

ORDINANCE NO. 2526
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPROVING A DEVELOPMENT AGREEMENT WITH HIGHBRIDGE
PROPERTIES RELATING TO THE LINCOLN40 PROJECT

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Davis (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, on March 13, 2018, the City certified the Final Environmental Impact Report (SCH 2016082073), for the Lincoln40 Project finding mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts to a level of insignificance and adopted a separate finding that the Lincoln40 Project qualifies as a sustainable communities project pursuant to Section 21155.1 of the Public Resources Code; and

WHEREAS, the City Council of Davis adopted Resolution No. 18-042, which is an intent to approve a general plan amendment for the Project; and

WHEREAS, the City Council of Davis adopted project entitlements for the Lincoln40 Project, including the Gateway /Olive Drive Specific Plan (consisting of General Plan, Specific Plan, Zoning Ordinance, and Design Guidelines for the subject site subarea), and other entitlement applications of Affordable Housing Plan, Lots Merger, Design Review and a subject Vacation of Right-of-Way, vested within the Development Agreement; and

WHEREAS, Developer desires to carry out the development of the Property consistent with the General Plan, as amended, and the Development Agreement and the vested entitlements referenced therein; and

WHEREAS, the Development Agreement will assure both the City and the Developer that the Development will proceed as proposed and that the public improvements and other amenities and funding obligations, will be accomplished as proposed; and that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 10, 2018, on the Final EIR, and Lincoln40 project entitlements, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public and made a recommendation to the City Council on the Final EIR and Lincoln40 project entitlements; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council held a duly noticed public hearing on March 13, 2018, on the Final EIR and Lincoln40 project entitlements, including the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations”.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, in that it establishes certain development rights, obligations and conditions for the implementation of the Lincoln40 Project;
- (b) The Development Agreement is compatible with the uses authorized therein, and the regulations prescribed for, the general plan designations which will apply to the Property;
- (c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Development Agreement will not adversely affect the orderly development of the Property or the preservation of property values;

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;

- (b) The City's General Plan, as amended;
- (c) Resolution No. 18-040, adopted by the City Council on March 13, 2018, making findings as to the Final EIR for the Project, including the Statement of Findings and the Mitigation Monitoring and Reporting Program approved by and incorporated in said Resolution and (2) the Project's qualification as a sustainable communities project pursuant to Section 21155.1 of the Public Resources Code, which Resolution and exhibits are incorporated herein by reference as if set forth in full;
- (d) The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 18-042, prior to adoption of this Ordinance;
- (e) All City staff reports (and all other public reports and documents) prepared for the Planning Commission and City Council, relating to the Amendment to the Development Agreement and other actions relating to the Property;
- (f) All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Amendment to the Development Agreement, and other actions relating to the Property; and
- (f) All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan, as amended, as approved by the City Council.

SECTION 6. The approval contained in Section 5 hereof is subject to and conditioned upon Resolution No. 18-042, adopted by the City Council with intent to approve the General Plan amendment, becoming effective.

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This ordinance shall become effective on and after the thirtieth (30th) day following its adoption; provided, however, that if the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

INTRODUCED on the 13th day of March, 2018 and PASSED on the 3rd day of April, 2018 by the following vote:

AYES:
NOES:
ABSENT:

Robb Davis, Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

ATTACHMENTS

A. Development Agreement

EXHIBIT A (Lincoln40 Development Agreement)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Davis,
Community Development and
Sustainability Department
23 Russell Boulevard, Suite 2
Davis, California 95616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT

BY AND BETWEEN

THE CITY OF DAVIS AND OLIVE DRIVE EAST, LLC

Relating to the Development

of the Property Commonly Known as Lincoln40

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of ____, 2018, by and between the CITY OF DAVIS, a municipal corporation (herein the “City”) and OLIVE DRIVE EAST, LLC, a California limited liability company (herein the “Developer”). This Agreement is made pursuant to the authority of Section 65864 *et seq.* of the *Government Code* of the State of California. This agreement refers to the City and the Developer collectively as the “Parties” and singularly as the “Party.”

Recitals

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et seq.* of the *Government Code* which authorizes any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

B. The Developer owns in fee certain real property(ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in the

incorporated area the City of Davis (herein the "Property") which the Developer seeks to develop as the Lincoln40 Apartments project (the "Project"). The Project would develop approximately 5.92 acres of the project site with a 3, 4 and 5-story student oriented building that will contain approximately 708 beds.

C. This Agreement is voluntarily entered into by Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

D. City has granted the Developer the following land use entitlement approvals for the Project (hereinafter "Project Approvals") which are incorporated and made a part of this Agreement:

- (1) Gateway/Olive Drive Specific Plan Amendment #3-16
- (2) General Plan Amendment #3-16
- (3) Zoning Amendment #2-16
- (4) Affordable Housing Plan #3-16
- (5) Lot Merger #1-16
- (6) Vacation of Right of Way #3-16
- (7) Design Review #10-16
- (8) Demolition #4-16
- (9) Environmental Impact Report #3-16

E. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements and public services,

establish the orderly and measured build-out of the Project consistent with the desires of the City to maintain the City's small city atmosphere and to have development occur at a pace that will assure integration of the new development into the existing community, and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

F. In exchange for the benefits to the City, the Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by *Government Code* §65864.

AGREEMENT

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

ARTICLE 1 General Provisions.

A. [Sec. 100] Property Description and Binding Covenants. The Property is that property described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. Developer represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

B. [Sec. 101] Effective Date and Term. The effective date of this Agreement shall be the date the Ordinance adopting this Agreement is effective. The term of this Agreement (the "Term") shall commence upon the effective date and shall extend for a period of fifteen (15) years thereafter, unless said Term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties, subject to the provisions of Sections 105 through 107 hereof. Following the

expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 407 hereof.

If this Agreement is terminated by the City Council pursuant to Section 400(A) prior to the end of the Term, the City shall cause a written notice of termination to be recorded with the County Recorder within ten (10) days of final action by the City Council.

This Agreement shall be deemed terminated and of no further effect upon entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the City Council's approval of this Agreement or any material part of the Project Approvals;

C. [Sec. 102] Equitable Servitudes and Covenants Running With the Land.
Any successors in interest to the City and the Developer shall be subject to the provisions set forth in *Government Code* §§ 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 103, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 103. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.

D. [Sec. 103] Right to Assign; Non-Severable Obligations.

1 The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

2. No assignment shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

(a) The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

(b) The proposed assignee has adequate experience with residential developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identify, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If City receives a public records request for any information designated a "trade secret" City shall notify the assignee of such request prior to releasing the material in question to the requesting party. If the assignee directs the City not to release the material in question, the assignee shall indemnify the City for any costs incurred by City, including but not limited to staff time and attorney's fees, as a result of any action brought by the requesting party to obtain release of the information and/or to defend any lawsuit brought to obtain such information. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) calendar days after receipt of written request for such approval, such assignment shall be deemed to be approved.

3. The Specific Development Obligations set forth in Section 201, are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and, subject to the procedure set forth in Section 400(A), shall entitle the City to terminate this Agreement in its entirety.

4. Notwithstanding subsection 2 of this Section, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing or refinancing the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

5. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, the Project Approvals and this Agreement. Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer's business structure, such as (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within

thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

E. [Sec. 104] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 8 hereof. Alternatively, formal written notices, demands, correspondence and communications between the City and the Developer may be sent by electronic mail (e-mail) and shall be deemed sufficient upon confirmation of receipt of the e-mail by recipient Party. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. The Developer shall give written notice to the City, at least thirty (30) days prior to the close of escrow, of any sale or transfer of any portion of the Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the acreage and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given, and any other information reasonably necessary for the City to consider approval of an assignment pursuant to Section 103 or any other action City is required to take under this Agreement.

F. [Sec. 105] Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the Parties, in accordance with the provisions of Government Code Sections 65867 and 65868.

