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**CITY OF SAN JOSE POLICY ON IMPLEMENTATION OF THE INCLUSIONARY HOUSING REQUIREMENT OF HEALTH & SAFETY CODE SECTION 33413(b)(2)
Amended November 2, 2010**

I. General.

The inclusionary housing requirement set forth in Health and Safety Code Section 33413(b)(2) shall be imposed upon all private housing developments, whether for-sale or rental, in the redevelopment project areas to which it applies (*i.e.*, all project areas and expansions except Park Center Plaza, San Antonio Plaza, Pueblo Uno, Mayfair One and original Rincon de los Esteros area) through the zoning process in accordance with this Policy (“Inclusionary Requirement”).

Notwithstanding anything to the contrary contained herein, the rental requirements of this policy shall be temporarily suspended as such Policy relates to newly constructed rental units until the earlier of: January 1, 2013, or the effective date of the City’s Inclusionary Housing Ordinance.

- A. The Inclusionary Requirement shall be met through any of the options set forth in Article II hereof.
- B. Residential units subject to the Inclusionary Requirement shall remain affordable to the targeted income group for the longest feasible time, but in no event less than the time periods set forth in the California Health and Safety Code Section 33413 (c)(1).
- C. Restricted units shall be made available for the term of the restriction at “affordable housing cost” or “affordable rent” to “extremely low income households”, “very low income households” and “persons and families of low or moderate income” as such terms are defined in the California Health and Safety Code.
- D. Affordability controls on rental units must be evidenced by either a recorded deed restriction or a recorded affordability agreement that is binding on subsequent owners of the property. Affordability controls on “for sale” units must

be evidenced by either a recorded deed restriction or a recorded affordability agreement that is binding on subsequent owners of the property. Affordability controls on “for sale” units may be released if the owners agree to comply with a program designed to preserve the City’s supply of affordable units including, but not limited to, an equity share program.

For purposes of this policy, “For-Sale” shall mean any dwelling unit, including a condominium, stock cooperative, community apartment, or attached or detached single family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which such unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 *et seq.*), or any Project including such units.

- E. Developers subject to the Inclusionary Requirement shall submit a compliance plan detailing the manner in which the Inclusionary Requirement will be met, for the approval of the Agency’s Executive Director, prior to the issuance of a foundation or building permit for the proposed development. The compliance plan and any agreement or restrictions recorded pursuant thereto may be subsequently modified with the approval of the Agency’s Executive Director, so long as any modification is consistent with this Policy.
- F. The Agency has delegated to the City the authority to implement and enforce compliance with the Inclusionary Requirement. The City Housing Department shall monitor and report to the Agency and State Department of Housing and Community Development such information as is required by law on income and affordability of restricted units. The City’s Housing Department shall report to the Executive Director periodically on the status of all implementation and enforcement activities. Unless a provision of this Policy expressly states that it requires an action by either the City Council or the Redevelopment Agency Board, any action to be taken hereunder by the Agency or City may be taken by either the Agency’s Executive Director or the Director of Housing on behalf of either the Agency or the City hereunder.
- G. The City’s Director of Planning shall include the Inclusionary Requirement as a condition to any new or substantially rehabilitated residential development located within a redevelopment project area to which this Inclusionary Requirement applies.
- H. It shall not be inconsistent with the inclusionary policy for the City or Agency to provide financial assistance towards the development of the required inclusionary units provided that 100% of the total units in the project will be Restricted Affordable Units, and such project is not developed under Section II below.

II. Satisfaction of Inclusionary Requirement.

The Inclusionary Requirement shall be met through satisfaction by developer of any of the options set forth below, which options shall be selected by developer and evidenced in a written compliance plan submitted by developer.

A. Development of Units within the Project.

The Inclusionary Requirement may be met through the development of units situated within the Project as follows:

1. Rental Projects: At least twenty-percent (20%) of the rental units developed within a residential project subject to this policy shall be made available for the term of the restriction at “affordable housing cost”, with at least 8% of the rental units restricted to “very-low income” households and at least 12% of the rental units restricted to “low income” households, provided that rents for “low income” households shall be set at 60% of area median income (AMI), although “low-income” households up to 80% of AMI shall also be eligible to occupy such units.
2. For-Sale Projects: At the option of the Developer:
 - a) At least twenty percent (20%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “low or moderate income” households; or
 - b) At least six percent (6%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “very low income” households and nine percent (9%) must be made available to “low or moderate income” households, for a total of 15% of the units restricted pursuant to the requirements of Health and Safety Code Section 33413(b)(2).
3. Mixed Rental and For-Sale Projects: At the option of the Developer, a project containing both rental and for-sale units may satisfy the requirements of this Section by (i) either satisfying one of the rental or for-sale options in Subsections A 1 or A 2 above for the entire project; or (ii) by applying the rental option in Subsection A 1 above to the rental portion of the project and by applying either of the for-sale options in Subsection A 2 above to the for-sale portion of the project.
4. Conversion from Rental to For-Sale Project: During any period that the requirements of this Policy that apply to newly constructed rental units are

suspended, any Project which contains units that are defined as “for-sale” units but which are initially developed and operated as rental projects shall comply with this policy and the provisions of this paragraph. Prior to issuance of a foundation or building permit for such project, the Developer shall record a for-sale affordability agreement which would require such project to comply with the for-sale requirements of this policy at such time as such project is converted from a rental to a for-sale project. Upon any future conversion of the project from a rental project to a for-sale project, the Developer shall comply with the for-sale inclusionary requirements contained in the recorded affordability agreement.

B. Payment of In-Lieu Fee.

The Inclusionary Requirement may be satisfied by the payment of a fee to the City *in-lieu* of constructing the required affordable units within that private housing development, provided that such fee is received by the City after the issuance of the development permit for the project, but prior to the initial occupancy of the unit. The amount of in-lieu fees will be established in the City Council’s annual resolution establishing the Schedule of Fees and Charges or as established otherwise by resolution of the City Council.

C. Dedication of Land in Lieu of Construction of Affordable Units.

A developer of a private housing development may satisfy the Inclusionary Requirement by dedicating land in lieu of constructing restricted affordable units within the private housing development if the City Council determines that all of the following criteria have been met:

1. The dedicated site is transferred to the City prior to commencement of construction of the private housing development or is subject to an agreement between the developer and the City that sets forth a date certain for transfer of the dedicated site and such agreement is in the best interests of the City.
2. The value of the dedicated site at the date of dedication or the date such agreement to dedicate is executed, as applicable, is greater than the in-lieu fee in effect at the date of dedication or the date such agreement to dedicate is executed, as applicable, multiplied by the number of otherwise required affordable units within the private housing development.
3. The dedicated site could accommodate at least the number of otherwise required affordable units within the private housing development.
4. The dedicated site is adjacent to the private housing development.

If the dedicated site is not to be transferred to the City prior to commencement of construction of the private housing development subject to the Inclusionary Requirement, the agreement between the developer and the City shall provide, among other things, that:

1. The dedicated site shall be transferred by the developer to the City at a date certain acceptable to the City;
2. The developer shall, prior to commencement of construction of the private housing development, pay to the City a substantial percentage (as determined by the City Council) of the in-lieu fee in effect at the date such agreement to dedicate is executed multiplied by the number of otherwise required affordable units within the private housing development, and
3. In the event that, upon transfer of the dedicated site, the value of the dedicated site is not at least equal to the future value of the in-lieu fee remaining payable, the developer shall immediately pay the shortfall in cash.

Notwithstanding the above, the City shall not be required to construct restricted affordable units on the dedicated site, but may sell, transfer, lease or otherwise dispose of the dedicated site as necessary in furtherance of its inclusionary affordable housing goals. Notwithstanding anything to the contrary contained herein, the provisions of this Subsection C shall expire and be of no further force and effect after December 31, 2007.

D. Develop a Stand-Alone Affordable Project.

1. A developer of a private housing development may satisfy the Inclusionary Requirement by developing a stand alone rental affordable project if all of the following criteria have been met:
 - a) Except as provided otherwise in Section 3 below, the stand alone project would accommodate at least the number of affordable units which would otherwise have been required under Section II A above within the private housing development;
 - b) Except as provided otherwise in Section 3 below, the affordability levels of the stand-alone project shall be consistent with the rental requirements set forth in Section II A above to be constructed in the stand-alone project;
 - c) Except as provided otherwise in Section 4 below, the stand alone project is developed within the redevelopment project area in which the private housing development is located;

