



February 29, 2024

Steve Marshall  
Deputy Director of Community Development  
City of Novato Planning Division  
922 Machin Avenue  
Novato, CA 94945

**Re: Request for Density Bonus and Concessions**  
**Project No. P2023-058**  
**1316-1320 Grant Avenue & 1020 4th Street | APN 141-261-29**

Dear Mr. Marshall,

Please accept this revised density bonus memo which amends the version originally submitted dated July 12, 2023. This version makes the following changes: edits select project details based on the revised drawings, updates the affordability table to provide clarity on how our proposed affordability meets various state laws and the city’s code, and updates the concessions. Additionally, language is added about AB 1287 which went into effect on January 1, 2024 and modifies State Density Bonus Law (SDBL) by allowing five concessions.

AMG & Associates, LLC (AMG) and the California Housing Defense Fund (CalHDF) request a density bonus and concessions for the aforementioned property pursuant to SDBL [Government Code (GC) Section 65915]. According to the 2035 General Plan, the land use designation of the site is Downtown Core which allows 10.0 to 23.0 units per acre in mixed-use developments and a maximum FAR of 2.0 when housing is part of the project. The intended uses of this designation include “mix of retail, service, office, recreation, assembly, and education uses... [and] residential (mixed use and live work)”. The site is zoned Downtown Core Retail with a Downtown Overlay (CDR: D) which is consistent with the General Plan designation of the property.

The project is a total of 209 units with 5,335 square feet of retail for a gross floor area of 170,729 square feet. The proposed affordability will be distributed according to the below table and consistent with the following applicable codes:

AMI Level		Very Low 50% AMI	Low 60% AMI	Low 80% AMI	Manager Unit Market Rate	TOTAL
# UNITS		21	21	164	3	209
%		10%	10%	80%		
Laws/ Codes	NMC §19.24.030	X	X			
	Housing Acct. Act			X		
	State DB Law	X	X	X		
	AB 2011	X	X	X		

- 1. City of Novato’s affordability requirements [Novato Municipal Code (NMC) §19.24]:** The City’s Code requires that a residential rental project of 20 or more units designate 20% of its units as affordable [NMC §19.24.030]. Of those designated units, half must be rented at 50% AMI and half must be rented

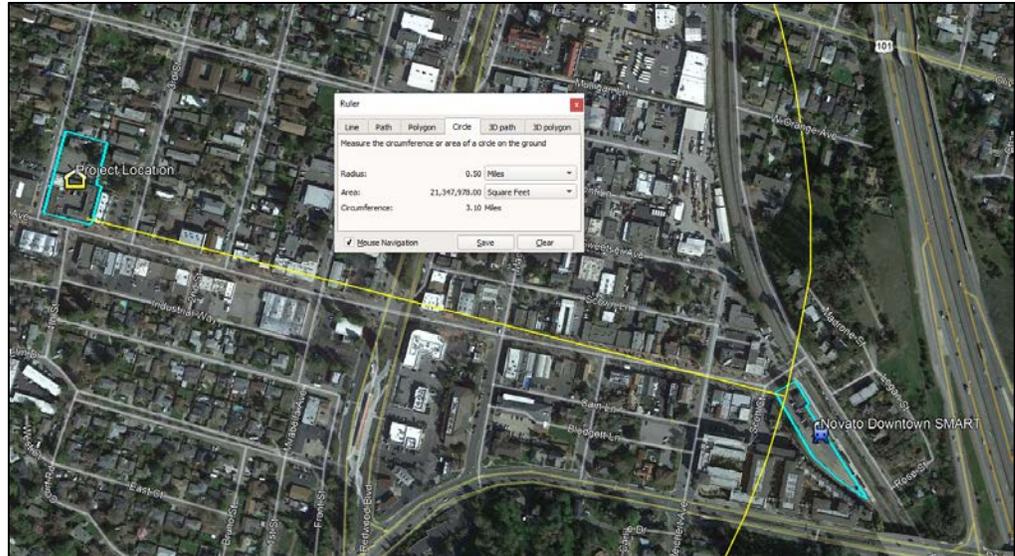
at 60% AMI. This requirement is met as indicated in the above table.