G. [Sec. 106] [Intentionally Reserved]

H. [Sec. 107] Major Amendments and Minor Amendments.

1. Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) changes to conditions, terms, restrictions or requirements applicable to subsequent discretionary

actions; (e) an increase in the density or intensity of use of the Property or the maximum height or maximum gross square footage; or (f) monetary contributions by Developer, shall be deemed a “Major Amendment” and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Amendment subject to Section 107(2) below. The City Manager or his or her delagee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 107(1) or a Minor Amendment subject to Section 107(2) below. The City Manager’s determination may be appealed to the City Council.

2. Minor Amendments. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 107(1), they shall effectuate such clarifications, minor changes or minor adjustments through a written Minor Amendment approved in writing by the Developer and City Manager. The parties agree that minor amendments authorized by this subsection do not constitute an “amendment” for the purposes of Government Code sections 65867, 65867.5, and 65868. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

ARTICLE 2. Development of the Property.

A. [Sec. 200] Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer shall have a vested right to develop the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement and the Project Approvals attached hereto as Exhibit B and incorporated herein by reference, and any amendments to the Project

Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

The Developer hereby agrees that development of the Project shall be in accordance with the Project Approvals, including the conditions of approval and the mitigation measures for the Project as adopted by the City, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Nothing in this Section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 107, *supra*. Nothing in this Agreement shall require Developer or Landowner to construct the Project or to pay fees for any portion of the Project that Developer or Landowner does not construct.

B. [Sec. 201] Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals, the Developer and the City have agreed that the development of the Property by the Developer is subject to certain specific development obligations, described herein and also described and attached hereto as Exhibits C through H and incorporated herein by reference. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement.

1. Impact Fees and Community Enhancement Funds. The Developer shall comply with the terms and conditions of Exhibit C.
2. Bike/Ped Overcrossing Commitments. The Developer shall comply with the terms and conditions identified in Exhibit D.
3. Water and Energy Conservation Information and Incentive Plan. The Developer shall comply with and implement the measures identified in Exhibit E to provide information and incentives to residents on their water and energy use to encourage conservation.
4. Affordable Housing. The Developer shall comply with the affordable housing requirements as set forth in Exhibit F.

5. Local Hiring Program. The Developer shall implement a Local Hiring Program as set forth in Exhibit G.
6. Environmental Sustainability. The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. Developer shall comply with the Implementation Plan set forth in Exhibit H.
7. Reimbursement for Property Taxes. Prior to issuance of building permit, Developer shall record a covenant on the title to the Project Site regarding property tax payments. The covenant shall include a permanent obligation for the property owner to make payments to the City in lieu of the City's share of otherwise-required property taxes in the event that the Property is acquired or master leased by an entity exempt from payment of property taxes. Wording of the covenant is subject to review and approval of the City Attorney.

B. [Sec. 202] [Intentionally Reserved]

C. [Sec. 203] Development Timing. The Developer shall be obligated to comply with the terms and conditions of the Project Approvals and this Development Agreement at those times specified in either the Project Approvals or this Development Agreement. The parties acknowledge that the Developer cannot at this time predict with certainty when or the rate at which the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and the Developer to hereby acknowledge and provide for the right of the Developer to develop the Project in such order and at such rate and times as the Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. City

acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, the Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, (*California Government Code § 65864 et seq.*), City Council Resolution 1986-77 and this Development Agreement. The Developer will use its best efforts, in accordance with their business judgment and taking into consideration market conditions and other economic factors influencing the Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Project Approvals.

Subject to applicable law relating to the vesting provisions of development agreements, Developer and City intend that except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances, growth control measures and initiatives or referenda (other than a referendum that specifically overturns City's approval of the Project Approvals), that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative or referendum shall not apply to the Project Approvals and the Project. Notwithstanding any other provision of this Agreement, Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby.

D. [Sec. 204] [Intentionally Reserved]

E. [Sec. 205]. [Intentionally Reserved]

F. [Sec. 206] Rules, Regulations and Official Policies.

1. For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of the ordinance enacted by the City Council approving this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement pursuant to Sections 105 through 107 hereof. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Article 2, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property.

(a) This Section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any

manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies).

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

2. All project construction, improvement plans and final maps for the Project shall comply with the rules, regulations and design guidelines in effect at the time the construction, improvements plan or final map is approved. Unless otherwise expressly provided in this Agreement, all city ordinances, resolutions, rules regulations and official policies governing the design and improvement and all construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit is granted. Ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time the applicable permit approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City or the date construction for the public improvements is commenced, whichever occurs first.

3. Uniform Codes Applicable. This Project shall be constructed in accordance with the prohibitions of the Uniform Building, Mechanical, Plumbing, Electrical, and Fire Codes, city standard construction specifications and details and Title 24 of the California *Code of Regulations*, relating to Building Standards, in effect at the time of submittal of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure

improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

4. The Parties intend that the provisions of this Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1 *et seq.* of the *Government Code* or any other state law now or hereafter enacted purporting to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Agreement, the Developer agrees that:

(a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use entitlements for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

(b) The Developer waives, for itself and its successors and assigns, the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Agreement and land use entitlements for the Property obtained while this Agreement is in effect; and

(c) The Developer will not make application for a land use entitlement under any Other Vesting Statute insofar as said application or the granting of the land use entitlement pursuant to said application would be inconsistent or in conflict with the terms and conditions of this Agreement and prior land use entitlements obtained while this Agreement is in effect.

5. This Section shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with the terms and conditions of this Agreement.

G. [Sec. 207]. Fees, Exactions, Conditions and Dedications.

1. Except as provided herein, the Developer shall be obligated to pay only those fees, in the amounts and/or with increases as set forth below, and make those dedications and improvements prescribed in the Project Approvals and this Agreement and any Subsequent Approvals. Unless otherwise specified herein, City-imposed development impact fees and sewer and water connection fees shall be due and payable by the Developer prior to the earlier of the issuance a final Certificate of Occupancy or a temporary Certificate of Occupancy that allows for residential occupancy for the building in question. As set forth expressly in this Agreement , Developer shall be entitled to a credit for certain impact fees previously paid with respect to the Property.

2. Except as otherwise provided by this Agreement, the Developer shall pay the amount in effect at the time the payment is made. The City retains discretion to revise such fees as the City deems appropriate, in accordance with applicable law. If the City revises such fees on a city-wide basis (as opposed to revising such fees on an *ad hoc* basis that applies solely to the Project) prior to the earlier of the issuance a final Certificate of Occupancy or a temporary Certificate of Occupancy that allows for residential occupancy , then the Developer shall thereafter pay the revised fee. The Developer may, at its sole discretion, participate in any hearings or proceedings regarding the adjustment of such fees. Nothing in this Agreement shall constitute a waiver by the Developer of its right to challenge such changes in fees in accordance with applicable law provided that the Developer hereby waives its right to challenge the increased fees solely on the basis of any vested rights that are granted under this Agreement.

3. The City may charge and the Developer shall pay processing fees for land use approvals, building permits, and other similar permits and entitlements which are in force and effect on a citywide basis at the time the application is submitted for those permits, as permitted pursuant to California *Government Code* sec. 66000 et seq.

4. Except as specifically permitted by this Agreement or mandated by state or federal law, the City shall not impose any additional capital facilities or development

impact fees or charges or require any additional dedications or improvements through the exercise of the police power, with the following exception:

(a) The City may impose reasonable additional fees, charges, dedication requirements or improvement requirements as conditions of the City's approval of a major amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and

(b) The City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the subsequently adopted development exaction does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

5. Compliance with Government Code § 66006. As required by *Government Code* § 65865(e) for development agreements adopted after January 1, 2004, the City shall comply with the requirements of *Government Code* § 66006 pertaining to the payment of fees for the development of the Property.