- d) An affordability agreement in a form acceptable to the Agency and City has been recorded against the underlying real property on which the stand alone project will be constructed; and
 - e) The developer of the market rate project shall have entered into an agreement with the Agency or the City, which agreement provides: (i) a time line for completion of the stand alone project, and (ii) adequate security to the City by developer (i.e. such as a bond or letter of credit) to ensure that the stand alone project will be completed or transfer of the land for the stand alone project to an affordable housing developer with the Agency/City's standard form affordability agreement recorded against such land.
2. Two or more developers of private housing developments may satisfy the Inclusionary Requirement by mutually developing (pooling) a stand alone rental affordable project if all of the following criteria have been met:
- a) Except as provided otherwise in Section 3 below, the stand alone project would accommodate at least the number of affordable units which would otherwise have been required under Section II A above within the private housing developments;
 - b) Except as provided otherwise in Section 3 below, the affordability levels of the stand-alone project shall be consistent with the rental requirements set forth in Section II A above to be constructed in the stand-alone project;
 - c) Except as provided otherwise in Section 4 below, the stand alone project is developed within the redevelopment project area in which at least one of the private housing developments is located.
 - d) An affordability agreement in a form acceptable to the Agency and City has been recorded against the underlying real property on which the stand alone project will be constructed; and
 - e) The developers of the market rate projects shall have entered into an agreement with the City, which agreement provides: (i) a time line for completion of the stand alone project, and (ii) adequate security to the City by such developers (i.e. such as a bond or letter of credit) to ensure that the stand alone project will be completed or transfer of the land for the stand alone project to an affordable housing developer with the Agency/City's standard form affordability agreement recorded against such land.

3. Notwithstanding anything to the contrary contained herein, the Inclusionary Requirement of twenty percent (20%) of the units set forth in Section II A 1 above shall be reduced to fifteen percent (15%), if, in connection with the development of a stand alone rental affordable project under this Section, the developer, pursuant to a recorded affordability agreement against the stand alone project, agrees to provide at least 25% of the units to extremely low-income (ELI) households and the remaining units are provided to very low-income households (VLI).
4. If, after a written request from a developer of a market rate project to be located in any of the project areas identified below, the Agency and City mutually determine that sufficient land is not available within the applicable project area for a stand alone project to be constructed under Section 1 or 2 above, the requirement that a stand alone project be developed within the redevelopment project area in which the private housing development is to be located may be waived by the City Council of Redevelopment Agency Board. This requirement shall only apply to a market rate project developed in a Neighborhood Business District, a Neighborhood Business Cluster, the Almaden Gateway Project Area, the Guadalupe-Auzerais Project Area, the Market Gateway Project Area, the Century Center Project Area, or the Civic Plaza Project Area. This requirement may only be waived if the Redevelopment Agency Board or the City Council finds, based on substantial evidence, after a public hearing, that the development of the stand alone project in another project area will not cause or exacerbate racial, ethnic, or economic segregation.

E. Combination of Other Inclusionary Options.

A developer of a private housing development may satisfy the Inclusionary Requirement by electing any combination of the above options, so long as such election fully satisfies the developers Inclusionary Requirement under this Policy. For example, if a market-rate developer has an inclusionary obligation of 100 affordable units but the site for the stand-alone affordable rental project can only accommodate 80 units, the developer could either: (i) pay an in-lieu fee for the remaining 20 units or (ii) provide 20 affordable units in the developer's market rate project.

In the event the calculation for the number of restricted affordable units that the developer must provide results in a fraction of a unit, then the developer shall have the option of either (i) providing a full unit within the project at the affordable price, or (ii) making an in-lieu payment to the Housing Department in an amount equal to the percentage represented by the fractional unit multiplied by the then current in-lieu fee.

F. Exception for Small Housing Projects.

Notwithstanding the Inclusionary Requirements set forth above, a private developer of a private housing development of ten (10) housing units or less shall not be subject to the requirements of this Policy.

G. Inclusionary Credits, Transfers.

If, in connection with satisfying the Inclusionary Requirements hereunder, a private developer under either Section II A or D above, develops affordable units without any Agency or City Assistance in excess of such developer's Inclusionary Requirement ("Surplus Inclusionary Units"), such developer shall have the right to utilize such Surplus Inclusionary Units to satisfy any future Inclusionary Requirements of such developer for a period of up to twenty (20) years after construction of such units. Such developer shall also have the right to sell or otherwise transfer to another developer any Surplus Inclusionary Units. The City and Agency shall establish administrative procedures to monitor Surplus Inclusionary Units.