2. **Housing Accountability Act [GC §65589.5]:** The Housing Accountability Act (HAA) offers additional protection for housing developments that set aside at least 20% of their units for lower income households (80% AMI) as defined by Health and Safety Code (HSC) §50079.5 [GC §65589.5(h)(3)]. This project meets this requirement by setting aside 80% of its units to families earning 80% AMI, and therefore qualifies for protection under the HAA.
3. **SDBL [GC §65915]:** For this project we request a density bonus, concessions, and reduced parking standards in accordance with SDBL. Below please find descriptions for each item requested.
  - i. **Density Bonus:** Pursuant to SDBL, a housing development is exempt from “maximum controls on density” when it meets two criteria – affordability and proximity to transit. Since this project complies with these criteria, as detailed below, then the City “shall not impose any maximum controls on density.”
    - **Affordability [§65915(b)(1)(G)]:** 100% of the units in the development, except those units designated for manager’s units, are for lower income households (80% AMI), as defined by HSC §50079.5. Note that per HSC §50079.5(b), lower income households also include very low income households (50% AMI). Thus, the very low-income units set aside for the purpose of meeting the City’s affordability requirements can be counted toward the low-income affordability requirements of SDBL. Therefore, this project meets this requirement as illustrated in the above table.
    - **Proximity to Transit [§65915(f)(3)(D)(ii)]:** The project must be located within one-half mile of a major transit stop in order for a city to “not impose any maximum controls on density.” SDBL defines how one-half mile is measured as follows (emphasis added):

*“that **any point on a proposed development**, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile **of any point on the property** on which a major transit stop is located, **including any parking lot** owned by the transit authority or other local agency operating the major transit stop” [§65915(o)(3)].*

The enclosed HCD Technical Memo dated November 17, 2021 (Exhibit A) provides further clarification on how the one-half mile distance should be measured. HCD states that it is a “broad definition” and that the “Legislature intended this broad definition when it chose the very general term ‘any point on the property’”.

SDBL relies on Public Resources Code §21064.3 for the definition of a “major transit stop” which, amongst other things, can be “an existing rail or bus rapid transit station.” The Downtown Novato SMART train station, an existing rail station, is located within one-half mile of the project site when measured from a point on the development to a point on the property where the major transit stop is located, including the parking lot that serves the stop as illustrated below.



- ii. Concessions & Waivers: Pursuant to §65915(d)(2)(D) and (e)(3), a project that receives unlimited density shall be eligible for five concessions plus an increase in height of up to 33 feet or 3 stories. As previously indicated “maximum controls on density” do not apply to this project. Please see the “Concessions” section for details on what is being requested at this time. Waivers may be requested but it is up to the City to agree to these waiver requests. At this time no waivers are being requested.
  - iii. Parking Standards: As permitted by §65915(p)(3)(A), a project that meets the affordability requirements of (b)(1)(G) and is located with “unobstructed access” to a major transit stop that is within one-half mile is not subject to parking standards. This project meets these items and is not required to provide parking. However, 42 vehicular stalls are proposed.
- 4. AB 2011 [GC §65400]**: Article 2 of AB 2011 [GC §65912.110 - §65912.114] provides specific direction for 100% affordable projects in commercial zones. A project is permitted to use this streamlined, ministerial process if it meets two criteria:
- i. 100% of the units, excluding managers’ units, are set at a rent consistent with the rent limits established by California Tax Credit Allocation Committee (CTCAC). The project is 100% affordable as indicated in our affordability table. Additionally, we intend to apply for CTCAC for this project and intend to comply with the rent limits consistent with CTCAC. The maximum rent level for low income households permitted by CTCAC is 80% of AMI, therefore the project assumes to meet this standard.

Please note that AB 2011 also defines lower income households in GC §65912.101(i) which states that a lower income household has the same meaning as HSC §50079.5 (80% AMI). Affordable cost and affordable rent is elaborated on in our separate memo titled Response Preliminary Eligibility, Objective Standards, & Density Bonus Determination.