6. Wastewater Treatment Capacity. The City and the Developer agree that there is capacity in the wastewater treatment facility to serve (1) existing residents and businesses that are already hooked up to the facility, (2) anticipated residents and businesses through build-out of the City's existing General Plan, and (3) the Project. The City and the Developer acknowledge and agree that reserving this capacity for the Project, such that sewer hookups shall be available at such time as they are needed as the Project builds out, is a material element of the consideration provided by the City to the Developer in exchange for the benefits provided to the City under this Agreement. The Parties recognize the availability of sufficient sewer capacity may be affected by regulatory or operational constraints that are not within the City's discretion. To the

extent the availability of sewer capacity is within the City's discretion (e.g., whether to extend sewer service to areas *not* currently within the City's service area), the City shall not approve providing such capacity to areas currently outside the City's service area if this approval would prevent or delay the ability of the City to provide sewer hookups to the Project as the Project requires hook-ups or connections. This provision shall not affect the City's ability to provide sewer service within its service boundaries or within the existing City boundaries as they exist on the effective date of this Agreement, and as to such connections, the Parties requesting sewer service shall be connected on a first come first served basis. The Developer shall pay the applicable connection charge in effect pursuant to City-wide ordinance at the time of building permit issuance. The Developer acknowledges that connection charge may increase substantially over time and that the cost to comply with the City's new NPDES permit, as they may be approved from time to time during the term of this Agreement, may be substantial.

I. [Sec. 208] Completion of Improvements. City generally requires that all improvements necessary to service new development be completed prior to issuance of building permits (except model home permits as may be provided by the Municipal Code). However, the parties hereto acknowledge that some of the backbone or in-tract improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all backbone or in-tract infrastructure improvements required to service such portion of the Property in accordance with the Project Approvals (e.g., pursuant to specific tentative map conditions or other land use approvals) shall be completed prior to issuance of any building permits within such portion of the Property. Provided, however, the Public Works Director may approve the issuance of building permits prior to completion of all such backbone or in-tract improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the Public Works Director, or in certain cases at the discretion of the City, adequate security has been provided to assure the completion of the improvements in question.

ARTICLE 2. Obligations of the Developer.

A. [Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement, the Project Approvals and the subsequent discretionary approvals , if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Article 4 hereof.

B. [Sec. 301] Developer's Obligations. Except as otherwise provided herein, the Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement and the Project Approvals.

C. [Sec. 302] City's Good Faith in Processing. Subject to the reserved discretionary approvals set forth in Section 200 and the provisions of Section 207(H)(3) hereof, the City agrees that it will accept, in good faith, for processing, review and action, all complete applications for zoning, special permits, development permits, tentative maps, subdivision maps or other entitlements for use of the Property in accordance with the General Plan and this Agreement.

The City shall inform the Developer, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall review said application and schedule the application for review by the appropriate authority.

ARTICLE 3. Default, Remedies, Termination.

A. [Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or

provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may at its option:

1. Terminate this Agreement, in which event neither Party shall have any further rights against or liability to the other with respect to this Agreement or the Property; or
2. Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

In no event shall either Party be liable to the other for money damages for any default or breach of this Agreement.

B. [Sec. 401] Developer's Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated.

C. [Sec. 402] Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms

and conditions of this Agreement pursuant to California Government Code Section 65865.1.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him or her to be required in order to ascertain compliance with this Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement pursuant to the procedures set forth in Sections 105 through 107, and 400. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by the Developer.

If, following such review, the City Manager is not satisfied that the Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council.

Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall the Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

D. [Sec. 403] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, moratoria or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

In the event litigation is initiated by any party other than Developer that challenges any of the approvals for the Project or the environmental document for those approvals and an injunction or temporary restraining order is not issued, Developer may elect to have the term of this Agreement tolled, i.e., suspended, during the pendency of said litigation, upon written notice to City from Developer. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate upon the earliest date on which either a final order is issued upholding the challenged approvals or said litigation is dismissed with prejudice by all plaintiffs. In the event a court enjoins either the City or the Developer from taking actions with regard to the Project as a result of such litigation that would preclude any of them from enjoying the benefits bestowed by this Agreement, then the term of this Agreement shall be automatically tolled during the period of time such injunction or restraining order is in effect.

E. [Sec. 404] Limitation of Legal Actions. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

F. [Sec. 405] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

G. [Sec. 406] Invalidity of Agreement.

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

2. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either Party in good faith determines that such provision is material to its entering into this Agreement, either Party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 400, subject, however, to the provisions of Section 407 hereof.

H. [Sec. 407] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect the Developer's obligations to comply with the General Plan and the terms and conditions of any and all Project Approvals and land use entitlements approved with respect to the Property, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

ARTICLE 4. Hold Harmless Agreement.

A. [Sec. 500] Hold Harmless Agreement. The Developer hereby agrees to and shall hold Landowner and the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from the Developer's or the Developer's contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by the Developer, or by any of the Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's contractors or subcontractors.

In the event any claim, action, or proceeding is instituted against the City, and/or its officers, agents and employees, by any third party on account of the processing, approval, or implementation of the Project Approvals and/or this Agreement, Developer shall defend, indemnify and hold harmless the City, and/or its officers, agents and employees. This obligation includes, but is not limited to, the payment of all costs of defense, any amounts awarded by the Court by way of damages or otherwise, including any attorney fees and court costs. City may elect to participate in such litigation at its sole discretion and at its sole expense. As an alternative to defending any such action, Developer may request that the City rescind any approved land use entitlement. The City will promptly notify Developer of any claim, action, or proceeding, and will cooperate fully in the defense thereof.

B. [Sec. 501] Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California *Labor Code* §1720, *et seq.*, and 1770 *et seq.*, as well as California *Code of Regulations*, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects, as defined. If work on off-site improvements pursuant to this Agreement is being performed by Developer as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in

question is \$1,000 or more, Developer agrees to fully comply with such Prevailing Wage Laws. Developer understands and agrees that it is Developer's obligation to determine if Prevailing Wages apply to work done on the Project or any portion of the Project. Upon Developer's request, the City shall provide a copy of the then current prevailing rates of per diem wages. Developer shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work subject to Prevailing Wage Laws, and shall post copies at the Developer's principal place of business and at the Project site. Developer shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Developer to comply with the Prevailing Wage Laws associated with any "public works" or "maintenance" projects associated with Project development.

ARTICLE 5. Project as a Private Undertaking.

A. [Sec. 600] Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between the Developer and the City is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 6. Consistency With General Plan.

A. [Sec. 700] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan, as amended by the General Plan Amendment approved as part of the Project Approvals.

ARTICLE 7. Notices.

A. [Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the Parties as set forth below, or alternatively via e-mail as set forth in Section 104.

Notice required to be given to the City shall be addressed as follows:

City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616
E-mail: mwebb@cityofdavis.org

Notice required to be given to the Developer shall be addressed as follows:

Olive Drive East, LLC
10069 West River Street
Truckee, CA 96161
Attn: Paul Gradeff
E-mail: pgradeff@highbridgeproperties.net

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address.

ARTICLE 8. Recordation.

A. [Sec. 900] When fully executed, this Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

ARTICLE 9. Estoppel Certificates.

A. [Sec. 1000] Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the certifying Party, (a) this Development Agreement is in full force and effect and a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its

obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting Party may designate a reasonable form of certificate (including a lender's form) and the Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and other mortgages. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of either party to execute an estoppel certificate shall not be deemed a default.

B. ARTICLE 11. Provisions Relating to Lenders

A. [Sec. 1101] Lender Rights and Obligations.

1. Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement prior to the time the Lender obtains possession of all or any portion of the Property to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors-in-interest, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which Lender holds an interest. Nothing in this Section shall be construed to grant to a Lender rights beyond those of the Developer hereunder or to limit any remedy City has hereunder in the event of a breach by Developer, including termination or refusal to grant subsequent additional land use Approvals with respect to the Property.

2. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are

obligations of Developer and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive Approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the Developer hereunder or entitled to enforce the provisions of this Agreement against City unless and until such Lender or successor in interest qualifies as a recognized assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

3. Notice of Developer's Breach Hereunder. If City receives notice from a Lender requesting a copy of any notice of breach given to Developer hereunder and specifying the address for notice thereof, then City shall deliver to such Lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer have committed a breach, and if City makes a determination of non-compliance, City shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on Developer.

4. Lender's Right to Cure. Each Lender shall have the right, but not the obligation, for the same period of time given to Developer to cure or remedy, on behalf of Developer, the breach claimed or the areas of non-compliance set forth in City's notice. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of Developer hereunder.

5. Other Notices by City. A copy of all other notices given by City to Developer pursuant to the terms of this Agreement shall also be sent to any Lender who

has requested such notices at the address provided to City pursuant to Section 1201(A)(4) above.