III. Subordination of Redevelopment Inclusionary Housing Restriction in Rental Projects.

The restriction for the Redevelopment Inclusionary Housing Requirement for a rental project may be subordinated to a lien, encumbrance or regulatory agreement of a federal or state government agency when all of the following conditions are met:

- A. The agency is providing financing or other assistance for the housing development;
- B. The statute or regulation governing the financing or assistance from that agency does not permit the restriction for the Inclusionary Requirement to be senior to the agency's lien, encumbrance or regulatory agreement.
- C. The agency will record a regulatory agreement that will require the housing development to provide affordable units in an amount not less than the amount required for the Inclusionary Requirements for the particular housing development.
- D. The City and Agency have determined that there is no economically feasible alternative method of financing or assisting the housing development on substantially comparable terms and conditions without subordination.
- E. The City and Agency obtain written commitments reasonably designed to assure that the restricted affordable units in the housing development will not be

removed in the event of default of the agency's lien, encumbrance or regulatory agreement, such as the following:

1. A right of the City or Agency to cure a default on the agency lien, encumbrance or regulatory agreement
2. A right of the City or Agency to negotiate with the agency after notice of default from the agency.
3. An agreement that if prior to foreclosure by the agency, the City or Agency takes title to the property and cures the default on the lien, encumbrance or regulatory agreement, the agency will not exercise any right it may have to accelerate a loan by reason of the transfer of title to the City or Agency.
4. A right of the City or Agency to purchase property from the owner at any time after a default on the lien, encumbrance or regulatory agreement.

IV. Subordination of Redevelopment Area Inclusionary Housing Restriction in For Sale Projects.

The restrictions for the Inclusionary Requirement for a "for sale" unit may be subordinated to a lien, encumbrance, or regulatory agreement of a lender other than the City or from a bond issuance providing financing, refinancing, or other assistance of "for sale" units or parcels where the Director of Housing, or his/her designee, makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the "for sale" units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the City obtains written commitments reasonably designed to protect the City's affordable housing supply in the event of default, such as any of the following:

1. A right of the City to cure a default on the loan.
2. A right of the City to negotiate with the lender after notice of default from the lender.
3. An agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City.
4. A right of the City to purchase property from the owner at any time after a default on the loan.

V. Request for Adjustment.

Notwithstanding the general requirements set forth above, the City Council shall, upon request of a private residential developer, reduce, adjust or relieve the developer of its obligations under this Redevelopment Area Inclusionary Housing Policy, but only to the extent the Developer demonstrates that there is no nexus between the proposed development and the purposes of this Policy.

VI. Projects Constructed Pursuant to a Development Agreement.

Notwithstanding the general requirements set forth herein, if the City Council approves a development agreement, by ordinance pursuant to the authority and provisions of Government Code Section 65864 *et. seq.* and City Ordinance 24297, with a private developer of a private housing development and, pursuant to such development agreement, the private developer agrees to provide the number of affordable units required pursuant to this Redevelopment Area Inclusionary Housing Policy but at lower levels of affordability, then the location, construction and phasing of such inclusionary units within such project if approved by the Director of Housing and set forth in an Affordable Housing Plan attached as an exhibit to the development agreement shall be deemed to be consistent with the provisions of this Redevelopment Area Inclusionary Housing Policy so long as the developer remains in compliance with the terms and conditions of such development agreement. Any breach of such Affordable Housing Plan shall constitute a material breach of the development agreement.

VII. Waiver of Inclusionary Requirements.

Notwithstanding anything to the contrary contained herein, the developer of a project containing for-sale units may apply for a waiver of the Inclusionary Requirements contained herein if the developer can demonstrate to the satisfaction of the City Manager and the Executive Director that the Affordable Price (as defined below) of a designated affordable unit is within five percent (5%) of the unrestricted market value of such unit. The following provisions shall apply to any waiver of the Inclusionary Requirements granted hereunder and any developer obtaining a waiver shall comply with such requirements:

1. The designated affordable unit may be sold at or below the Affordable Price with no requirement that it be sold to a person or family of low or moderate income (as defined in the California Health and Safety Code) ("Affordable Household").
2. The designated affordable unit must be initially occupied by the purchaser.
3. There will be no requirement that any affordability restrictions (or an equity share) be recorded against the designated affordable unit or the project.

4. The waiver shall be valid for six (6) months from the date the application for waiver is approved. If the designated affordable unit is not sold within such six (6) month period, the developer may request an extension of such waiver provided that the developer can demonstrate to the satisfaction of the Executive Director and the City Manager that the applicable unit continues to qualify for the waiver in accordance with the requirements of this Section.

For purposes of this section, "Affordable Price" shall be defined as the purchase price to be paid by an Affordable Household to acquire a designated affordable unit as determined under the provisions of the California Health and Safety Code and this Policy and the regulations adopted to implement the Policy. A developer may use any reasonable means of demonstrating the market value of a unit, including, but not limited to, an appraisal, comparable sales within the developer's project, or comparable sales of other similar projects located in close proximity to the developer's project.

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IX. Evidence of Satisfaction of Inclusionary Requirements During Suspension Period.

During any period of time that the Inclusionary Requirements of this Policy that apply to newly constructed rental units are suspended by the City Council and Redevelopment Agency Board ("Suspension Period"), the Executive Director and the Director of Housing, acting jointly, shall have the authority to enter into an agreement ("Satisfaction Agreement") with a Developer developing one or more phases of rental housing (individually, "Phase" and collectively, "Project"). Subject to the satisfaction of the conditions contained therein, the Satisfaction Agreement shall serve as evidence that the rental inclusionary requirements of this Policy have been satisfied with respect to the initial Phase and will be satisfied for future Phases of the Developer's Project. If the Developer meets the Minimum Qualifications set forth below, the Executive Director and the Director of Housing shall negotiate with Developer a Satisfaction Agreement. If the Developer agrees to satisfy the requirements contained in a mutually agreed upon form of Satisfaction Agreement and the Executive Director and the Director of Housing reasonably believe that the Developer can satisfy the requirements set forth in the Satisfaction Agreement, the Executive Director and the Director of Housing shall execute a Satisfaction Agreement with Developer.

In order to enter into a Satisfaction Agreement, the Developer shall meet the following minimum qualifications ("Minimum Qualifications"):

1. Prior to September 1, 2010, the Developer shall have obtained a Development Permit (as defined below), as may be amended, which shall allow for the construction of not less than two hundred (200) rental units in a Redevelopment Project Area; and

2. The Developer shall have the ability to obtain a Building Permit and commence construction (as defined below) of the Project (or initial Phase thereof) on or before September 30, 2011; and
3. The Developer, with respect to a Project consisting of more than one Phase, shall have the ability to commence construction of each Phase in accordance with a phasing schedule mutually agreed to by the Developer, the City and the Agency ("Phasing Plan"), provided that Developer shall have the ability to complete construction of all Phases of the Project no later than thirty (30) months after Commencement of Construction of the final Phase, and each Phase shall be completed within the time period set forth in the Phasing Plan.

For purposes of this Section, a Phasing Plan shall require that phases two and three of any multi-phased Project shall commence construction no later than September 30, 2013 and any phases in excess thereof shall commence construction no later than September 30, 2014.

Notwithstanding the specific dates for the commencement and completion of construction required hereunder and for any particular Phase of a Project as set forth in a Satisfaction Agreement, if a Developer has entered into a Satisfaction Agreement and has used good faith efforts to commence or completion construction of a particular Phase within the time period set forth in the Satisfaction Agreement, at the Developer's request, the Executive Director and the Director of Housing, acting jointly, may extend any of the deadlines set forth in the Satisfaction Agreement for a reasonable period not to exceed thirty (30) days ("Extension Period"); provided that the Executive Director and the Director of Housing reasonably believe that the Developer, acting diligently, can commence or complete construction of the applicable Phase within the Extension Period.

The following provisions, at a minimum, shall be included in each Satisfaction Agreement:

1. The Developer shall obtain a Building Permit and shall commence construction of the Project (or initial Phase thereof) on or before September 30, 2011, subject to extensions permitted by the Satisfaction Agreement.
2. The Developer, with respect to a Project consisting of more than one Phase, shall agree to commence construction and complete each Phase in accordance with the Phasing Plan mutually agreed to by the Developer, the City and the Agency, subject to extensions permitted by the Satisfaction Agreement.

3. The rental inclusionary requirement for a Project to be constructed in Phases shall be satisfied for each Phase once the Developer has obtained a Building Permit and commenced construction of such Phase.
4. The Satisfaction Agreement shall terminate if the Developer fails to commence construction and complete the Project or subsequent Phases within the time period set forth herein or in the Phasing Plan agreed to by the Developer, the City and the Agency. If the Satisfaction Agreement terminates and the Developer has not obtained a Building Permit for the Project or a future Phase of the Project, then the Project or such future Phase shall be subject to the Inclusionary Requirements of this Policy existing as of the date that Developer obtains a Building Permit for such Project or Phase.
5. For purposes of the Satisfaction Agreement, a Project or Phase thereof shall be deemed completed upon receipt by the Developer of a Certificate of Occupancy from the City.
6. Notwithstanding a change in the Inclusionary Requirements that apply to newly constructed rental units, a Developer shall not be required to comply with any changes in the Inclusionary Requirements with respect to the Project provided that (i) the Developer has entered into a Satisfaction Agreement with the City and Agency prior to the effective date of any such changes, (ii) the Satisfaction Agreement is still in full force and effect and (iii) the Developer is in full compliance with the terms of the Satisfaction Agreement.
7. The Developer shall acknowledge that the Satisfaction Agreement does not alter or suspend any other City requirement, nor does it alter or suspend any requirements contained in the Development Permits or the Building Permits, and the failure of the Developer to comply with any other City requirements, including the requirements contained in the Development Permits and the Building Permits, shall not cause the Satisfaction Agreement deadlines to be extended.
8. The parties shall also acknowledge and agree that:
 - a) The Developer is relying on the terms of the Satisfaction Agreement, including the satisfaction of inclusionary housing requirements, as a material inducement to proceed with construction of the Project in accordance with the Phasing Plan, which includes very significant upfront investment required for the Project.
 - b) The City is relying upon the terms of the Satisfaction Agreement, including the commencement and construction of the Project in accordance with the Phasing Plan, to satisfy the inclusionary

housing requirements required under the Inclusionary Housing Policy.

- c) The City retains and reserves the power to amend the Inclusionary Housing Policy or enact, enforce or amend other land use ordinances or policies (including, without limitation, the Inclusionary Housing Ordinance) whose effect would be to require satisfaction of inclusionary housing requirements for the Project notwithstanding the terms of the Satisfaction Agreement (“Reserved Power”).
 - d) Notwithstanding anything to the contrary in the Satisfaction Agreement, if Developer has obtained building permits for and commenced construction and is proceeding with construction of the Project in accordance with the Phasing Plan, Developer shall be deemed to have a vested right to proceed with any remaining Phases of the Project in accordance with the Phasing Plan and the Satisfaction Agreement and the Amendment to Inclusionary Housing Policy that added Article IX; provided, however, that if for any reason notwithstanding the vesting of rights described in the foregoing clause, the effect of the City’s exercise of Reserved Power is to impose inclusionary housing requirements on the Project despite the Satisfaction Agreement, the City shall use other means or resources to satisfy those inclusionary housing requirements.
9. The Satisfaction Agreement shall be recorded in the Official Records of Santa Clara County and, if requested by the Developer, the City and the Agency agree to execute an estoppel certificate from time to time in a form acceptable to the City and Agency setting forth the status of the Satisfaction Agreement as it relates to a Project or any Phase thereof. Upon completion of a Phase or the Project in compliance with a Satisfaction Agreement, the City and the Agency shall, if requested by a Developer, record a document to evidence compliance with the Inclusionary Housing Policy (“Compliance Certificate”). Recordation of a Compliance Certificate shall constitute conclusive evidence that a Developer has satisfied the Inclusionary Housing Policy with respect to the Phase or Project for which the Compliance Certificate is issued.

For purposes of this Section, the following terms shall be defined as follows:

- 1. “Building Permit” shall mean full structural building permits that allow for and involve the commencement of physical construction of the Project;
- 2. “Certificate of Occupancy” shall mean the permit issued by the San Jose Building Division authorizing the initial occupancy of a residential

- unit, including a temporary certificate of occupancy, for the Project or the particular Phase;
3. “Commencement of Construction” shall mean the date that the Developer has commenced physical construction of the structure, which shall include, at a minimum, the foundation; and
 4. “Development Permit” shall mean any permit issued pursuant to [Chapter 20.100](#) of the San Jose Municipal Code, with the exception of a sidewalk café permit issued pursuant to Part 12 of [Chapter 20.100](#).

If a Developer has previously entered into a recorded affordability agreement for a Project or Phase thereof in order to comply with the Inclusionary Requirements, but has not yet obtained a Building Permit for such Project or Phase thereof, the Executive Director or the Director of Housing, in conjunction with entering into a Satisfaction Agreement, may release or rescind the affordability agreement of record.