- ii. A deed restriction shall be recorded for 55 years for rental units or 45 years for owner-occupied units. This project will be a rental project. As stated above, we intend to submit a CTCAC Application and receive an allocation. Receiving an allocation requires that we enter into a deed restriction for a period of 55 years. Additionally, a City may request that we enter into an affordable housing agreement with them. If that is the case then we agree to do so. Therefore the project assumes to meet this criterion.

## Concessions

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Below are the concessions being requested which result in actual, identifiable costs for the project.

1. **Private Open Space [NMC §19.32.124.B.2]:** This standard requires that at least 50% of the required open space be private to each residential unit in the form of a deck, balcony, or patio as suggested in the City's response comments. The required open space for the project is 31,350 square feet (150 square feet per unit). If we complied with this comment then at least 15,675 square feet of private open space would need to be provided as private space to each unit (75 square feet for each unit). The majority of these units would require balconies which results in high construction costs including, but not limited to, structural support, waterproofing, railings, and special annual inspections. We estimate approximately 197 of the units will need a balcony and 12 units on the second floor facing the outdoor podium courtyard will need a private deck or patio. We estimate that this will cost approximately \$15,000 to \$30,000 per unit. If we incorporated private open space for all units then we expect an increase in the construction budget of approximately \$3,135,000 to \$6,270,000. The request for a reduction in private open space comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).
2. **Outdoor Open Space [NMC §19.34.100.K]:** This standard requires a minimum of 150 square feet of open space per unit or 31,350 square feet for 209 residential units. The project proposes approximately 9,338 square feet of common outdoor space. Meeting this requirement would necessitate the incorporation of a 6,337 square foot rooftop deck to achieve 50% of the total 31,350 square feet mandated by the NMC (15,675 square feet). This would mean a large increase in the overall construction budget as a rooftop deck involves extra structural support and design, waterproofing measures, and additional maintenance requirements amongst other things. We estimate, based on other similarly designed and constructed projects, that a rooftop deck costs approximately \$42/square foot. Therefore, we could expect an increase in the construction budget of approximately \$266,154. The request for a reduction in outdoor open space comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).
3. **Upper Stories Setbacks [NMC §19.34.100.E]:** This standard requires that structures greater than 20 feet in height shall step back each story above the second story at least an additional 10 feet from the side property lines. The proposed project does not step back floors three thru six by at least 10 feet along the

side property lines. If this standard were incorporated then it would create a domino effect wherein multiple elements of the project would need to be redesigned, resulting in a reduction in the proposed number of units. Stepping back upper floors by at least 10 feet at the side property lines will shift the location of the trash rooms and stairwells. This change would alter all residential floors resulting in a loss of approximately 35 units. The difference between land cost per unit at 174 units (without the concession) and at 209 units (with the concession) is \$3,657.26 per unit. The first page of our purchase and sale agreement with the seller (Exhibit B) is provided with this memo to verify the actual land purchase price of \$3,800,000.

	<b>Project with Concession</b>	<b>Project without Concession</b>
<b>Total Units</b>	209	174
<b>Land Cost/Unit</b>	\$18,181.82	\$21,839.08

The request for relief from upper stories setbacks comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

- 4. Floor Area Ratio (FAR) [General Plan and NMC §19.12.040, Table 2-8 & §19.34.100 C]:** These standards state that the maximum FAR is 2.0 when housing is incorporated into a mixed-use project. The proposed project FAR is 3.5. Applying 2.0 FAR to the 48,750 square foot site results in a 97,500 square foot building. Not exceeding the 97,500 square foot requirement means limiting density to a four-story building and 92 units. The difference between land cost per unit at 92 units (without the concession) and at 209 units (with the concession) is \$ 23,122.53 per unit.