B. [Sec. 1102] Right to Encumber. City agrees and acknowledges that this Agreement shall not prevent or limit the owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device. City acknowledges that any Lender may require certain interpretations of the agreement and City agrees, upon request, to meet with the owner(s) of the property and representatives of any Lender to negotiate in good faith any such request for interpretation. City further agrees that it shall not unreasonably withhold its consent to any interpretation to the extent such interpretation is consistent with the intent and purpose of this Agreement.

ARTICLE 12. Entire Agreement.

A. [Sec. 1200] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of 34 pages and 8 Exhibits which constitute the entire understanding and agreement of the Parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

- Exhibit A: Description of the Property
- Exhibit B: Project Approvals
- Exhibit C: Impact Fees and Community Enhancement Funds
- Exhibit D: Bike/Ped Overcrossing Commitments
- Exhibit E: Water and Energy Conservation Information and Incentive Plan
- Exhibit F: Affordable Housing Plan
- Exhibit G: Local Hiring Program
- Exhibit H: Environmental Sustainability Implementation Plan

IN WITNESS WHEREOF, the City and Developer and Landowner have executed this Agreement as of the date set forth above.

“CITY”

CITY OF DAVIS

By: _____

Robb Davis

Mayor

Attest: _____

Zoe Mirabile

City Clerk

[Signatures continued on following page]

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

“DEVELOPER”

OLIVE DRIVE EAST, LLC, a California
limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

Description of Property

PROPERTIES ADDRESSES ARE:

1. 1111 Olive Drive (APN: 070 280 010),
2. 115 Hickory Lane (APN: 070 280 014),
3. 113 Hickory Lane (APN: 070 280 013),
4. 111 Hickory Lane (APN: 070 280 012),
5. 118 Hickory Lane (APN: 070 280 017),
6. 120 Hickory Lane (APN: 070 280 016),
7. 1165 Olive Drive (APN: 070 280 015),
8. 1185 Olive Drive (APN: 070 290 002),
9. 1229 Olive Drive (APN: 070 290 004)
10. 1223 Olive Drive (APN: 070 290 001), and
11. 1225 Olive Drive (APN: 070 290 003).

PROPERTIES DESCRIPTIONS ARE:

LEGAL DESCRIPTION

Real property in the City of Davis, County of Yolo, State of California, described as follows:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, ROUTE 6, SECTION "A," IN THE CITY OF DAVIS, YOLO COUNTY, CALIFORNIA, THAT IS SITUATE NORTH 48° 09' EAST 452.98 FEET FROM A 3/4" INCH IRON PIPE MARKING THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SAID OLD STATE HIGHWAY RIGHT OF WAY WITH THE WESTERLY LINE OF "I" STREET AS SAME APPEARS OF RECORD IN MAPS AND SURVEYS BOOK 6, AT PAGE 36, IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY; THENCE, FROM SAID POINT OF BEGINNING, NORTH 13° 15' WEST 251 .44 FEET; THENCE NORTH 71° 49' EAST 100.38 FEET; THENCE SOUTH 13° 15' EAST 205.56 FEET TO THE POINT OF INTERSECTION WITH THE NORTHERLY LINE OF SAID OLD STATE HIGHWAY RIGHT OF WAY; THENCE SOUTH 48° 09' WEST 113.90 FEET TO THE POINT OF BEGINNING.

APN: 070-290-003

LEGAL DESCRIPTION

Real property in the City of Davis, County of Yolo, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT IN THE WESTERLY LINE OF "I" STREET IN THE CITY OF DAVIS, CALIFORNIA THAT IS SITUATE NORTH 13° 15' WEST 92.03 FEET FROM A ¾ INCH IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, PRESENTLY KNOWN AS OLIVE DRIVE, AS SAME APPEARS OF RECORD ON THAT RECORD OF SURVEY MAP FOR JOE CALLORI WHICH IS FILED IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY IN MAPS AND SURVEYS BOOK 6 AT PAGE 36, AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG SAID WESTERLY LINE OF "I" STREET NORTH 13° 15' WEST 45.00 FEET; THENCE AT RIGHT ANGLES TO "I" STREET SOUTH 76° 45' WEST 116.59 FEET; THENCE ALONG A LINE PARALLEL WITH THE LINE COMMON TO JOE CALLORI AND JOSEPH H. SLATTER SOUTH 0° 04' EAST 46.22 FEET; THENCE NORTH 76° 45' EAST 127.14 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE OCCUPIED PROPERTY LINE COMMON TO JOSEPH H. SLATTER AND JOE CALLORI, THAT IS SITUATE NORTH 0° 04' WEST, ALONG SAID PROPERTY LINE, 76.76 FEET FROM THE NORTHERLY LINE OF FIRST STREET AS SAID PROPERTY LINE AND STREET APPEAR OF RECORD ON THE MAP OF FIRST STREET-SLATTER AVE.-I STREET AND I STREET EXTENSION IN THE CITY OF DAVIS, CALIFORNIA, AND FILED IN BOOK 5 OF MAPS AND SURVEYS, AT PAGE 74, OF YOLO COUNTY RECORDS, AND EXTENDING THENCE FROM SAID POINT OF BEGINNING NORTH 0° 04' WEST, ALONG THE AFORESAID OCCUPIED PROPERTY LINE, 203.82 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD CO., THENCE NORTH 57° 23' EAST; ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 31.01 FEET; THENCE SOUTH 11° 37' EAST 208.83 FEET; THENCE SOUTH 76° 45' WEST, 69.78 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

BEGINNING AT A POINT ON THE WESTERLY LINE OF "I" STREET IN THE CITY OF DAVIS, CALIFORNIA, THAT IS SITUATED NORTH 13° 15' WEST 72.03 FEET FROM A ¾ INCH IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, PRESENTLY KNOWN AS OLIVE DRIVE, AS SAME APPEARS OF RECORD ON THE RECORD OF SURVEY MAP FOR JOE CALLORI WHICH IS ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY IN MAPS AND SURVEYS BOOK 6 AT PAGE 36, AND EXTENDING THENCE FROM SAID POINT OF BEGINNING AT RIGHT ANGLES TO SAID "I" STREET SOUTH 76° 45' WEST 152.37 FEET TO THE PROPERTY LINE COMMON TO JOE CALLORI AND JOSEPH H. SLATTER; THENCE ALONG SAID PROPERTY LINE NORTH 0° 04' WEST 107.57 FEET TO A ¾ INCH IRON PIPE MARKING THE SOUTHWEST CORNER OF THE EARL JORDAN PROPERTY; THENCE NORTH 76° 45' EAST, ALONG THE SOUTH LINE OF SAID JORDAN PROPERTY, 20.54 FEET; THENCE ALONG A LINE PARALLEL WITH THE PROPERTY LINE COMMON TO JOE CALLORI AND JOSEPH H. SLATTER, SOUTH 0° 04' EAST 87.03 FEET; THENCE NORTH 76° 45' EAST, ALONG A LINE PARALLEL WITH THE FIRST COURSE OF THIS DESCRIPTION AND 20.00 FEET DISTANT THEREFROM MEASURED AT RIGHT ANGLES THERETO, A DISTANCE OF 127.14 FEET TO THE WESTERLY LINE OF "I" STREET; THENCE ALONG SAID WESTERLY LINE OF "I" STREET, SOUTH 13° 15' EAST, A DISTANCE OF

20.00 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

BEGINNING AT A POINT IN THE WESTERLY LINE OF "I" STREET IN THE CITY OF DAVIS, CALIFORNIA, THAT IS SITUATE NORTH 13° 15' WEST 137.03 FEET FROM 3/4 INCH IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, PRESENTLY KNOWN AS OLIVE-DRIVE, AS SAME APPEARS OF RECORD ON THE RECORD OF SURVEYS MAP FOR JOE CALLORI WHICH IS FILED IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY, IN MAPS AND SURVEYS BOOK 6, PAGE 36, AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG SAID WESTERLY LINE OF "I" STREET, NORTH 13° 15' WEST, 45.00 FEET; THENCE RIGHT AT ANGLES TO "I" STREET, SOUTH 76° 45' WEST, 57.88; THENCE SOUTH 11° 37' EAST 5.26 FEET; THENCE SOUTH 76° 45' WEST 49.24 FEET; THENCE ALONG A LINE PARALLEL WITH THE LINE COMMON TO JOE CALLORI AND JOSEPH H. SLATTER, SOUTH 0° 04' EAST, 40.81 FEET; THENCE NORTH 76° 45' EAST 116.59 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

BEGINNING AT A POINT IN THE WESTERLY LINE OF "I" STREET IN THE CITY OF DAVIS, CALIFORNIA, THAT IS SITUATE NORTH 13° 15' WEST, 182.03 FEET FROM A 3/4" IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, PRESENTLY KNOWN AS OLIVE DRIVE, AS SAME APPEARS OF RECORD ON THAT RECORD OF SURVEY MAP OF JOE CALLORI WHICH IS FILED IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY, IN BOOK 6 OF MAPS AND SURVEYS, AT PAGE 36; AND EXTENDING THENCE FROM SAID POINT OF BEGINNING SOUTH 76° 45' WEST, 57.88 FEET; THENCE NORTH 11° 37' WEST 203.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD; THENCE NORTH 57° 23' EAST ALONG THE SOUTHERLY LINE OF SAID RAILROAD RIGHT OF WAY, 55.22 FEET TO THE WESTERLY LINE OF "I" STREET; THENCE SOUTH 13° 15' EAST, ALONG THE WESTERLY LINE OF "I" STREET, 222.06 FEET TO THE POINT OF BEGINNING.

PARCEL SIX:

A PORTION OF THAT CERTAIN PARCEL OF LAND LOCATED IN THE CITY OF DAVIS, YOLO COUNTY, LYING BETWEEN THE OLD STATE HIGHWAY, ROUTE 6, SECTION A, AND THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, EAST OF "I" STREET, AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF YOLO COUNTY IN MAPS & SURVEYS BOOK 7 AT PAGE 6, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS NORTH 48° 09' EAST 45.56 FEET AND NORTH 13° 15' WEST 127.38 FEET FROM A 3/4" IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH NORTHERLY LINE OF OLIVE DRIVE, FORMERLY THE OLD CALIFORNIA STATE HIGHWAY, ROUTE 6 SECTION "A" AS SHOWN ON SAID RECORD OF SURVEY. SAID POINT OF BEGINNING BEING SITUATE ON THE EASTERLY LINE OF SAID "I" STREET AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID "I" STREET NORTH 13° 15' WEST 63.74 FEET TO THE SOUTHWEST CORNER OF THE MARIA CALLORI PROPERTY, THENCE ALONG THE SOUTH LINE OF SAID MARIA CALLORI PROPERTY NORTH 76° 45' EAST 89.65 FEET, THENCE ALONG A LINE PARALLEL WITH THE EASTERLY LINE OF SAID "I" STREET SOUTH 13° 15' EAST 63.74 FEET THENCE SOUTH 76° 45' WEST 89.65 FEET TO THE POINT OF BEGINNING.

PARCEL SEVEN:

BEGINNING AT THE POINT OF INTERSECTION OF THE PROPERTY LINE COMMON TO JOE CALLORI AND JOSEPH H. SLATER WITH THE NORTHERLY LINE OF THE OLD CALIFORNIA STATE HIGHWAY, PRESENTLY KNOWN AS OLIVE DRIVE, AS SAME APPEARS OF RECORD ON THAT RECORD OF SURVEY MAP FOR JOE CALLORI WHICH IS FILED IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY IN MAPS AND SURVEYS BOOK 6 AT PAGE 36 AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHERLY LINE OF SAID OLIVE DRIVE NORTH 48° 09' EAST 73.76 FEET THENCE ALONG A LINE PARALLEL WITH SAID COMMON LINE TO JOE CALLORI AND JOSEPH H. SLATER AND 55.00 FEET EASTERLY THEREFROM MEASURED AT RIGHT ANGLES THERETO, NORTH 0° 04' WEST A DISTANCE OF 146.38 FEET; THENCE ALONG A LINE PARALLEL WITH THE SOUTHERLY LINE OF FIRST STREET AND 10.00 FEET NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, SOUTH 76° 45' WEST 56.49 FEET TO SAID COMMON LINE TO JOE CALLORI AND JOSEPH H. SLATER; THENCE ALONG SAID COMMON PROPERTY LINE, SOUTH 0° 04' EAST 182.65 FEET TO THE POINT OF BEGINNING.

PARCEL EIGHT:

A PORTION OF THAT CERTAIN PARCEL OF LAND LOCATED IN THE CITY OF DAVIS, YOLO COUNTY, AND THE SOUTHERN PACIFIC RIGHT OF WAY, EAST OF "I" STREET, AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF YOLO COUNTY IN MAPS & SURVEYS BOOK 7 AT PAGE 6, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID "I" STREET THAT IS DISTANT NORTH 13° 15' WEST 212.93 FEET AND NORTH 76° 45' EAST 40.00 FEET FROM AN IRON PIPE WHICH MARKS THE INTERSECTION OF SAID OLD STATE HIGHWAY WITH THE WESTERLY LINE OF "I" STREET; THENCE NORTH 76° 45' EAST 104.00 FEET; THENCE NORTH 13° 15' WEST PARALLEL WITH SAID WESTERLY LINE OF "I" STREET 60.00 FEET; THENCE SOUTH 76° 45' WEST 104.00 FEET TO SAID EASTERLY LINE OF "I" STREET 60.00 FEET TO THE POINT OF BEGINNING.

PARCEL NINE:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY WITH THE EASTERLY LINE OF "I" STREET IN SAID CITY OF DAVIS, AS THE SAME IS SHOWN BY RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF YOLO, STATE OF CALIFORNIA, IN BOOK 7 OF MAPS AND SURVEYS, AT PAGE 6, AND EXTENDING THENCE EASTERLY ALONG THE SAID SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, A DISTANCE OF 1080 FEET, MORE OR LESS, TO THE INTERSECTION OF SAID RAILROAD RIGHT OF WAY WITH THE NORTHERLY LINE OF OLIVE DRIVE, FORMERLY STATE HIGHWAY, ROUTE 6, SECTION A; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF SAID OLIVE DRIVE, A DISTANCE OF 1200 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE EASTERLY LINE OF SAID "I" STREET; THENCE NORTHERLY, ALONG SAID STREET LINE, A DISTANCE OF 400 FEET, TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED IN THE FOLLOWING DEEDS:

A. DEED TO H.D. MARTINO AND WIFE, RECORDED JULY 29, 1955, VOLUME 461, PAGE 238, YOLO COUNTY RECORDS.

B. DEED TO FRED CALLORI AND WIFE, RECORDED JUNE 7, 1956, VOLUME 487, PAGE 149, YOLO COUNTY OFFICIAL RECORDS.

C. DEED TO FRED CALLORI AND WIFE, RECORDED DECEMBER 4, 1961, VOLUME 657, PAGE 538, YOLO COUNTY OFFICIAL RECORDS.

D. DEED TO JOE PETER MAGGIOLO AND WIFE, RECORDED SEPTEMBER 4, 1962, VOLUME 687, PAGE 95, YOLO COUNTY OFFICIAL RECORDS,

AND THE FOLLOWING DESCRIBED PROPERTY:

E. THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF DAVIS, COUNTY OF YOLO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS, TO WIT:

A PORTION OF THAT CERTAIN PARCEL OF LAND LOCATED IN THE CITY OF DAVIS, YOLO COUNTY LYING BETWEEN THE OLD STATE HIGHWAY ROUTE 6, SECTION A AND THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, EAST OF "I" STREET, AS SAID PARCEL IS SHOWN NOW ON THAT CERTAIN RECORD OF SURVEY IS SHOWN NOW ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF YOLO COUNTY IN MAPS AND SURVEYS BOOK 7 AT PAGE 6, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS NORTH 48° 09' EAST 46.56 FEET AND NORTH 13° 15' WEST 127.38 FEET FROM A 3/4" IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF "I" STREET WITH NORTHERLY LINE OF OLIVE DRIVE, FORMERLY THE OLD CALIFORNIA STATE HIGHWAY, ROUTE 6 SECTION "A" AS SHOWN ON SAID RECORD OF SURVEY. SAID POINT OF BEGINNING BEING SITUATE ON THE EASTERLY LINE OF SAID "I" STREET AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID "I" STREET NORTH 13° 15' WEST 63.74 FEET TO THE SOUTHWEST CORNER OF THE MARIA CALLORI PROPERTY, THENCE ALONG THE SOUTH LINE OF SAID MARIA CALLORI PROPERTY NORTH 76° 45' EAST 89.65 FEET, THENCE ALONG A LINE PARALLEL WITH THE EASTERLY LINE OF SAID "I" STREET SOUTH 13° 15' EAST 63.74 FEET THENCE SOUTH 76° 45' WEST 89.65 FEET TO THE POINT OF BEGINNING.

F. A PORTION OF THAT CERTAIN PARCEL OF LAND LOCATED IN THE CITY OF DAVIS, YOLO COUNTY, LYING BETWEEN THE OLD STATE HIGHWAY ROUTE 6, SECTION A, AND THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, EAST OF I STREET, AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF YOLO COUNTY IN MAPS AND SURVEYS BOOK 7 AT PAGE 6, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS NORTH 48° 09' 00" EAST 45.56 FEET FROM A 3/4" IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF I STREET WITH THE NORTHERLY LINE OF OLIVE DRIVE, FORMERLY THE OLD CALIFORNIA STATE HIGHWAY, ROUTE 6 SECTION A, AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT OF BEGINNING BEING SITUATE ON THE NORTHERLY LINE OF SAID OLIVE DRIVE AND THE EASTERLY LINE OF SAID I STREET; THENCE FROM SAID POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID I STREET NORTH 13° 15' 00" WEST 127.38 FEET; THENCE NORTH 76° 45' 00" EAST 73.22 FEET; THENCE ALONG A LINE PARALLEL TO THE EASTERLY LINE OF SAID I STREET SOUTH 13° 15' 00" EAST 87.47 FEET TO THE NORTHERLY LINE OF SAID OLIVE DRIVE; THENCE ALONG SAID NORTHERLY LINE OF OLIVE DRIVE SOUTH 48° 09' 00" WEST 83.39 FEET TO THE POINT OF BEGINNING.

PARCEL TEN:

BEGINNING AT A POINT WHICH BEARS NORTH 48° 09' EAST, 208.11 FEET FROM A 3/4 INCH IRON PIPE MARKING THE POINT OF INTERSECTION OF THE WESTERLY LINE OF I STREET WITH THE NORTHERLY LINE OF OLIVE DRIVE, FORMERLY THE OLD CALIFORNIA STATE

HIGHWAY, ROUTE 6, SECTION C, AS SHOWN ON THAT RECORD OF SURVEY MAP FOR JOE CALLORI FILED IN MAPS AND SURVEYS BOOK 7, AT PAGE 6 OF YOLO COUNTY RECORDS, SAID POINT OF BEGINNING BEING SITUATE ON THE NORTHERLY LINE OF SAID OLIVE DRIVE AND EXTENDING THENCE FROM SAID POINT OF BEGINNING ALONG A LINE PARALLEL WITH THE WESTERLY LINE OF I STREET, NORTH 13° 15' WEST, 135.44 FEET; THENCE NORTH 76° 45' EAST, 65.00 FEET; THENCE ALONG A LINE PARALLEL WITH SAID WESTERLY LINE OF I STREET, SOUTH 13° 15' EAST, 100.00 FEET TO THE NORTHERLY LINE OF SAID OLIVE DRIVE; THENCE ALONG SAID NORTHERLY LINE OF OLIVE DRIVE, SOUTH 48° 09' WEST, 74.03 FEET TO THE POINT OF BEGINNING.

PARCEL ELEVEN:

A PORTION OF THAT CERTAIN PARCEL OF LAND LOCATED IN THE CITY OF DAVIS, YOLO COUNTY, LYING BETWEEN THE OLD STATE HIGHWAY, ROUTE 6, SECTION A, AND THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, EAST OF "I" STREET, AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF YOLO COUNTY IN MAPS & SURVEYS BOOK 7 AT PAGE 6, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID HIGHWAY (NOW KNOWN AS EAST OLIVE DRIVE) THAT IS DISTANT NORTH 48° 09' EAST 623.83 FEET FROM ITS INTERSECTION WITH THE WESTERLY LINE OF "I" STREET AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTH 13° 15' WEST ALONG A LINE PARALLEL WITH SAID WESTERLY LINE OF "I" STREET 182.61 FEET TO A POINT THAT IS DISTANT 25.00 FEET FROM THE SOUTH RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD; THENCE SOUTH 71° 48' WEST PARALLEL WITH SAID RAILROAD RIGHT OF WAY 50.19 FEET; THENCE SOUTH 13° 15' EAST 205.56 FEET TO SAID NORTHWESTERLY LINE OF SAID HIGHWAY THENCE NORTH 48° 09' EAST ALONG SAID NORTHWESTERLY LINE OF SAID HIGHWAY 56.95 FEET TO THE POINT OF BEGINNING.

APN: 070-280-012-000(Affects Parcel One), 070-280-013-000(Affects Parcels Two, Three and Four), 070-280-014-000(Affects Parcel Five), 070-280-017-000(Affects Parcel Six), 070-280-010-000(Affects Parcel Seven), 070-280-016-000(Affects Parcel Eight), 070-280-015-000(Affects a portion of Parcel Nine), 070-290-001-000(Affects a Portion of Parcel Nine), 070-290-002-000(Affects Parcel Ten), 070-290-004-000(Affects Parcel Eleven).

EXHIBIT B

Project Approvals

1. Gateway / Olive Drive Specific Plan Amendment that consists of General Plan, Specific Plan, Zoning, and Design Guidelines;
2. Development Agreement;
3. Affordable Housing Plan;
4. Lot Merger
5. Vacation of Hickory Lane Right of Way (ROW)
6. Design Review; and
7. Demolition Permit.

EXHIBIT C

Impact Fees and Community Enhancement Funds

Notwithstanding the general provision of Section 207 of this Agreement and the Municipal Code, the specific impact fees, connection fees and community benefit contributions set forth in this Exhibit C shall be paid by the Project as modified in this Exhibit C. All other fees, connection fees, and payments shall be subject to the general provisions of Section 207 and the Municipal Code.

1) Water (Impact/Connection Fees) – Water connection fees paid by the Developer shall not exceed the existing City fee for the first five years from the Effective Date of this Agreement. Thereafter, if the water connection fee has increased, the residential units shall pay the then current connection fee. If the water connection fees decrease during the five year period, then the Project shall be subject to the lower fee.

2) Sewer (Impact/Connection Fees) – Sewer connection fees paid by the Developer shall not exceed the existing City fee for the first five years from the Effective Date of this Agreement. Thereafter, if the sewer connection fee has increased, the residential units shall pay the then current connection fee. If the sewer connection fees decrease during the five year period, then the Project shall be subject to the lower fee.

3) Payment of Development Impact Fees for the Project shall be payable prior to the earlier of the issuance a final Certificate of Occupancy or a temporary Certificate of Occupancy that allows for residential occupancy being issued for the Project.

4) Community Enhancement Funds – The following Community Enhancement Funds shall be paid by the Developer in accordance with the following amount (Community Enhancement Funds are in addition to Development Impact Fees):

Category	Per Unit Amount	Applicable Units	Total Fee Amount
Park Community Enhancement Funds	\$1,841.67	130	\$239,460
Open Space Community Enhancement Funds	\$317.13	130	\$41,227
Public Safety Facilities Community Enhancement Funds	\$364.29	130	\$47,320
General Facilities Community Enhancement Funds	\$877.28	130	\$114,010
Totals	\$3,400.38	130	\$442,048.96

5) Community Enhancement Funds for the Project shall be payable prior to the earlier of the issuance a final Certificate of Occupancy or a temporary Certificate of Occupancy that allows for residential occupancy. However, the Developer shall have the right to defer payment of the

Community Enhancement Funds for up to 36-months after being issued a final Certificate of Occupancy, provided a surety, such as a performance bond or letter of credit, or other financing mechanism in a form acceptable to City, is issued securing the outstanding amount of Community Enhancement Funds. If the amount due to the City is not paid in full upon the expiration of the 36-month period, a 10% penalty will be assessed. The surety amount shall include the 10% penalty for whatever amount of the Community Enhancement Funds is deferred.

6) The Developer maintains the right to pay any impact fees associated with the project at any given time after project approval to avoid upcoming increases.

7) In addition to the general Community Enhancement Funds described in Exhibit C, 4) of this Development Agreement, the Developer shall pay Two Hundred Ninety Six Thousand Two Hundred Sixty Eight 11/100 Dollars (\$296,268.11) or Two Thousand Two Hundred Seventy Eight and 99/100 Dollars (\$2,278.99) per unit in additional Community Enhancements Funds to be specifically allocated towards the funding of a future bicycle/pedestrian overcrossing connecting from the western edge of the project site to the Amtrak Depot. Should the said future bicycle/pedestrian overcrossing not be constructed within the timeframe established in Exhibit D, the Developer would be entitled to a refund of the additional Community Enhancement Funds (up to \$296,268.11) that were paid and specifically allocated towards said overcrossing as defined in this term.

EXHIBIT D

Bike and Pedestrian Depot Overcrossing Contribution

Developer shall pay One Million Dollars (\$1,000,000) to the City to be used for a future bicycle/pedestrian overcrossing connecting from the western edge of the project site to the Amtrak Depot. The payment shall be made in accordance with the following schedule and terms:

1) Thirty Thousand Dollars (\$30,000) shall be paid to the City no later than 60 days prior to the ATP, SACOG or other grant application closing date. These funds will contribute to conceptual engineering studies and other grant application preparation needs. Any remaining funds will be deposited in the City's Roadway Impact Fee account.

2) The City shall provide the Developer with notice of the City's intent to execute a contract to move forward on the improvements at least thirty (30) days before the contract is executed. After the notice period required by this paragraph has run, the Developer shall place Nine Hundred Seventy Thousand Dollars (\$970,000) in an escrow account within three (3) days prior to the City executing a contract associated with a grant that provides matching funds for the improvements or, alternatively if the City enters a contract to move forward with the improvements without matching funds, one (1) day prior to such contract. Upon the earlier of the City execution of the contract associated with matching grant funds or a contract to move forward with the improvements, the entire amount shall be released to the City for overcrossing construction efforts.

3) Developer shall receive a dollar-for-dollar reduction in Roadway Impact Fees for monies paid towards the overcrossing in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000). Should the overcrossing grant award contract or construction authorization occur after the project Roadway Impact Fees have been paid, the developers overcrossing obligation shall be reduced dollar-for-dollar in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000).

4) Should the overcrossing construction overlap with the project being occupied by residents, the developer shall receive a Roadway Impact Fee reduction or a reduced overcrossing funding obligation for the income lost during the overcrossing period for up to 38 parking stalls at a rate of \$60 per month per stall. In no event shall the amount exceed Forty One Thousand Forty Dollars (\$41,040).

5) Developer shall receive a Roadway Impact Fee reduction or a reduced overcrossing funding obligation in the amount of Forty Five Thousand Four Hundred Seventy Three Dollars (\$45,473) for the permanent loss of three (3) parking spaces due to the overcrossing construction. Should the parking stalls loss be less than (3) spaces, the amount would be reduced on a pro-rated basis accordingly.

7) Developer shall receive a Roadway Impact Fee reduction or a reduced overcrossing funding obligation in the amount of Thirty Four Thousand Five Hundred Dollars (\$34,500) in recognition of 2,300 square feet of excess land being provided at the western portion of the property for future overcrossing construction in the swap for the Hickory Lane Right-of-Way.

8) Should the overcrossing construction projected schedule overlap with the project schedule, the Developer and the City agree to meet and determine if it would be reasonable to have the overcrossing construction be managed by the Developer for greater efficiencies.

8) Term of Pursuit - Developer obligations for overcrossing funding beyond the Thirty Thousand Dollars (\$30,000) described in Exhibit D, (and any associated Roadway Impact Fee reductions) shall terminate within three (3) years of effective date of the project Development Agreement, unless the City has been notified of a grant award or a grant award notification is pending.

9) Landscaping, fencing and parking improvements in the anticipated overcrossing construction area may be of a temporary nature until the overcrossing is constructed or the Term of Pursuit has expired. Final improvements shall be installed within six (6) months of the overcrossing being constructed or the Term of Pursuit expiring.

EXHIBIT E

Water and Energy Conservation Information and Incentive Plan

Incentive Plan Goal. To reduce water and electric usage by incentivizing the residents to think conservatively.

Incentive Plan. Starting once the Project reaches 90% occupancy, and occurring every month thereafter, the residents in each specific unit type, i.e. studio, 1-bedroom, 2-bedroom, 4-bedroom and 5-bedroom, with the lowest usage for both water and energy will each receive a \$50 gift card. No unit can receive a gift card for more than two (2) consecutive months.

Water Usage Fee. Developer shall charge a water usage fee on units with “excessive” monthly usage above a baseline amount, which shall be established as an appropriate average amount for units of similar size and occupancy. The baseline water amount and fee shall be reviewed annually in consultation with the City to determine whether any adjustments are needed. Adjustments are subject to review and approval by the Director of Community Development and Sustainability.

Notices. Each unit will receive a monthly summary of that unit’s water and electric usage (with comparison information).

EXHIBIT F

Affordable Housing Plan—LincolnLift

Developer will satisfy the City's affordable housing requirements through the development and operation of LincolnLift, a privately run, fully integrated affordable housing program that will be managed by the ownership of the Lincoln40 project consistent with all applicable laws. The LincolnLift program is designed to provide privately subsidized rental housing to low and very-low income residents who may be overlooked by or may not qualify for traditional publicly-assisted affordable housing programs.

1. Structure of Program

The program will include a designated number of beds integrated among any of Lincoln40's double-bed rooms which will be allocated to the LincolnLift program. Developer shall, at a minimum, include 71 beds in the LincolnLift program (the "Affordable Beds"), including 57 beds that are rented to very low income individuals ("Very Low Income Beds"), and 14 beds rents to low income individuals ("Low Income Beds"). There will be no distinction made between the LincolnLift beds and beds rented at market rate rents. Participants in the LincolnLift program will enjoy the same amenities and living experience as all other residents in the project. Lincoln40's management staff will administer both eligibility and suitability of residents and matches consistent with all applicable laws and subject to oversight by the City.

2. Qualification for LincolnLift

The LincolnLift program will be made available to residents, subject to the requirements included in this Plan. To qualify to lease a Very Low income Bed, the resident must demonstrate that he or she is a member of a household whose annual income does not exceed a very-low income household income for Yolo County, adjusted for household size, as determined by the California Department of Housing and Community Development ("HCD") on an annual basis pursuant to California Code of Regulations Title 25, Section 6932 ("Very Low Income"). To qualify to lease a Low Income Bed, the resident must demonstrate that he or she is a member of a household whose annual income does not exceed the annual income for a low income household for Yolo County, adjusted for household size, as determined by HCD on an annual basis pursuant to California Code of Regulations Title 25, Section 6932 ("Low Income").

Developer shall be responsible for developing selection criteria for the Affordable Beds that are consistent with all state and federal fair housing laws, including but not limited to the Federal Fair Housing Act, the California Fair Employment and Housing Act, and the California Unruh Act (collectively, "Fair Housing Laws").

Subject to all applicable laws, residents may be eligible for the LincolnLift program if either of the following criteria are met:

A. Financially Dependent Residents

Residents claimed as an income tax dependent by any individual for the tax year preceding application to the program may qualify for LincolnLift by demonstrating that the household income of the parent(s) or other legally supporting person(s) when combined with the resident's income, does not exceed Very-Low Income or Low Income, as applicable to the Affordable Bed for Yolo County.

i. *Verifying Dependent Resident's Income Status:* The resident must verify his or her parent's or other supporting person's income by means of documentation such as tax returns, W-2s, pay stubs, bank statements, and other similar information as deemed appropriate. "Income" shall be defined as set forth in 25 Cal. Code Regs. §6914. Developer shall be responsible for developing written procedures for verification of income status consistent with Fair Housing Laws, this Affordable Housing Plan and the Regulatory Agreement to be recorded against the Lincoln40 project. The written criteria shall be subject to review and approval by the City.

B. Financially Independent Residents

Residents who have not been claimed as an income tax dependent by any individual for the tax year immediately preceding application to the program may qualify by verifying financial independence and by demonstrating that the resident's income does not exceed Very-Low Income or Low Income, as applicable to the Affordable Bed for Yolo County.

i. *Verifying Financially Independent Status:* Financially independent residents must be able to demonstrate that they are not claimed as a dependent on anyone else's tax return and show financial self-sufficient status by means of verifying documentation such as tax returns and W-2s and additional information to demonstrate financial independence.

ii. *Verifying Independent Resident's Income Status:* The resident must document his or her income by means of verifying documentation such as tax returns, W-2s, FAFSA documentation, bank statements, etc. "Income" shall be defined as set forth in 25 Cal. Code Regs. §6914. Developer shall be responsible for developing written procedures for verification of income status consistent with Fair Housing Laws, this Affordable Housing Plan and the Regulatory Agreement to be recorded against the Lincoln40 project. The written criteria shall be subject to review and approval by the City.

3. Affordable Rate Determination

The monthly rent for each Affordable Bed will not exceed;

- i. For a Low Income Bed, 1/12 of 30% of 60% of Yolo County area median income for a single person household as determined by HCD; or,
- ii. For a Very Low Income Bed, 1/12 of 30% of 50% of Yolo County area median for a single person household as determined by HCD.

This rental rate includes all utilities and any cost for amenities provided to residents of Lincoln40, but increases from utility overutilization will be passed through to tenants in the LincolnLift program in the same way as they are in the Lincoln40 apartment complex to encourage sustainable living.

Continuing residents are given priority to new residents for the LincolnLift program provided those residents provide documentation of qualifying, continuing need. Applications for existing residents in the subsequent year will be due by February 28. Applications for new residents in the subsequent year will be due by March 31.

Priority of tenant applications will be based on demonstrated need. However, where qualifying tenant applicants outnumber available beds, a waitlist will be implemented that takes the order in which applications are received into account in addition to demonstrated need.

4. Marketing of LincolnLift Program

Developer shall develop and implement a marketing plan for the LincolnLift program that shall be subject to the review and reasonable approval by the City. Social media channels including Nextdoor, Facebook, and Instagram will be . Lincoln40 will market LincolnLift using programs on the UC Davis campus that represent traditionally underserved groups, including but not limited to the Associated Students of the University of California, Davis (ASUCD), the ASUCD Food Pantry, Guardian Scholars, and the AB 540 Center. Lincoln40 will also market LincolnLift through Yolo County Housing, the City of Davis, and UC Davis Student Housing.

If, notwithstanding Developer's efforts consistent with the approved marketing plan, fewer applications than beds in the LincolnLift program are received by May 31 of the subsequent year for the program they may be filled by those on the waitlist for Lincoln40 at market rates for that year. In subsequent years, the Developer will again seek eligible applicants for the LincolnLift program with the goal of filling all beds in the program each year.

5. Reporting for LincolnLift

Lincoln40 management will provide an annual report to the City of Davis that shows the number of beds participating in the LincolnLift program as well as compliance with qualification criteria of the LincolnLift program.

In the event that Developer fails to lease all of the Affordable Beds in any year, after diligent efforts, Developer will pay the City of Davis' Housing Fund an amount equivalent to the difference between the total annual market rent and the rent for the Affordable Bed for each bed that is not rented to a Very Low or Low Income resident, as applicable for that year, and may lease those beds at market rate. If at any time Lincoln40 is unable to fully rent the LincolnLift beds to qualified residents for two consecutive years, the City may on its own initiative or at the request of Developer, consider and make modifications to this Affordable Housing Plan, provided that any such modifications shall ensure to the satisfaction of the City in its reasonable discretion that Developer shall provide affordable housing in an amount equivalent to the LincolnLift program approved as part of this Development Agreement.

6. Regulatory Agreement

Subject to the modifications that may be made pursuant to Section 5 of this Plan above, the required number of Affordable Beds shall be maintained and rented as part of the Lincoln40 project in perpetuity. The LincolnLift program shall be implemented through a Regulatory Agreement and Restrictive Covenants (the "Regulatory Agreement") which shall be recorded against the Property prior to the issuance of any building permits for the Project. The Regulatory Agreement shall be consistent with the Plan as outlined herein and shall be in a form as approved by the City Manager and City Attorney. The Regulatory Agreement shall remain in effect in perpetuity (except as it may be amended pursuant to Section 5 of this Plan above) and shall be in a senior position to any deeds of trust or other security instruments recorded against the Property for any purpose.

EXHIBIT G

Local Hiring Program for Construction

Local Hiring Policy for Construction. Developer shall implement a local hiring policy (the “**Local Hiring Policy**”) for construction of the Project, consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by Developer and it’s contractors at the Project of residents of the City of Davis (the “**Targeted Job Applicants**”), and in particular, those residents who are “**Low-Income Individuals**” (defined below).
2. Definitions.
 - a. “**Contract**” means a contract or other agreement for the providing of any combination of labor, materials, supplies, and equipment to the construction of the Project that will result in On-Site Jobs, directly or indirectly, either pursuant to the terms of such contract or other agreement or through one of more subcontracts.
 - b. “**Contractor**” means a prime contractor, a sub-contractor, or any other entity that enters into a Contract with Developer for any portion or component of the work necessary to construct the Project (excluding architectural, design and other “soft” components of the construction of the Project).
 - c. “**Low Income Individual**” means a resident of the City of Davis whose household income is no greater than 80% of the Median Income.
 - d. “**Median Income**” means the median income for the Yolo County median income, which is published annually by HUD.
 - e. “**On-Site Jobs**” means all jobs by a Contractor under a Contract for which at least fifty percent (50%) of the work hours for such job requires the employee to be at the Project site, regardless of whether such job is in the nature of an employee or an independent contractor.

3. Priority for Targeted Job Applicants. Subject to Section 6 below in this Exhibit G, the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority;
 - a. First Priority: Low Income Individuals living within one mile of the Project;
 - b. Second Priority: Low Income Individuals living in census tracts throughout the City for which household income is no greater than 80% of the Median Income;
 - c. Third Priority: Low Income Individuals living in the City, other than the first priority and second priority Low Income Individuals; and
 - d. Fourth Priority: City residents other than the first priority, second priority, and third priority City residents.
4. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs related to the construction of the Project, by Developer or its Contractors.
5. Outreach. So that targeted Job Applicants are made aware of the availability of On-Site Jobs, Developer or its Contractors shall advertise available On-Site Jobs in the Davis Enterprise or similar local newspaper.
6. Hiring. Developer and its prime contractor shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs, in accordance with their respective normal hiring practices. The City acknowledges that the Contractors shall determine in the respective subjective business judgment whether any particular targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied.
7. Term. The Local Hiring Policy extends throughout the construction of the Project until the final certificate of occupancy for the Project has been issued by the City.

EXHIBIT H

Environmental Sustainability

The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. Therefore, the Project shall meet LEEDv3 Gold standards. Compliance for meeting LEEDv3 equivalency standards shall be demonstrated by an evaluation prepared by a third party mutually agreeable to the City and Developer, prior to building permit issuance. Developer may choose to maximize photovoltaic energy generation, or to adjust or substitute credits provided the point count for LEEDv3 Gold is met, to the satisfaction of the Director of Community Development and Sustainability. The Director may require third party verification of any changed credits, or monitoring during construction for compliance, at the cost of the Developer. Formal certification of the Project by the U.S. Green Building Council is not required.