligations pertain to the Lot sold, assigned or transferred to it. Such assignment may only be in writing and must be recorded to be effective.

6.15 Permissible Changes to Existing Land Use Regulations

Only the following changes to Existing Land Use Regulations shall apply to the development of the Property:

6.15.1 LEGALLY IMPOSED CHANGES.

Land use regulations, ordinances, policies, programs and fees adopted or undertaken by City in order to comply with regional, State or Federal laws, plans or regulations, provided that in the event that such regional, State or Federal laws, plans or regulations prevent or preclude compliance with one or more provisions of this Development Agreement, such provision or provisions shall be modified or suspended as may be necessary to comply with the such State or Federal laws, plans or regulations.

6.15.2 BUILDING CODES

Citywide amendments or adoptions of building or other codes, on such development.

6.16 Later Changes with Consent.

City land use regulations, ordinances, resolutions or policies adopted after the Effective Date, which are in conflict with the Existing Land Use Regulations, but the application of which to the development of the Property are consented to in writing by Clarum and/or the applicable Successor.

6.17 Procedure to Modify Development Agreement

This Development Agreement may be amended from time to time by mutual consent of the City and Clarum in writing, pursuant to California Government Code Section 65868, provided that any amendment which relates to material change in the term, phasing schedule, permitted uses, density, intensity of use, height and size of proposed building envelopes or provisions for reservation and dedication of land shall require the public hearing or hearings required by law before the City and Clarum shall be required to execute any such agreed amendment. Unless otherwise provided by law, any other amendments may be approved without a noticed public hearing. The determination of materiality shall be made by the City's Community Development Director.

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Minor non-material changes to the approved exhibits may be made by City and Clarum in accordance with the provisions of the Special Conditional Use Permit and PD District as set forth in WMC Section 14-16.2512 and shall not otherwise require an amendment to this Development Agreement.

6.18 Further Discretionary Actions.

Clarum acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, approval of the SFD CC&RS, Town House CC&Rs, and actions necessary to implement the Mitigation Monitoring Plan pursuant to Public Resources Code § 21081.6. Nothing in this Development Agreement is intended to limit the authority or the obligation of the City and/or any of its officers or officials to comply with or apply Existing Land Use Regulations, except as they may be specifically modified by this Development Agreement.

7. REMEDIES AND ENFORCEMENT

7.1 Notices

Notices, demands, correspondence, and other communication to City and Clarum shall be sufficiently given if dispatched by prepaid first-class mail to the principal offices of City or Clarum.

Notice to the City shall be to the attention of the City Clerk. Notices to Successors shall be required to be given by the City only for those Successors who have given the City Clerk written notice of their address for such notices. The City and Clarum hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Notices to City
City Clerk
City of Watsonville
215 Union Street
P. O. Box 50000
Watsonville, CA 95076-5000

and copy to:
Alan Smith, Esq.
Grunsky, Ebey, Farrar & Howell
240 Westgate Drive
Watsonville, CA 95076

Notices to Clarum
Clarum Corporation
Attn: John Suppes
P. O. Box 60088
Palo Alto, CA 94306

and copy to:
Edward W. Newman, Esq.
Newman, Marcus & Clarenbach, LLP
P. O. Box 625
Capitola, CA 95010

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7.2 *Annual Review.*

City, through its City Manager shall, at least every twelve (12) months during the term of this Development Agreement, review the extent of good faith substantial compliance by Clarum or Successor with the terms of this Development Agreement. The scope of review shall be limited to determine good faith compliance with the Development Agreement pursuant to California Government Code § 65865.1.

Upon not less than thirty (30) days written notice by the Community Development Director of City to Clarum, Clarum shall provide such information as may reasonably be requested and deemed to be required by the Community Development Director in order to ascertain compliance or lack thereof with this Development Agreement.

Said review shall be diligently completed. The City shall deposit in the mail or fax to Clarum and/or Successor a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least two (2) business days prior to such periodic review. Clarum or Successor shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Development Agreement before the City Council and, if the matter is referred to a City Planning Commission, before said Commission.

If City takes no action within thirty (30) days following the hearing, Clarum shall be deemed to have complied in good faith with the provisions of this Development Agreement.

7.3 *Default*

7.3.1 DETERMINATION OF DEFAULT.

Failure or material delay by either party or any Successor to perform any term or provision of this Development Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, shall constitute a material default under this Development Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (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 within said thirty (30) day period.

7.4 *Default by Clarum.*

Upon a default by Clarum, City's sole remedy shall be to modify, terminate, or specifically enforce this Development Agreement.

City may, at its discretion, terminate or modify this Development Agreement and/or refuse to

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conduct a building inspection and/or issue a building permit or Certificate of Completion for any structure on any Lot under any of the following circumstances:

1. Clarum or any Successor fails or refuses to execute or record the SFD CC&Rs in accord with this Development Agreement.
2. Clarum or any Successor fails or refuses to execute or record the Town House CC&Rs in accord with this Development Agreement.
3. Clarum or any Successor fails or refuses to execute or record the Affordable Housing Agreement or 1% recapture agreement in accord with this Development Agreement
4. If the final pro forma made or furnished by Clarum to City is willfully false when made or later proves to have been willfully false in any material respect when it was made
5. Upon a finding by City made following an annual review under the procedure set forth in Government § 65865.1 that upon the basis of substantial evidence, Clarum or its Successor has not complied in good faith with one or more terms or conditions of this Development Agreement.
6. In any other way, Clarum or a Successor has materially failed to satisfy a condition or materially defaulted in any term or condition of this Development Agreement.

7.4.1 LIMITATION ON REMEDIES.

Regardless of any other provision in this Development Agreement, the remedies available to Clarum and City are limited to the equitable remedies of specific performance or injunctive relief and do not include any right or entitlement to receive Damages, except for liquidated damages as may be expressly provided herein for a failure to comply with the Affordable Housing Ordinance.

7.4.2 SEVERABILITY

Except as specified herein, no default hereunder in performance of a covenant or obligation with respect to a particular portion of the Property shall constitute a default applicable to any other portion of the Property, and any remedy arising by reason of such default shall be applicable solely to the portion of property where the default has occurred. Similarly, the obligations of Clarum and Successors shall be several and no default hereunder in performance of a covenant or obligation by any one of them shall constitute a default applicable to any other owner who is not affiliated with such defaulting owner, and any remedy arising by reason of such default shall be solely applicable to the defaulting owner and the portion of the Property owned thereby.