	<b>Project with Concession</b>	<b>Project without Concession</b>
<b>Total Units</b>	209	92
<b>Land Cost/Unit</b>	\$18,181.82	\$ 41,304.35

The request for an increase in floor area ratio comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

- 5. Street Trees [NMC §19.28.040.C.2.d.4]:** This standard states that street trees should be provided for every 40-feet of right-of-way. The project meets this requirement for Grant Avenue by maintaining the existing five street trees. No street trees are provided along Fourth Street. Providing the necessary street trees would conflict with the existing 265' long storm drain existing under the sidewalk. Currently the storm drain is not deep enough to accommodate the trees. In order to make this work we need to remove three existing storm drain manholes and the 265' of existing 10" diameter storm drain then install two new storm drain manholes and the 265' of existing 10" storm drain closer to the proposed project. All of this work will cost at least \$38,500.00. The request for relief from the street tree

requirement comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

In addition to the five concessions requested, a height increase of 33 feet or three stories is permitted for projects that are not imposed with “maximum controls on density.” In the Downtown Core Retail zoning district the maximum height is 35 feet. However, in accordance with NMC §19.12.040 Table 2-8 “a height bonus may be granted to allow a height of 45 feet with Design Review approval in accordance with 19.20.070.” AB 2011 permits that a design review can occur as long as the review is focused on objective design standards [§65912.114(e)]. The 45 foot height bonus is an objective standard. Therefore, a height of 78 feet is permitted. Per the cover sheet of the plan set, the height of the building is 78’ from grade to the top of the stair overrun.

Granting the requested concessions allows us to develop the project at the allowed 209 units pursuant to SDBL. AMG and CalHDF reserve the right to revise or request additional concessions and waivers should they be needed during the entitlement phase of the project. If you have questions, please contact me at [alocke@amgland.com](mailto:alocke@amgland.com) or (818) 600-2518.

Sincerely,



Amanda Locke  
AMG & Associates, LLC



Dylan Casey  
California Housing Defense Fund

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



November 17, 2021

Jennifer Carman  
City of Morgan Hill  
Development Services Director  
17575 Peak Avenue  
Morgan Hill, CA 95037

Dear Jennifer Carman:

**RE: Morgan Hill State Density Bonus Law – Letter of Technical Assistance**

The purpose of this letter is to provide technical assistance on the application of State Density Bonus Law (SDBL) (Gov. Code, § 65915.) The California Department of Housing and Community Development (HCD) has reviewed and responded to the questions contained in your letter dated August 31, 2021. Prior to receiving your letter, HCD received a request for technical assistance from AMG & Associates, LLC (AMG) on August 20, 2021, which posed very similar questions. This letter is intended to answer questions and provide clarifications applicable to both letters.

**Project Description**

HCD understands that AMG proposes to develop 200 units of deed-restricted affordable housing on two parcels located at 17910 and 17920 Monterey Street in Morgan Hill. The approximately 1.7-acre site, consisting of two parcels, currently contains an auto repair shop. One hundred percent of the units of the development would be affordable. These would include 20 units for households earning up to 50 percent of the area median income (AMI), 140 units for households earning up to 80 percent of AMI, and 40 units for households earning up to 120 percent of AMI.

The project site has a general plan land-use designation of Mixed-Use Flex, allowing residential densities of 7-24 dwelling units per acre (du/ac). The site is zoned Mixed-Use Flex, which also allows residential densities from 7 du/ac through 24 du/ac. Since the project site is 1.7 acres with a maximum allowable residential density of 24 du/ac, the base density of the site is 41 units. Given that the proposed development would provide 200 units, which represents an approximately 500 percent density bonus, the development would only be possible if found eligible for the “unlimited” density bonus provided under Government Code section 65915, subdivision (f)(3)(D)(ii). Pursuant to this subdivision, no maximum controls on density may be imposed on a development for which one hundred percent of all units are for lower-income households (containing

up to 20 percent moderate-income units) and that is located within one-half mile of a major transit stop.

As described in the project description, 160 units (80 percent) would be for lower-income households and 40 units (20 percent) would be for moderate-income households. This would qualify the proposed development with respect to affordability. The main question then is whether the project is located within one-half mile of a major transit stop. (Gov. Code, § 65915, subs. (f)(3)(D)(ii), (o)(3); Pub. Resources Code, § 21155, subd. (b).) The City and applicant agree that the nearby Morgan Hill Caltrain station meets the definition of a major transit stop under this definition. The sole question presented here is whether the project site is within one-half mile of the Morgan Hill Caltrain station.