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7.4.3 ENFORCED DELAY, EXTENSION OF TIMES OF PERFORMANCE

In addition to any specific provisions, and payment of the fees described herein according to the List of Fees attached and identified as Exhibit E of this Development Agreement relative to delays or extensions, performance by either party or Successor hereunder shall not be deemed to be in default where delays or defaults are due to third party litigation against Clarum or City or both, war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than enforcement of Clarum's obligations under this Development Agreement or any law or City ordinance existing on the Effective Date, or due to the enactment of new or supplementary State or Federal laws or regulations.

Clarum may apply for two (2) one (1) -year extensions of the deadline set forth to complete this Development Agreement upon a showing of good cause due to unavoidable circumstances beyond its control. Any such request must be submitted no more than 180 and no less than 60 days before the deadline for expiration of this Development Agreement and must be approved by the Council to be effective. An extension of time for such cause shall be granted in writing by City for the period of the enforced delay or longer, as may be mutually agreed upon, but in no case shall the cumulative extensions add more than two (2) years to the effective period of this Development Agreement.

7.5 *Default by City.*

It shall be a default by City if City does not accept, review, approve or issue necessary development permits or entitlements as defined by this Development Agreement, or as otherwise agreed to by the City and Clarum as designated herein except if such delay was caused by the delay of Clarum which delay shall excuse any delay by City.

7.6 *Satisfaction and Reconveyance.*

This Development Agreement shall be deemed released as to each Lot, when that Lot has been fully developed and all of Clarum's obligations in connection therewith are satisfied as reasonably determined by the City.

In any dispute arising out of this, or the City otherwise materially defaults under the terms of this Development Agreement, City agrees that Clarum or Successor shall not be obligated to proceed with or complete the Project, nor shall resulting delays in Clarum's performance constitute grounds for termination or cancellation of this Development Agreement.

Upon the written request of Clarum or any prospective landowner together with a declaration setting forth with reasonable particularity the status of the project, City shall issue an Estoppel

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Certificate stating whether there are any existing defaults under this Development Agreement that may affect the occupancy rights with respect to a particular Lot, and if any such defaults exist, stating with reasonable particularity the requirements for cure thereof. City shall not assert any default hereunder that is not described in the Estoppel Certificate (excepting later defaults by the Landowner or Successor) which adversely affect the occupancy rights or other aspect of the development or use of said Lot pursuant to this Development Agreement which is the product of extensive negotiation between Clarum and City and has been reviewed by legal representatives of each. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it.

7.7 *Effect of Termination on City*

Upon any release of this Development Agreement as to Clarum or the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Development Agreement shall no longer inure to the Lot(s) affected by such termination and the City shall no longer be limited, by this Development Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

In a dispute arising out of this, or the City otherwise materially defaults under the terms of this Development Agreement, City agrees that Clarum or Successor shall not be obligated to proceed with or complete the Project, nor shall resulting delays in Clarum's performance constitute grounds for termination or cancellation of this Development Agreement.

8. GENERAL PROVISIONS

8.1 *Effect of Recitals*

The Preamble, the recitals and all defined terms set forth in both, are hereby incorporated into this Development Agreement as if set forth in full.

8.2 *Definitions*

As used in the Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section and as set forth and defined in the Watsonville Municipal Code ("WMC").

8.2.1 ADOPTING ORDINANCE.

Adopting Ordinance means the ordinance identified in the recitals above whereby the Council adopted this Development Agreement.

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8.2.2 AFFORDABLE HOUSING ORDINANCE.

Affordable Housing Ordinance means Chapter 14-46 of the Watsonville Municipal Code in effect when this Development Agreement becomes final.

8.2.3 AFFORDABLE HOUSING UNITS.

Affordable Housing Units means the ownership and rental housing units described in this Agreement, the Ownership and Rental Housing Agreements and as designated on the Tentative Subdivision Map.

8.2.4 APPROVED PLANS.

Approved Plans means an approved On-Site and Off-site Improvement Plan designed in accordance with the Standard Specifications and Tentative Map which Plans shall be submitted and approved by the Directors of Public Works and Utilities and Community Development.

8.2.5 ASSUMPTION AGREEMENT.

Assumption Agreement means an agreement in a form approved by the City Attorney of the City, executed between the City and a Successor, whereby the Successor expressly assumes the obligations of this Development Agreement.

8.2.6 CEQA.

CEQA means the California Environmental Quality Act, §§ 21000, et seq., of the California Public Resources Code.

8.2.7 CEQA GUIDELINES.

CEQA Guidelines means the State CEQA Guidelines as defined in Section 15001 of Title 14 of the California Code of Regulations, and commencing with Section 15000, as adopted by Resolution 316-88 (CM) of the City of Watsonville.¹

8.2.8 CERTIFICATE OF COMPLETION.

Certificate of Completion means either

- A certificate of final inspection issued after successful final inspections by City indicating a satisfactory final inspection by the City Building Official has occurred authorizing a person or persons in possession to dwell in, occupy or otherwise use a specified building or dwelling unit, or
- A Certificate of Occupancy has been issued authorizing occupation of any multiple

¹ John Doughty is trying to determine if the City's CEQA Guidelines are current.

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occupancy building or structure.

8.2.9 PLANNED DEVELOPMENT CONDITIONS OF APPROVAL

Planned Development or "PD" Conditions of Approval means the conditions of Approval of the Planned development Zoning and Special Conditional Use Permit.

8.2.10 TENTATIVE MAP CONDITIONS OF APPROVAL

Tentative Map Conditions of Approval means the Conditions of Approval For Planned Development and Tentative Tract Map approved by the Council.

8.2.11 COUNCIL.

Council means the Watsonville City Council.

8.2.12 TOWN HOUSE CC&RS.

Town House CC&Rs means an agreement for repair, maintenance, and replacement of improvements in specified areas as set forth the Tentative Map Conditions of Approval.

8.2.13 SFD CC&RS

SFD (Single family Detached Dwelling) CC&Rs means an agreement for repair, maintenance, and replacement of improvements in specified areas as set forth in the Tentative Map Conditions of Approval.

8.2.14 CLARUM.

Clarum means Clarum Corporation, a California corporation.

8.2.15 EFFECTIVE DATE.

Effective Date means the date the Adopting Ordinance becomes final according to the Watsonville Municipal Code and the Development Agreement Law.

8.2.16 ENVIRONMENTAL DOCUMENT

Environmental Document means a Final Subsequent EIR for the Franich Annexation dated October, 1992 (SCH No. 88101123) and the Final Subsequent Environmental Impact Report for the proposed residential development of the Property dated May, 2001 (SCH No. 1988101123) prepared by Denise Duffy & Associates.

8.2.17 EXISTING LAND USE REGULATIONS.

Existing Land Use Regulations means the resolutions and/or ordinances adopted by the Watsonville City Council in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land for this development and subject to the conditions of such

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permitted uses, the density and intensity of use, and the design, improvement, construction standards (including but not limited to the Public Improvement Standards), and specifications applicable to the development of the Subject Property, including, but not limited to, the General Plan, Subdivision Improvement Agreement, Mitigation Monitoring Plan, and the Zoning Ordinance and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, impact or development fees and building and improvement standards (but only to the extent the Zoning Ordinance and other such regulations are not inconsistent with this Development Agreement). Existing Land Use Regulation does not include non-land use regulations nor does it include taxes.

8.2.18 GENERAL PLAN.

General Plan means the Watsonville 2005 General Plan of the City of Watsonville, including the text and maps, as amended through and including the date of this Development Agreement.

8.2.19 LOT.

Lot means a Lot as defined in Sec. 13-2.13 of the Watsonville Municipal Code.

8.2.20 MITIGATION MONITORING PROGRAM.

The Mitigation Monitoring Program means that certain document attached as Exhibit B to the resolution certifying the Supplemental Environmental Impact Report for Assessors Parcel Numbers 17-551-8, 9, 10 and 11.

8.2.21 OFF-SITE.

Off-Site means any kind of improvement to be made on any part of the Project as shown in the Tentative Map, except improvements on any of the individual Lots created by the Tentative Map.

8.2.22 ON-SITE

On-Site means any kind of improvement to be made on any of the Lots created by the Tentative Map.

8.2.23 PLANNED DEVELOPMENT DISTRICT.

Planned Development District means the Zoning designation described in Sections 14-16.2503 through 14-16.2512, inclusive, of the Watsonville Municipal Code.

8.2.24 PROJECT.

Project means the anticipated development of the Property.

8.2.25 PROPERTY.

Property means the real property and improvements described in herein.

Clarum Development Agreement

8.2.26 SUBDIVISION IMPROVEMENT AGREEMENT

Subdivision Improvement Agreement means the agreement between Clarum and City relating to the design, features, specifications, components, standards, location, bonding, insuring and construction of public works and utilities improvements in a form and with content satisfactory to the Director of Public Works and Utilities of the City of Watsonville. Public works and utilities include but are not limited to water and sewer pipes, streets, storm drains, street lights, traffic signals, fire hydrants, sidewalks, curbs, gutters, and telecommunications conduit.

8.2.27 PUBLIC IMPROVEMENT STANDARDS.

Public Improvement Standards means the City of Watsonville Public Improvement Standards adopted by the City of Watsonville and effective as of the start of construction of each of the four phases.

8.2.28 SPECIAL CONDITIONAL USE PERMIT

Special Conditional Use Permit means the authority described in Section 14-10.604 of the Watsonville Municipal Code and authorized pursuant to Part 6 of Chapter 14-10 of the Watsonville Municipal Code (Sections 14-10.600 through 14-10.609, inclusive).

8.2.29 FRANICH-LAFCO MOU.

Franich-LAFCO MOU means the Memorandum of Understanding between Anthony Franich and the Santa Cruz County Local Agency Formation Commission dated on or about June 12, 1989

8.2.30 CITY-FRANICH SOU.

City-Franich SOU means the agreement entered into by the City with prior owners of the Property on or about February 23, 1993, pursuant to Resolution No. 54-93, pertaining to the Property.

8.2.31 SUCCESSOR.

Successor is a person who has voluntarily or involuntarily acquired any joint or successor ownership interest in any portion of the Property from Clarum, whether or not pursuant to an Assumption Agreement. A Successor, unless otherwise released as provided in this Development Agreement, shall be subject to the applicable provisions of this Development Agreement.

8.2.32 TENTATIVE MAP.

Tentative Map means the map prepared by Giuliani & Kull, Inc. Job No. 99156, entitled: "Vista Montana" subject to any non-material changes allowed pursuant to sub-paragraph (a)(2) of Government Code Section 66442. Said Tentative Map consists of the following pages, titles and

Clarum Development Agreement

revision dates and subject to the Tentative Map Conditions of Approval.

Sheet	Title	Drawn	Last Revised
1	General Site Layout	5/7/01	
2	Vesting Tentative Map - Typical Sections	5/7/01	
3	Tentative Map - Phase 1 & 2	5/7/01	
4	Tentative Map - Phase 3 & 4	5/7/01	
5	Tentative Map - Residential Setbacks	5/7/01	
6	Conceptual Grading, Drainage, Utility and Street Lighting	5/7/01	
7	Conceptual Grading, Drainage, Utility and Street Lighting	5/7/01	
8	Conceptual Grading, Drainage, Utility and Street Lighting	5/7/01	

Notwithstanding said Tentative Map, Clarum may re-configure Lots A-D inclusive so as to allow for one additional lot providing the re-configuration is approved in advance in writing by the City's Director of Public Works and Utilities.

8.2.33 WMC.

WMC means the Watsonville Municipal Code.

8.3 Covenants Run with the Land

Pursuant to California Government Code § 65868.5, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise), and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any Lot or any portion thereof, and any interest therein, whether by sale, operation of law or other manner, and they shall inure to the benefit of the parties and their respective Successors.

8.4 Exhibits and References

All exhibits identified in the Development Agreement are incorporated by this reference as if set forth in full at the place where reference is made. In the event of inconsistency between the Recitals and other provisions of this Development Agreement, the other provisions of this Development Agreement shall prevail.

To the extent this Development Agreement may be inconsistent with any Exhibit or Reference thereby creating any ambiguity, both documents may be read together to interpret or explain the ambiguity. This Development Agreement however, shall take precedence over any inconsistent language in any Exhibit.

Clarum Development Agreement

Ex. No.	§§	Description
A	Recitals	Franich-LAFCO MOU
B	Recitals	City-Franich SOU
C	Recitals	MLD 2-99 Site and Vicinity Map
D		List of Fees
E		

8.5 Negotiated Contract

The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

8.6 Effects of Termination on Clarum Obligations.

An estoppel certificate shall not affect any owner's obligations to comply with the City General Plan and the terms and conditions of any applicable zoning laws, or subdivision map or other land use entitlements approved with respect to the Property, any other covenants specified in this Development Agreement, or any other obligations specifically identified in this Development Agreement to continue after the termination of this Development Agreement or obligations to pay assessments, liens, fees, or taxes.

8.7 Third Party Beneficiaries

This Development Agreement is made for the sole protection and benefit of City, and their permitted Successors. No other person shall have the right of action based on any provision of this Development Agreement.

8.8 Full or Partial Invalidity or Unenforceability

If this Development Agreement in its entirety is determined by a court to be invalid or unenforceable, this Development Agreement shall automatically terminate as of the date of final entry of judgment and expiration of any appeal power. If any provision of this Development Agreement shall be determined by a court to be invalid and/or unenforceable, or if any provision of this Development Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the effective date of the Adopting Ordinance, then the remaining provisions of this Development Agreement shall

Clarum Development Agreement

nevertheless remain in full force and effect.

8.9 Time of the Essence

Time is of the essence of this Development Agreement. The parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that the failure to timely perform any of the obligations hereof by either party shall constitute a breach of and a default under this Agreement by the party so failing to perform.

8.10 No Joint Venture or Partnership

Nothing contained in this Development Agreement or any document executed with this Development Agreement shall be construed as creating a joint venture or partnership between the City, Owner and Clarum.

8.11 Interpretation.

Clarum and City agree that this Development Agreement is the product of extensive negotiation between Clarum and City and has been reviewed by legal representatives of each. Any rule of construction which would interpret this contract against the drafting party or the party which caused the ambiguity or uncertainty, regardless of California Civil Code Section 1654 and any California case law to the contrary.

8.12 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any dispute arising out of this Development Agreement shall be determined by the State Courts of the County of Santa Cruz.

8.13 Effects of Release on City.

Upon any release of this Development Agreement as to the Clarum or the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Development Agreement shall no longer be vested with respect to the Lot affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning law) and the City shall no longer be limited, by this Development Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

Clarum Development Agreement

8.14 Necessary Acts

All parties to this Development Agreement agree to execute, acknowledge and deliver all instruments and perform all acts reasonably required to carry out the intent of this Development Agreement.

9. SIGNATURES

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

DATED: 10/17/, 2001

CITY OF WATSONVILLE
a municipal corporation

By: 

Title


DATED: October 17, 2001

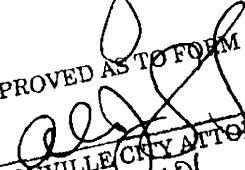
CLARUM CORPORATION
a California corporation

By: 

Title vice president

ATTEST:


CITY CLERK

APPROVED AS TO FORM

WATSONVILLE CITY ATTORNEY
DATED: 11-20-01

Page 35

C:\Documents and Settings\ajsmith\Desktop\Clarum-Franich DA - Council approved version.doc
Author: Alan J. Smith; Revision No. 2
Create date: 10/16/2001 12:21 PM
Print date: 10/16/2001 12:21 PM.

Attachment/Exhibit to:
Ordinance No. 1118-01 (CM)

RECEIVED

OCT 18 2001

CITY OF WATSONVILLE
Community Development Dept.

[illegible]

On 10/11/01, 2001 before me, MICHAEL MURPHY NOTARY, a Notary Public in and for said County and State, personally appeared JOHN B SUPPES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Michael Murphy
NOTARY PUBLIC

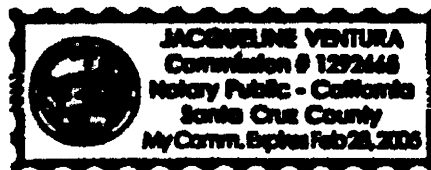
[illegible]

On November 26, 2001, ~~2000~~ before me, Jacqueline Ventura, a Notary Public in and for said County and State, personally appeared Carlos J. Palacios, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~^{she} executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Reginald A. Estera
NOTARY PUBLIC



RECEIVED

OCT 18 2001

CITY OF WATSONVILLE
Community Development Dept.

C:\Documents and Settings\ajsmith\Desktop\Claum-Franich DA - Council approved version.doc
 Author: Alan J. Smith; Revision No. 2
 Create date: 10/16/2001 12:21 PM
 Print date: 10/16/2001 12:21 PM.

Attachment/Exhibit to:
Ordinance No. 1118-01 (CM)

EXHIBIT A

April 24, 1989

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, is made and entered into this 12th day of June, 1989, by and between the Local Agency Formation Commission of the County of Santa Cruz, hereafter called "LAFCO", and the City of Watsonville, hereafter called "CITY".

RECITALS

WHEREAS, in January 1981, the owners of a 72-acre apple orchard petitioned for annexation of the property to the CITY in order to develop the property for housing and four acres of commercial use, which annexation is indexed as the East Lake Avenue/Franich Reorganization, LAFCO Application No. 624 (hereafter called "Franich Annexation"); and

WHEREAS, proceedings on the Franich annexation were thereafter conducted by the CITY and LAFCO, and LAFCO approved the annexation as requested, and in October 1982, LAFCO filed a certification that the reorganization was complete; and

WHEREAS, in November 1982, two lawsuits were filed in the Superior Court for the County of Santa Cruz seeking to invalidate the Franich Annexation; and

WHEREAS, after consolidation of the two cases and various hearings and proceedings, the trial court issued its Judgment in July 1984 affirming and validating the annexation; and

WHEREAS, the petitioners and plaintiffs in the lawsuits subsequently appealed the trial court's decision to the Court of Appeal of the State of California, First Appellate District; and

WHEREAS, on May 6, 1987, the Court of Appeal entered its decision reversing the trial court judgment, based on technical error, a copy of which decision is attached hereto as Attachment A, and provided for remand of the matter to the trial court for further proceedings consistent with the views expressed in its decision; and

WHEREAS, on September 3, 1987, pursuant to the Court of Appeal Decision, William M. Kelsay, Judge of the Superior Court, considered the remand from the Court of Appeal and thereafter issued a Writ of Mandate commanding LAFCO and CITY to take all

Attachment/Exhibit to:

Ordinance No. 1118-01(CM)

actions necessary to set aside the approval of the Franich Annexation to the CITY and to undertake further proceedings consistent with the views expressed in the decision of the Court of Appeal; and

WHEREAS, in October and November, 1987, pursuant to the Writ of Mandate, LAFCO and CITY each took action to set aside the 1982 Franich Annexation; and

WHEREAS, on June 17, 1988, State Senator Henry J. Mello, of the Seventeenth Senatorial District, conducted a public hearing in the City of Watsonville on Watsonville housing, the Franich annexation, and the pending Assembly Bill 4367 by Assembly Member Hauser, at which time Senator Mello stated that LAFCO and CITY previously approved the Franich Annexation in 1982, and that the concerns of the Court of Appeal regarding findings as expressed in its decision is all that needs to be addressed by LAFCO and CITY upon remand to LAFCO and CITY; and

WHEREAS, the CITY and LAFCO both wish to have the proposed Franich Annexation considered by LAFCO at the earliest possible time and acknowledge that, in order to comply with State law and discourage challenge from opponents to the Franich Annexation, it is necessary and desirable to prepare a subsequent Environmental Impact Report (EIR) to provide sufficient evidence upon which to make adequate findings; and

WHEREAS, in that regard, it is the desire and intent of both LAFCO and CITY to make the environmental review process thorough and complete from the outset and to thereby minimize any unnecessary delays in implementing the environmental review process and to take appropriate action on the Franich Annexation in a manner consistent with State law; and

WHEREAS, in the spirit of efficiency and accommodation, LAFCO and CITY both desire to enter into a written Memorandum of Understanding (MOU) specifying the process and timeline required to hear the matter, as well as the parties' respective duties and obligations to provide information and data and to do all things necessary to expeditiously make a fair, full, and final determination on the proposed Franich Annexation as specified in this agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. CITY shall continue to be the conducting authority for the Franich Annexation and the lead agency to prepare a subsequent Environmental Impact Report (EIR) thereof.

2. CITY and LAFCO acknowledge that the Franich Annexation is an active application before LAFCO. The parties agree to treat the Court of Appeal decision as

Attachment/Exhibit to: Ordinance No. <u>1118-01</u> (CM)

invalidating only those actions taken by LAFCO and the Watsonville City Council on September 1, 1982, and thereafter. All actions taken by LAFCO and the CITY prior to September 1, 1982, shall remain valid and shall serve as the basis for further proceedings on the original reorganization application for annexation. To the extent permitted by Government Code Section 56101, those proceedings shall be continued and completed under, and in accordance with the provisions of the Knox-Nisbet Act in effect as of December 31, 1985.

3. CITY will provide additional information to LAFCO in compliance with CEQA (State Guideline Section 15096), in the subsequent EIR (State Guideline Section 15162), so that LAFCO will have up-dated information before it completes these proceedings. CITY will distribute the Notice of Preparation (State CEQA Guidelines Section 15082) within ten (10) days of the date of the memorandum. Within forty-five (45) days of receiving a Notice of Preparation from CITY, LAFCO will provide the CITY with specific detail as to the scope and content of environmental information it shall require with respect to this annexation. (State Guideline 15096 (b) (2)). CITY will make every effort to release the draft EIR and expedite the certification process for completion of a Final EIR within one-hundred eighty (180) days of the date of this memorandum.

4. LAFCO shall comment on the Notice of Preparation and the Notice of Completion of the Draft Subsequent EIR within forty-five (45) days of receiving those notices as provided in the State CEQA Guidelines.

5. CITY shall provide LAFCO with twenty-five (25) copies of the certified Final EIR.

6. LAFCO shall hold a noticed public hearing on the reorganization proposal for annexation within sixty (60) days of receiving the Final EIR, and will make its final decision on the reorganization proposal for annexation as soon as possible, and no later than ninety (90) days, thereafter.

7. The parties agree to the following interpretation of LAFCO Resolution 610, which on January 12, 1983, adopted the Sphere of Influence for the City of Watsonville. Paragraph (6) of said Resolution 610 provides in part as follows:

(a) Annexation proposals should provide for an adequate and stable buffer between the urban uses and adjacent agricultural uses. Buffering is the responsibility of the urban uses.

(b) The City of Watsonville and LAFCO should review any proposed boundary change with reference to a goal of maintaining land in the City to accommodate between five (5) and seven (7) years of growth.

(c) Prior to permitting the annexation of undeveloped lands in agricultural areas to the City of Watsonville, LAFCO shall make a finding that there are no lands inside the CITY which are capable of development for the same purposes for which the annexation is sought.

Attachment/Exhibit to:

Ordinance No. 118-D1 (CM)

LAFCO agrees that, if an annexation is approved, the CITY's Resolution No. 334-87 (CM) shall govern.

With respect to subparagraphs (b) and (c) above, LAFCO acknowledges that, for the purposes of evaluating the merits of the Franich Annexation, the objectives of the two subparagraphs (b) and (c) may be in conflict. Therefore, LAFCO agrees that in adopting the finding required to be made under subparagraph (c), LAFCO will take into consideration the policy expressed at subparagraph (b), so that even if, at the time that this annexation is considered, there are lands inside the CITY which are capable of development for the same purposes for which the annexation is sought, an annexation of the Franich property shall not be denied to the extent that the annexation is necessary to enable the CITY to maintain land in the CITY to accommodate between five (5) and seven (7) years of growth, provided that no other alternative is identified in the EIR which:

- (1) would provide a comparable amount of developable land, or equivalent ability to accommodate urban growth at the same densities specified in the rezoning for the Franich property; and
- (2) involves lands which are in or contiguous to the CITY, on the date of this Agreement; and
- (3) would allow LAFCO to adopt a finding, based upon a supporting statement of facts in the record, that such an alternative would better accomplish the purposes of LAFCO as mandated by State law.

LAFCO acknowledges that Standard 3.2.4 is satisfied in the review of this annexation proposal by LAFCO Resolution No. 610, as interpreted in this paragraph.

LAFCO further acknowledges and agrees that this annexation proposal shall be reviewed according to the provisions of Government Code Section 56001.

8. In its deliberations, LAFCO will consider, under both its express and latent powers, both social and economic impacts of the annexation, including but not limited to the CITY's existing housing, infrastructure, drainage, parks, and traffic needs. In reviewing the annexation, LAFCO will give a high priority to the CITY's effort to address these issues, and LAFCO acknowledges that the proposed annexation of the Franich property to the CITY is intended to accomplish the following objectives:

- (1) maintenance of sufficient land in the CITY to accommodate between five (5) and seven (7) years of growth, so as to enable the CITY to continue to meet its fair share of regional housing needs as determined by the regional council of governments and approved by the State Department of Housing and Community Development,

Attachment/Exhibit to:
Ordinance No. 1118-01 (CM)

(2) implementation of a drainage and floodway plan to alleviate flooding problems affecting the nine-hundred (900) unit senior citizen community located near the property,

(3) implementation of a traffic circulation plan to alleviate congestion on the city's eastern edge by completion of Bridge Street to East Lake Avenue (Highway 152),

(4) dedication of approximately 3 acres of the property for parkland,

(5) provision of affordable housing for the CITY,

(6) subjecting the City to development costs (for infrastructure and municipal services needed for urban growth) substantially the same as or less than those to which the City would be subjected in conjunction with development of the Franich property.

LAFCO will specifically consider how the foregoing can be accomplished if a decision is made to annex less than the entire seventy-two (72) acres and will adopt a set of written findings, based upon a supporting statement of facts in the record, which outlines how such objectives can reasonably be accomplished if either a partial annexation is approved, or if no annexation is approved.

9. The CITY shall impose upon the property owner a condition that fifteen (15%) percent of the housing units to be built on the property will be affordable to persons of low and moderate income.

10. LAFCO does acknowledge that the subject property is priority number 4 under LAFCO Standard 3.2.3. If any uncertainty in the interpretation of this standard occurs, the parties agree that Section 54790.2 (a) of the Knox-Nisbet Act shall govern.

11. If less than the whole property is annexed or if no annexation is approved, LAFCO agrees to allow immediate reapplication to annex the remainder of the property, and will consider waiver of fees.

12. In preparing and certifying the Subsequent Environmental Impact Report, the CITY will develop and include data addressing the proposal analyzed in the EIR and any alternatives addressed in the final EIR regarding any issue for which this Agreement requires findings to be made. The alternatives to be addressed in the draft EIR shall include those set forth in the Memorandum from the Planning Director to the City Manager, dated December 20, 1988, attached hereto as Attachment B and incorporated by such reference.

13. Except as provided in paragraph 2 of this Agreement, the parties further agree that all relevant provisions of State law in existence as of the date of the execution of this MOU shall govern proceedings under this Agreement.

Attachment/Exhibit to
Ordinance No. 1118-01 (CM)

DATED: 5/10, 1989

CITY OF WATSONVILLE
BY: John Radin
John Radin
City Manager

DATED: June 12, 1989

SANTA CRUZ LOCAL AGENCY
FORMATION COMMISSION
BY: Robley Levy
Robley Levy
Chairperson

~~APPROVED AS TO FORM:~~

Maile
CITY Attorney

APPROVED AS TO FORM:

Dee Se
LAECO Counsel

Attachment/Exhibit to
Ordinance No. 11/8-01 ICMA

EXHIBIT B

Recording requested by
and when recorded mail to:

City of Watsonville
P. O. Box 50000
Watsonville, CA 95077-5000

Attn: City Clerk

STATEMENT OF UNDERSTANDING

This document memorializes the understanding between the City of Watsonville, California ("City") and Anthony J. Franich, on behalf of all owners (collectively "Franich"), relative to that 72.19 acre Property located adjacent to the City limits, APN 51-191-33, in the event the entire Property is annexed to the City.

RECITALS

WHEREAS, Franich is the owner of the Property which is the subject of annexation proceedings to the City before the Local Agency Formation Commission of the County of Santa Cruz ("LAFCO"); and

WHEREAS, if annexed, City desires a mixed density, quality neighborhood to be developed upon the Property, including an elementary school, a major community park, and a mix of housing that contains a substantial amount of affordable below-market rate housing; and

WHEREAS, if annexed, Franich agrees to pursue a planning process to formulate a site plan for the entire Property (Planned Development or Specific Plan) in order to implement the objectives

contained herein and to maintain neighborhood quality; and

WHEREAS, City and Franich agree that the Property should be planned and developed to maximize residential densities for efficient land use consistent with maintaining the quality of development with a target of approximately three hundred ninety-four (394) to five hundred seventy seven (577) dwelling units; and

WHEREAS, City and Franich agree that the Property should be developed to maximize affordable below-market rate housing consistent with the feasibility of its entire development; and

WHEREAS, City and Franich agree that any commercial development of the Property is optional but not necessary and that the priority is for housing, a school site and a community park site; and

WHEREAS, City and Franich agree that in order to achieve the goals of providing the target residential density, a school site and a major community park site it is necessary for the entire 72.19 acres of the Property to be annexed to the City.

NOW, THEREFORE, the parties hereto agree as follows:

1. The above and foregoing is true and correct.
2. School Site. City and Franich agree that the ten (10) acres to be acquired by the Pajaro Valley Unified School District ("District") for an elementary school site may be relocated to a different location, if acceptable to the District, as part of the site plan for the entire Property.

3. Affordable Housing.

- A. Franich volunteers and, by this writing, agrees to

dedicate to City nine (9) acres (net usable acres) - for affordable housing concurrent with the recording of the first final subdivision map for the Property. The locations and size of the parcels dedicated pursuant to this provision shall be mutually agreed upon by the parties and shall be designated as part of the site plan for the entire Property. Franich shall develop the roads and infrastructure, including utility service to the property line, to serve the parcels to be dedicated pursuant to this provision as part of the development of the entire Property.

B. City agrees to use the nine (9) acres dedicated herein to develop affordable housing at densities that will yield between one hundred eighty (180) to two hundred seventy (270) dwelling units. City also agrees that this nine (9) acre dedication will satisfy all of the affordable housing requirements set forth in Chapter 14-46 of the Watsonville Municipal Code for the entire Property. City or its successor in interest shall be responsible for the payment of all fees for the development of this site. City or its successor in interest shall be responsible for providing internal access, final site finish work, utility connections and except as provided herein, all other costs to develop affordable housing on this site. City agrees to pay for one-half (1/2) the cost of the public improvements (road, infrastructure and utilities) on this land dedicated to City for affordable housing based upon the street frontage of the land so dedicated. ✓

4. Park Site.

A. City plans to develop a major community park of at least sixteen (16) acres on the Property at a location to be determined by the City as part of site plan. The City has the power to and is willing to acquire all or a portion of the park site by condemnation.

B. Franich agrees to dedicate three (3) acres of the Property for the community park to comply with the Memorandum of Understanding between LAFCO and City dated June 12, 1989 concerning the Franich annexation. Franich volunteers and, by this writing, agrees to donate five (5) acres of the Property to the City for a part of the community park. This donation of property is conditioned solely on the entire community park being named after Martin John Franich. Additionally and solely under the threat of condemnation by the City, Franich agrees to sell to the City eight (8) acres of the Property at its fair market value to be used as part of the community park. The dedication of the three (3) acres and conveyance of the five (5) acres shall be concurrent with the recording of the first final subdivision map for the Project. The eight (8) acres shall be conveyed to the City within ninety (90) days after the adoption of a Resolution of Necessity by the City or such other time as the City may agree. Franich shall develop the roads and infrastructure, including utility service to the property line, to serve the entire parcel to be conveyed pursuant to this provision as part of the development of the entire Property.

C. City agrees to name the community park after Martin

John Franich provided that five (5) acres of the Property is donated for the community park site. City acknowledges that no part of the five (5) acres donated to the City shall be considered as meeting Franich's obligation with regard to parkland dedication. City also agrees that the three (3) acre dedication will satisfy all of the parkland dedication requirements set forth in Article 6 of Chapter 3-6 of the Watsonville Municipal Code for the entire Property. In the event the City decides to transfer the recreational facilities at Joyce MacKenzie Park to the new community park, the City may agree to exchange the land at Joyce MacKenzie Park at its fair market value as partial payment for the land to be purchased under threat of condemnation. City agrees to pay for one-half (1/2) the cost of public improvements (roads, infrastructure and utilities) for thirteen (13) (donated and sold under threat of condemnation) of the sixteen (16) acres to be conveyed to the City for the community park based upon the street frontage of the land so conveyed.

5. Miscellaneous. Franich agrees that, except as otherwise provided herein, all other City requirements for fees, dedications, and the like shall apply to the development of the Property unless an alternate agreement to the provisions contained herein is reached. Franich agrees to develop the remaining residential acres for market-rate housing at a target density to yield approximately eighty-six (86) to one hundred nine (109) single family and one hundred twenty-eight (128) to one hundred ninety-eight (198) multi family dwelling units and to pay all required fees for its

development. Franich further agrees that at least fifty percent (50%) of the market-rate housing will be sold at less than one hundred twenty percent (120%) of the average sales price of a home, as established by the Watsonville Association of Realtors or its successor, which price shall be determined at the time of development.

6. This document is intended to be recorded on the Property, binding on Franich, and the City of Watsonville, and their respective assignees or successors-in-interest.

Dated: Feb. 23, 1993

ANTHONY J. FRANICH

By: 

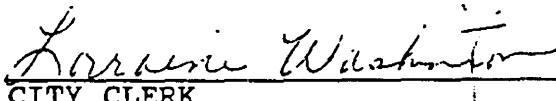
CITY OF WATSONVILLE

Dated: 2/25/93

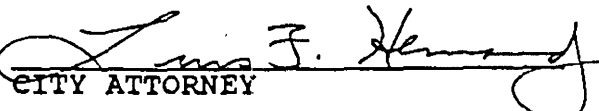
By: 

Title: City Manager

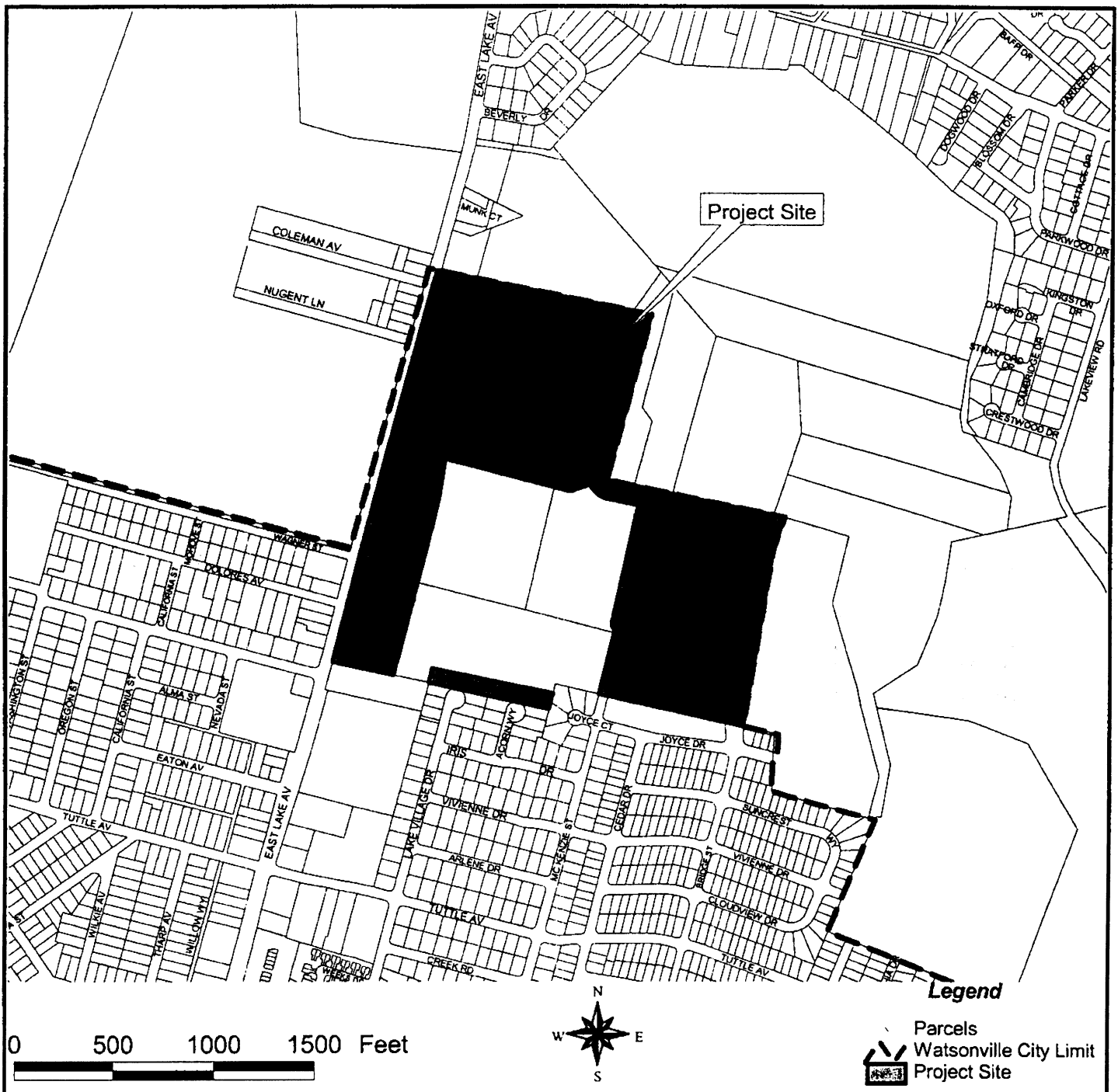
ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

Site and Vicinity Map



Project: Vista Montana

Applicant: Clarums Homes/John Suppes

P.O. Box 60088

Palo Alto, Ca. 94306

Owner: 1. Clarums Homes/John Suppes

P.O. Box 60088

Palo Alto, Ca. 94306

Attachment/Exhibit to
Ordinance No. 11832 (CM)

2. Diane Franich Carrol 3. John Franich 4. Marcia Franich
100 Delois St., PMB 156 25 Taryn Ct. 5351 Southbridge Pl.
Carmel Valley, CA. 93923 Scotts Valley, San Jose, CA. 95118
CA. 95066

APN#: 017-155-8, 9, 10, & 11

PROJECT NO: PD-5-99, S-5-99, & U-89-99

LOCATION OF PROJECT: East Lake Ave.

Prepared by Watsonville Planning Commission 3/01 COM 0110

EXHIBIT "C" 14

Exhibit D
List of Fees for Vista Montaña

PERMIT FEES

- Standard Building Permit and Inspection Fees.
- Standard Planning Plan Check Fees.
- Standard Engineering Fees for Plan Check and On/Off-Site inspection.
- Standard Final Map and Inspection Fees.

IMPACT FEES

City Wide Traffic Impact Fee - Single Family Dwelling \$125/14 trips per unit

Multi-Family Dwellings \$125/10 trips per unit

Additional Traffic Signal and Off site impact fees in conditions of approval:

Sanitary Sewer Connection fee - \$1,286.50 per unit

Standard Water Service Connection fees - Dependent on meter size

Public Facilities Impact Fee - \$ 0.40 per square foot

Fire Impact Fee - \$ 0.20 per square foot

Fire Service Fees - Fire Hydrant construction \$3,349 for 6" hydrant
Detector check size \$7,500 for 6"

School Impact Fees - \$3.31 per square foot

Affordable Housing Fees - \$0 with the exception of provisions in the D.A.

Ground Water Impact fee - \$296 per bedroom

Storm Drainage fee - Credit for additional capacity provided by improvements subtracted from \$18,018.5 per acre of impermeable surface

Parks and Recreation Fee - \$0

Attachment/Exhibit to:
Ordinance No. 1118-01 (CM)

Grading and Construction Schedule

MONTH: 0 1 2 3 4 5 6 7 8 9 * * * * *

[illegible]

Phase I consists of:	46 Market Rate SFD 19 Affordable SFD Ho 30 Market Rate SFA H 4 Affordable SFA Hom
Phase II consists of:	45 Market Rate SFD 21 Affordable SFD Ho 28 Market Rate SFA H 4 Affordable SFA Hom
Phase III consists of:	135 Affordable Apartm
Phase IV consists of:	34 Market Rate SFD 12 Affordable SFD Ho 12 Market Rate SFA H 2 Affordable SFA Hom

<u>Tax Credit Application Schedule:</u>	
Submittal to City for Design Review	****
Design Review Approved	****
Tax Credit Application Submitted	****
Tax Credit Award Date	****
Building Permit Submittals	****
Start Apartments	****

Attachment/Exhibit to
Ordinance No. 1118-01 (CM)

EXHIBIT E
Page 1 of 1


ORDINANCE NO. 1118-01 (CM)

The foregoing ordinance, having been printed and published as required by the Charter of the City of Watsonville, and coming on for final consideration at the regular meeting of the Council of the City of Watsonville, held on the 23rd day of October, **2001**, by Council Member **Bobeda**, who moved its adoption, which motion being duly seconded by Council Member **Phares**, was upon roll call carried and the ordinance finally adopted by the following vote:

AYES: COUNCIL MEMBERS: **Bobeda, de la Paz, Gomez, Lopez, Phares, Carter**

NOES: COUNCIL MEMBERS: **None**

ABSENT: COUNCIL MEMBERS: **Doering-Nielsen**



Charles E. Carter, Mayor

ATTEST:



City Clerk

EFFECTIVE DATE:

November 22, 2001