### **Interpretation of Subdivision (o)(2)**

Recently enacted changes to Government Code section 65915, subdivision (o)(2), explain that “Located within one-half mile of a major transit stop” means that “*any* point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of *any* point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.” (Emphasis added.)

Despite the definition contained in state law, it is apparent that approaches vary in the real-world application of these newly adopted measurements. Therefore, HCD offers the following technical assistance in the interpretation of the point of measurement on “any point on a proposed development” and “any point on the property upon which a major transit stop is located”.

**Liberal Interpretation.** Subdivision (r) of Government Code section 65915 requires that the SDBL be interpreted liberally in favor of producing the maximum number of total housing units. HCD remains mindful of this interpretive directive whenever offering technical assistance on the SDBL.

**Point of Measurement–Major Transit Stop.** HCD interprets “any point on the property upon which a major transit stop is located” to mean any point on the parcel(s) that make up the property upon which a major transit stop is located. HCD believes that the Legislature intended this broad definition when it chose the very general term “any point on the property”. Had the Legislature specifically intended the boarding platform itself to be the point of measurement, as is suggested by the City, it could have done so. Because land is most commonly understood in terms of parcels, parcels represent a familiar way to establish the boundaries of a “property”. Cities also typically perform

measurements from the edges of parcels in other situations (e.g., public hearing notice mailing radius).

While the edges of a boarding platform should not serve as a point of measurement for the purposes of establishing eligibility under the SDBL, the boarding platform (and by extension, the parcel upon which it sits) is certainly a “point on the property.” Therefore, and based on information provided by the applicant, HCD interprets that a straight-line measurement should be taken from the westernmost point on Parcel Number 726-13-050. This point is coincident with the eastern edge of the East Main Avenue right-of-way.

HCD recognizes that the shape of parcels containing boarding platforms associated with major transit stops are often irregularly shaped and inconsistent in size. Irregular parcel shapes, such as long/narrow railroad rights-of-way, can distort the true proximity of the project site to the major transit stop to a certain extent. For example, the Cottle Light Rail Station in San Jose is located on an I-shaped parcel that extends northward from the boarding platform almost 0.2 miles. Measurements taken from the edges of inconsistently sized and irregularly shape of parcels would, as a matter of chance, advantage certain potential development sites and disadvantage others. However, such variation does not provide adequate justification to allow a local agency to apply a stricter standard than is provided by the statute.

**Point of Measurement – Proposed Development.** HCD interprets that the point of measurement on the site of a proposed development should be any portion of the parcel(s) containing the structures, parking areas, landscaping, etc., that make up the development. Given the infill nature of the proposed development (and lacking a site plan for the proposed development), HCD anticipates that all or nearly all of the site will meet this requirement. Therefore, an appropriate point of measurement would likely be on or near the parcel edge nearest to the Morgan Hill Caltrain Station.

**Project Eligibility for Unlimited Density.** Applying the definitions and methodology described in this letter, it appears that the proposed development lies approximately 2,050 feet from the property on which a major transit stop is located. Therefore, the proposed project appears to be located within one-half mile (2,640 feet) of the major transit stop.

**Parking Exemption.** In subdivision (p) of Government Code section 65915, the SDBL provides for a variety of parking reductions and exemptions. Subparagraph (3) provides that a development that consists solely of housing affordable to lower-income families located within one-half mile of a major transit stop is exempt from local requirements to provide on-site parking. Per the project description, the proposed development contains 20 percent moderate-income units. Moderate-income units (i.e., serving households earning 80-120 percent of AMI) do not serve lower-income families. Therefore, the proposed development does not appear to meet the

requirements of subparagraph (3) in subdivision (p) and is not eligible for that specific parking exemption. As noted in the City's letter dated August 21, 2021, the City recognizes that other reduced parking standards under subdivision (p) may apply and that the applicant may request incentives, concessions, or waivers related to further parking reductions. The ability of an applicant to pursue reductions in off-street parking requirements is described in subdivision (p)(6) of Government Code section 65915.

### **Conclusion**

In conclusion, HCD interprets that the proposed development is located within one-half mile of a major transit stop and therefore qualifies for "unlimited" density under Government Code section 65915, subdivision (f)(3)(D)(ii). HCD interprets that the proposed development does not qualify for the parking exemption described in Government Code section 65915 subdivision (p)(3). HCD strongly supports the development of affordable housing in Morgan Hill generally and on this project site specifically. Morgan Hill has met its RHNA targets for all income levels except Very Low Income (VLI), where it has constructed only 29.3 percent (80 units) of its target of 273 units. The construction of additional VLI units should therefore be a top priority. HCD believes that the residents of the proposed development would benefit greatly from the walkable proximity to a Caltrain station and the other amenities of downtown Morgan Hill.

If you have questions or need additional information, please contact Brian Heaton at [Brian.Heaton@hcd.ca.gov](mailto:Brian.Heaton@hcd.ca.gov).

Sincerely,



Shannan West  
Housing Accountability Unit Chief

SUBJECT TO THE ATTACHED COUNTER OFFER "SELLER" 02/23/20



CALIFORNIA ASSOCIATION OF REALTORS®

VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (C.A.R. Form VLPA, Revised 4/10)

Date January 23, 2020

- 1. OFFER: A. THIS IS AN OFFER FROM AMG & Associates, LLC and/or assignee ("Buyer"). B. THE REAL PROPERTY TO BE ACQUIRED is described as 1316 - 1324 Grant Avenue situated in Novato, County of Marin, California, ("Property"). C. THE PURCHASE PRICE offered is Three Million Eight Hundred Thousand (Dollars \$ 3,800,000). D. CLOSE OF ESCROW shall occur on (date) (or 180 Days After Acceptance).

- 2. AGENCY: A. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction: Listing Agent (Print Firm Name) is the agent of (check one): [ ] the Seller exclusively; or [X] both the Buyer and Seller. Selling Agent (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): [ ] the Buyer exclusively; or [ ] the Seller exclusively; or [ ] both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

- 3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder. A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 75,000 (1) Buyer shall deliver deposit directly to Escrow Holder by personal check, [X] electronic funds transfer, [ ] Other within 3 business days after acceptance (or [X] Other within 5 business days); OR (2) (if checked) [ ] Buyer has given the deposit by personal check (or [ ] to the agent submitting the offer (or to [ ]), made payable to [ ]. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder (or [ ] into Broker's trust account) within 3 business days after Acceptance (or [ ] Other).

- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance, or [ ]

- C. LOAN(S) (1) FIRST LOAN in the amount of \$ This loan will be conventional financing or, if checked, [ ] FHA, [ ] VA, [ ] Seller (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form PAA), [ ] Other. This loan shall be at a fixed rate not to exceed % or, [ ] an adjustable rate loan with initial rate not to exceed % of the loan amount. (2) [ ] SECOND LOAN in the amount of \$ This loan will be conventional financing or, if checked, [ ] Seller (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form PAA), [ ] Other. This loan shall be at a fixed rate not to exceed % or, [ ] an adjustable rate loan with initial rate not to exceed % of the loan amount. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- D. ADDITIONAL FINANCING TERMS: Within sixty-five (65) days after the Acceptance, Buyer shall instruct Escrow to release Initial Deposit.

Said amounts shall be non-refundable to Buyer and apply to the Purchase Price at the Close of Escrow.

- E. BALANCE OF PURCHASE PRICE OR DOWN PAYMENT In the amount of \$ 3,725,000 to be deposited with Escrow Holder within sufficient time to close escrow.

- F. PURCHASE PRICE (TOTAL): \$ 3,800,000

Buyer's Initials (M) (M)

Seller's Initials (M/E) (M/S)

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Reviewed by Date



Agent: Phone: Fax: Prepared using zlpForm® software Broker: