

DEPARTMENT OF COMMUNITY DEVELOPMENT & SUSTAINABILITY

23 Russell Boulevard, Suite 2 – Davis, California 95616
530/757-5610 – FAX: 530/757-5660 – TDD: 530/757-5666



VIA EMAIL

March 26, 2018

HighBridge Properties, c/o Paul Gradeff
901 A Street, Suite C
San Rafael, CA 94901

Subject: **Lincoln40 City Council Action Letter** -- Planning Application (PA) #16-01 for Gateway / Olive Drive Specific Plan Amendment #1-16 Relative to General Plan Amendment #3-16; Zoning Amendment #2-16, Affordable Housing Plan #3-16; Lot Merger #1-16; Vacation of Right of Way #3-16, Design Review #10-16, Demolition #4-16; Development Agreement; and Environmental Impact Report #3-16

Dear Paul,

This is to inform you that on March 13, 2018, the City Council by unanimous vote (5-0) took the following actions on the Lincoln40 project:

1. Certified the Environmental Impact Report prepared for the project and adopt the Findings of Fact and Mitigation Monitoring Plan; and
2. Approved the below listed Lincoln40 project planning applications, subject to findings and conditions of approval attached to this letter: a) Gateway / Olive Drive Specific Plan Amendment that consists of General Plan, Specific Plan, Zoning, and Design Guidelines; b) Development Agreement (DA); c) Affordable Housing Plan; d) Lot Merger; e) Vacation of Hickory Lane Right of Way (ROW); f) Design Review; and g) Demolition.

In addition, the Council directed modifications to the Development Agreement (DA) relative to Community Enhancement, which is reflected in the attached DA document, and added the condition of approval below.

Sustainability. Project will maximize photovoltaics to the greatest extent feasible. Unless otherwise prohibited by applicable law and regulation, the balance of the electricity for the Project shall be purchased through the Valley Clean Energy Alliance's "100% Green" tariff, when it becomes available, provided the rates are competitive within 10% of PG&E's utility rates, or the next highest "Green" tariff rate within 10% of PG&E's rates.

If you have any questions regarding the City Council action, please contact me as usual.

Sincerely,

Ike Njoku, Planner & Historical Resources Manager

cc: Kevin Fong, Public Works Department
Tim Scott, Building Division
Patrick Sandholdt, Fire Department
Rob Cain, Parks and Community Services

Attachments – Lincoln40 Ordinance, Resolutions, and Conditions of approval

RESOLUTION NO. _____, SERIES 2018

RESOLUTION TO AMEND THE CITY OF DAVIS GATEWAY / OLIVE DRIVE SPECIFIC PLAN THAT CONSISTS OF GENERAL PLAN, SPECIFIC PLAN, ZONING AND DESIGN GUIDELINES FOR THE AREA

WHEREAS, the purpose of the Gateway / Olive Drive Specific Plan is to provide the goals, policies, design guidelines, and zoning mechanism necessary to realize the vision created by the Advisory Committee for the plan of which certain parts are being modified to accommodate Lincoln40 project;

WHEREAS, the intent of the General Plan is to provide mixed-use development that connects the University and Core Area along Interstate 80 at Gateway to Davis;

WHEREAS, the City of Davis General Plan incorporates by reference the Gateway Olive Drive Specific Plan, and the Specific Plan serves as the areas' General Plan, Specific Plan, Zoning, and Design Guidelines document;

WHEREAS, the Gateway / Olive Drive Specific Plan identifies the site of the proposed Lincoln40 Apartments project, including the Hickory Lane Properties as a part of the East Olive Drive Subarea, and more appropriately describes the properties as the Callori property and Hickory Lane Properties;

WHEREAS, the Gateway / Olive Drive Specific Plan Amendment will not adversely impact the general welfare of residents or businesses within the area; and

WHEREAS, the Gateway / Olive Drive Specific Plan currently designates the combination of eleven properties located at 1111 Olive Drive (APN: 070 280 010), 115 Hickory Lane (APN: 070 280 014), 113 Hickory Lane (APN: 070 280 013), 111 Hickory Lane (APN: 070 280 012), 118 Hickory Lane (APN: 070 280 017), 120 Hickory Lane (APN: 070 280 016), 1165 Olive Drive (APN: 070 280 015), 1185 Olive Drive (APN: 070 290 002), 1229 Olive Drive (APN: 070 290 004) 1223 Olive Drive (APN: 070 290 001), and 1225 Olive Drive (APN: 070 290 003) as "East Olive Drive Residential Medium Density" (RMD) and "East Olive Multiple Use" (EOMU);

WHEREAS, the proposed Lincoln40 project requests to change the current land use designations to "Residential Medium High Density" (RMHD) to accommodate the proposed student oriented apartment building, which will necessitate modifications to the description of land uses of the Specific Plan for the subject sites, texts, land use tables, development standards and design guidelines;

WHEREAS, these additions and modifications to the Specific Plan relative to texts, maps, tables, development standards and design guidelines are attached hereto as Exhibit B;

WHEREAS, the City has determined that the Project is a sustainable communities project that does not require EIR preparation, although one is prepared;

WHEREAS, the Planning Commission held a duly noticed public hearing on _____, 2018 in addition to a July 26, 2017, public meeting held on the Project and its Environmental Impact Report (EIR, SCH# 2016082073);

WHEREAS, the City Council held a duly noticed public hearing on _____, 2018, and based on oral testimony and documentary evidence reviewed during the public hearing, approved the project and determined that the Environmental Impact Report (SCH: 2016082073) prepared for the project adequately addresses the potential environmental impacts of the Project and that the appropriate findings were made.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that the Gateway / Olive Drive Specific Plan of the City of Davis for the area that also serves as the General Plan, Specific Plan,

Zoning Ordinance, and Design Guidelines, is hereby amended to accommodate Lincoln40 project as shown in attached Exhibits A and B.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day, 2018, by the following votes:

AYES:

NOES:

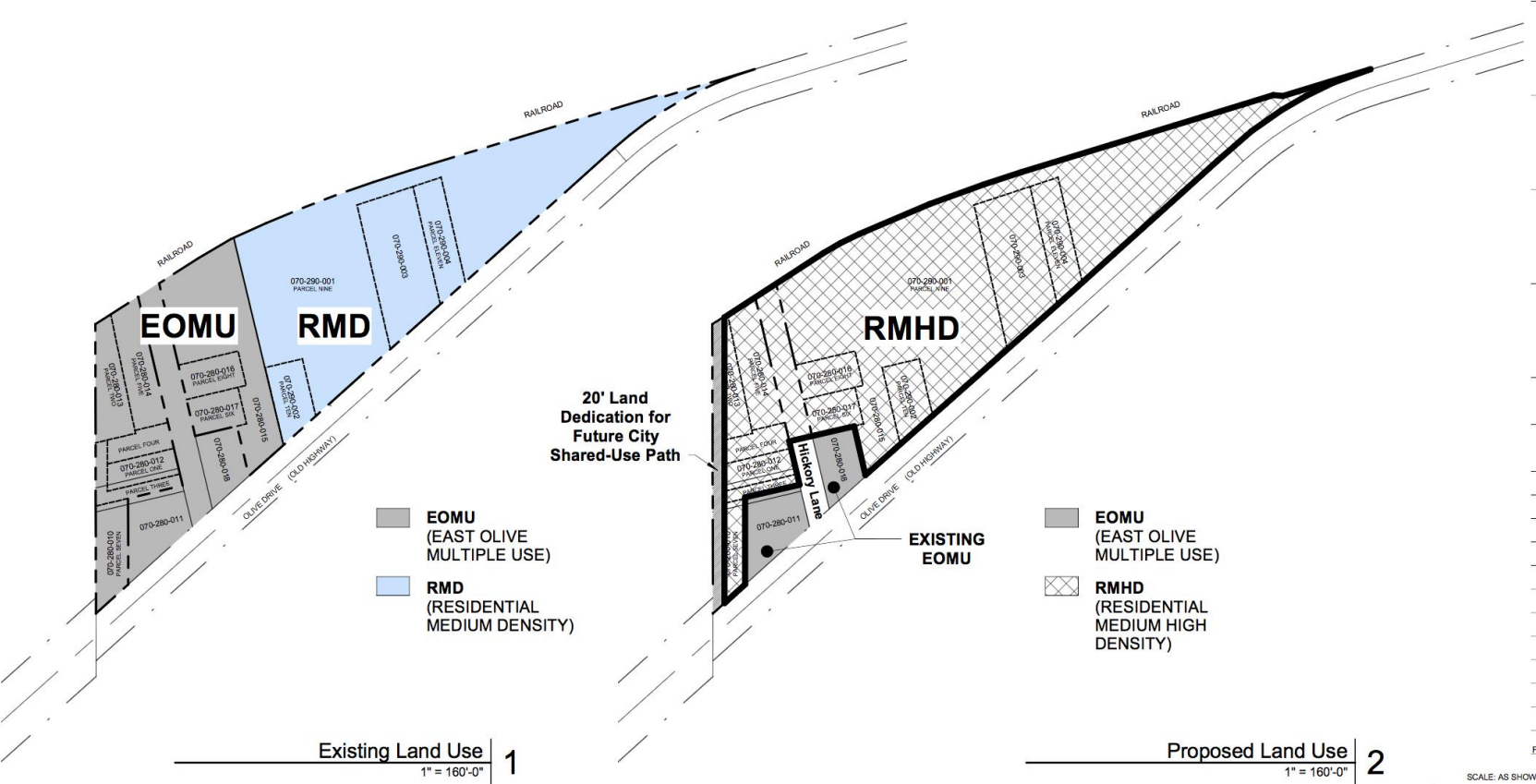
ABSENT:

Robb Davis
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A – Land Use Map Change



Lincoln40 Project

Davis, CA

**LAND USE AMENDMENT
EXHIBIT**

DATE: 9/12/17
PROJECT NO: 1212-0001
SCALE: AS SHOWN
SHEET: A0.11



LPAS

2484 Natomas Park Drive, Suite 100, Sacramento CA 95833
916.443.0335 | lpasdesign.com

Exhibit B (Applicable Gateway / Olive Drive Specific Plan Excerpts)

RESOLUTION NO. 18 - ____, SERIES 2018

RESOLUTION OF INTENT TO AMEND THE GENERAL PLAN OF THE CITY OF DAVIS TO CHANGE THE LAND USE DESIGNATION FOR THE PROPERTIES AT 1111 Olive Drive (APN: 070 280 010), 115 Hickory Lane (APN: 070 280 014), 113 Hickory Lane (APN: 070 280 013), 111 Hickory Lane (APN: 070 280 012), 118 Hickory Lane (APN: 070 280 017), 120 Hickory Lane (APN: 070 280 016), 1165 Olive Drive (APN: 070 280 015), 1185 Olive Drive (APN: 070 290 002), 1229 Olive Drive (APN: 070 290 004) 1223 Olive Drive (APN: 070 290 001), and 1225 Olive Drive (APN: 070 290 003), CONSISTING OF 5.91 ACRES, FROM “EAST OLIVE DRIVE RESIDENTIAL MEDIUM DENSITY” AND “EAST OLIVE MULTIPLE USE” TO “RESIDENTIAL MEDIUM HIGH DENSITY”

WHEREAS, the Gateway / Olive Drive Specific Plan currently designates the combination of eleven properties located at 1111 Olive Drive (APN: 070 280 010), 115 Hickory Lane (APN: 070 280 014), 113 Hickory Lane (APN: 070 280 013), 111 Hickory Lane (APN: 070 280 012), 118 Hickory Lane (APN: 070 280 017), 120 Hickory Lane (APN: 070 280 016), 1165 Olive Drive (APN: 070 280 015), 1185 Olive Drive (APN: 070 290 002), 1229 Olive Drive (APN: 070 290 004) 1223 Olive Drive (APN: 070 290 001), and 1225 Olive Drive (APN: 070 290 003) as East Olive Drive “Residential Medium Density” (RMD) and “East Olive Multiple Use” (EOMU);

WHEREAS, amending the General Plan land use designation for the subject parcels to “Residential Medium High Density” will be consistent with the recent City Council approved land use category, including applicable policies and plans for the specific plan, zoning and design guidelines; and

WHEREAS, amending the General Plan land use designation for the subject parcels to “Residential Medium High Density” enables a development that reflects General Plan policies promoting a variety of housing including multifamily and students housing, and affordable housing; is consistent with smart-growth principles promoted in the Sacramento Area Regional Council of Governments (SACOG) Blueprint program to bring a mix of uses near each other to create active, vital neighborhoods; provide for residential development that would conserve energy, reduce carbon footprint, and promote alternative transportation use; reduces the number of vehicle miles travelled, also reducing the emission of greenhouse gases and other pollutants; and promotes infill development and densification rather than suburban sprawl along the periphery of the city; and

WHEREAS, the Residential Medium High Density designation will provide for a suitable multi-family residential site to meet housing demand and is located along a minor arterial street with connections to bicycle and transit facilities and convenient to services, downtown and UC Davis; and

WHEREAS, the General Plan Amendment is appropriate in that it is compatible and consistent with existing and adjacent uses; and

WHEREAS, the General Plan Amendment will not adversely impact the general welfare of residents or businesses within the area; and

WHEREAS, the City has determined that the Project is a sustainable communities project that does not require EIR preparation, although one is prepared;

WHEREAS, the Planning Commission held a duly noticed public hearing on December 13, 2017, in addition to a July 26, 2017, public meeting held on the Project and its Environmental Impact Report (EIR, SCH# 2016082073);

WHEREAS, the City Council held a duly noticed public hearing on _____, 2018, and based on oral testimony and documentary evidence reviewed during the public hearing, approved the project and determined

that the Environmental Impact Report (SCH: 2016082073) prepared for the project adequately addresses the potential environmental impacts of the Project and that the appropriate findings were made.

NOW, THEREFORE, the City Council of the City of Davis does hereby declare its intent as follows:

Section 1. The General Plan Land Use Map of the City of Davis is hereby intended to be amended to redesignate the land use for the subject properties from “East Olive Drive Residential Medium Density” (RMD) and “East Olive Multiple Use” (EOMU) to “Residential Medium High Density” as shown in Exhibit A.

PASSED AND ADOPTED by the City Council for the City of Davis on this _____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis, Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk

Existing Land Use

1" = 160'-0" **1**

Proposed Land Use

1" = 160'-0" **2**

SCALE: AS SHOWN

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916 443 0335 lpasdesign.com Architecture + Design

ORDINANCE NO. _____
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 _____, 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. ____, 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 _____, 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 _____, 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. _____, adopted by the City Council on ____, 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. _____ 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. _____, 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 ____ day of __, 2018 and PASSED on the _____ day of _____, 2018 by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis, Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

ATTACHMENTS

- A. Findings and Conditions of Approval
- B. Development Agreement

ATTACHMENT 2B

EXHIBIT A (Findings and Conditions of Approval)

FINDINGS

Lincoln40 Project

1. **Timeliness.** The property owner will commence the construction of the Lincoln40 project in good faith during the Development Agreement effective period.
2. **Conformance.** The proposed development conforms to the General Plan in that it implements the General Plan land use designation for a residential medium high density land use designation, Gateway / Olive Drive Specific Plan, and contributes to infill housing within the city limits.
3. **Appropriateness.** The residential development contributes to the mix of housing types within the district and is appropriate in area, location, and overall planning for the purpose intended and the design and development standards to create an environment of sustained desirability and stability with the character of the surrounding neighborhood, and meets performance standards established by the Gateway / Olive Drive Specific Plan. Public facilities and open space are adequate. No industrial, research, institutional, recreational, or non-residential uses are proposed as part of the project or require consideration.
4. **Traffic and Access.** The EIR has adequately addressed and provided mitigation measures to address auto, bicycle, and pedestrian traffic system and affirms that they are adequately designed to meet anticipated traffic in the affected roadway segments and will operate in the future within city standards for level of service. Vehicular access on the site is available and is adequate to serve the project. The City has determined that adequate number, configuration and location of parking spaces have been provided. The project incorporates adequate facilities, connections, and access to serve bicycles and pedestrians.
5. **CEQA.** The City Council held a duly noticed public hearing on _____, 2018 and based on oral testimony and documentary evidence reviewed during the public hearing, certified the Environmental Impact Report (SCH#2016082073) prepared for the project and included adoption of a Mitigation Monitoring Plan. A Draft EIR was prepared and circulated for public review in accordance with CEQA requirements, and addressed CEQA streamlining in regards to project consistency with the Sacramento Area Council of Governments Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS). The EIR adequately analyzed the significant and potentially significant environmental impacts of the project, identified appropriate mitigation, and project alternatives. Public comments were received and a response to comments was included in the Final EIR. Additional text and information was provided to clarify discussion but do not alter the conclusions of the EIR. The EIR represents the independent judgment of the lead agency. In addition, in consideration of the substantial evidence set forth in the EIR and in the administrative record, the City Council finds that the project is a sustainable communities project pursuant to Section 21155.1 of the Public Resources Code and, therefore, is exempt from CEQA, although the EIR was prepared.
6. **SCS Consistency.** The project is consistent with the Sacramento Area Council of Governments Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS) pursuant to SB 375, and complies with the requirements of Section 21159.28 of CEQA Guidelines. As a residential project that is consistent with the MTP/SCS, the City Council finds that project is eligible for CEQA streamlining benefits as a qualifying “residential or mixed-use residential project” including the benefits set forth in Section 21159.28(a)-(b) and 21099(d).

7. **Consistency.** The project, as proposed and conditioned, is consistent with the General Plan, Subdivision Ordinance, City Zoning Ordinance and any adopted design guidelines for the subarea of the Gateway / Olive Drive Specific Plan within which the project is located, in that the project is a residential development in a residential area, is consistent with the General Plan designation of Residential Medium High Density, the applicable zoning standards, design guidelines, and it meets all applicable General Plan policies, subdivision requirements, and zoning and standards.
8. **Subdivision Map Act.** The project, as proposed and conditioned, meets all applicable requirements of the Subdivision Map Act, in that none of the findings that would require disapproval of the parcels merger applies.
9. **Site Suitability.** The parcels to be merged are suitable sites in that the project has adequately considered floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, public health issues, site suitability, Subdivision Map Act, the City of Davis Municipal Code, and the General Plan.
10. **Demolition.** The proposed demolition is consistent with and supportive of identified goals and policies of the General Plan and the proposed action will not have a significant effect on the goals and purposes of zoning provisions addressing historical resources and historic districts, in that there are no nearby historical resources or historical districts that would be adversely affected by the demolition of the existing structures, which have been determined to have no historical significance, and the replacement project is consistent with City goals and policies for infill development, urban design, and land use.
11. **Neighborhood Character.** The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community, in that the project uses creative and unique design to accommodate the residential development in an energy and resource efficient manner while minimizing impacts, providing extensive landscaping and adequate buffers, and maintaining the character of the neighborhood.
12. **Compatibility.** The architectural design of the proposed project is compatible with the existing properties and anticipated future developments within the neighborhood in terms of such elements as height, mass, scale and proportion, in that the size, scale and mass of the buildings are appropriate for the site and in relation to the surrounding buildings, steps back the height of the upper floors, and incorporates a mix of materials, rooflines, and building recesses. (DR)
13. **Circulation.** The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation, in that the EIR has adequately addressed and mitigated any potential impacts associated with the project upon the local streets; does not create additional hazards to bicyclists or pedestrians using the sidewalks; and provides adequate parking and access for vehicles and bicycles. (DR)
14. **Appropriate Materials/Methods.** The location, climate, and environmental conditions of the site are adequately considered in determining the use of appropriate construction materials and methods, in that the project incorporates materials appropriate for the climate and site. (DR)
15. **1% Percent Growth Consistency.** The project is consistent with City Council Resolution No. 08-019, which established a target of 1% percent as an annual growth cap for residential development. The resolution exempts permanently affordable units and allows the City Council to designate a portion of the yearly amount to multi-family rental units that can be rolled over and accumulated over

several years as needed. City Council may approve an infill project, which provides for particular community needs with extraordinary community benefits, even if it would cause an exceedance of the annual growth guideline of 1%. The project consists of 130 student-oriented apartment units, which provides benefits to the community with needed student affordable and rental housing. It is estimated that buildout of approved and potential residential projects over the next five years will result in average annual residential unit growth of 0.6% percent, as detailed in City Council staff report, which is well within the 1% annual growth cap target.

16. **Affordable Housing.** The proposed project complies with the City's affordable housing ordinance (Davis Municipal Code Article 18.05) by committing to comply with Affordable Housing Plan #3-16, which is incorporated into the Development Agreement as Exhibit F (the "Affordable Housing Plan"). The Affordable Housing Plan requires that 71 of the 708 beds to be included in the proposed project shall be rented to individuals that are members of low income households (14 beds) and very low income households (57 beds). The City Council approves the Affordable Housing Plan and finds that it is consistent with Article 18.05 pursuant to the discretion granted to the Council by Davis Municipal Code Section 18.05.060(b), which allows the Council to approve alternative affordable housing requirements for rental housing projects of 15% affordable units, bedrooms or beds, or lesser amounts based on certain factors as listed in Section 18.05.060(b). The City Council finds that approval of alternative affordable housing requirements as set forth in the Affordable Housing Plan for the proposed project pursuant to Section 18.05.060(b) is appropriate and consistent with the requirements of Article 18.05 based on the following factors:

- The proposed project will meet a specific housing need identified in the City's housing element and general plan policies, in that it will provide rental housing that is primarily intended to serve students;
- The proposed project incorporates design features and rental strategies that make the project affordable-by-design and, as a result, the market rate portion of the project is anticipated to provide additional housing options for low and moderate income residents in the City;
- By providing rental housing primarily intended to serve students in close proximity to downtown, UC Davis, and public transit access, Lincoln40 will further other land use goals of the City including reductions in the need for private vehicles and the encouragement of development consistent with the Metropolitan Transportation Plan/Sustainable Communities Strategy adopted for the Sacramento Region by the Sacramento Area Council of Governments;
- The market rate component of the proposed project includes unusually high infrastructure and other cost burdens, including but not limited to obligations that exceed standard infrastructure and development fees within the City, such as the commitment to provide substantial fair-share funding towards construction of the railroad overcrossing;
- The affordable component of the proposed project will be privately managed and is not eligible for public subsidy or other public funding to offset the costs of providing the affordable housing;
- The affordable beds are incorporated into units with market rate beds, providing for a more complete integration of the affordable and market rate components of the project; and
- The application for the proposed project was submitted to the City and the terms of the Development Agreement were discussed and negotiated well before the adoption of AB 1505 at a time when the standard rental affordable housing requirements set

forth in Article 18.05 were not in effect, and the parties did not consider the costs of full compliance with the standard rental affordable housing requirements as part of the negotiation of the terms of the Development Agreement.

17. **General Welfare.** The General Plan Amendment will not adversely impact the general welfare of residents or businesses within the area; the General Plan Amendment is appropriate in that it is compatible and consistent with existing and adjacent uses; and it will not adverse impact the health and safety of the residents or business within the area.

CONDITIONS OF APPROVAL

Lincoln40

I. GENERAL CONDITIONS, FEES, AND TIME LIMITS

1. **Approval.** This approval allows Demolition of the existing buildings (10 cottage single-family structures, and the Kober Apartment buildings) and the replacement improvements that consists of a multi-family residential student oriented building containing 130 units. The approval allows the redevelopment of the subject sites with a residential structure ranging from three to five stories, and would include a mix of two-bedroom to five-bedroom fully-furnished units, each with a floor space ranging from 1,024 square feet (sf) to 1,797 sf. Of the 473 total bedrooms included in the project, 235 bedrooms would be designed as double-occupancy rooms with attached bathrooms; thus, the total beds for the project is 708. The approved project would also include the construction of a manager's facility, bike storage/barn/repair facility, indoor and outdoor lounge areas, and a pool with barbeques and fire pits, the other amenities and landscape improvement. Parking would be provided for both vehicles and bicycles, with about 240 vehicle parking spaces and 725 bicycle parking spaces.
2. **Development Agreement.** This project is subject to that certain Development Agreement between the City of Davis and HighBridge Properties, as approved by the City Council.
3. **Permit Expiration.** The Lincoln40 project shall become null and void upon expiration of the Development Agreement if substantial construction in good faith reliance on the approval has not commenced.
4. **Applicant's Responsibility to Inform.** The applicant shall be responsible for informing all subcontractors, consultants engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein in the City of Davis Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City.
5. **Indemnification.** The applicant shall defend, indemnify, and hold harmless the City of Davis, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City of Davis concerning this approval, including but not limited to any approval of condition of approval of the Planning Commission or City Council. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees and agents in the defense of the matter.
6. **Conflicts.** When exhibits and/or written conditions of approval are in conflict, the written conditions shall prevail. In the event of a conflict between the provisions of these conditions of approval and the Development Agreement, the terms of the Development Agreement shall prevail. In the event of a conflict between the provisions of these conditions of approval and the EIR mitigation measures, the terms of the mitigation measures shall prevail.
7. **Standard Conditions of Approval.** Given that standard conditions of approval are imposed on the project approval, any condition of approval deemed not applicable to this project by the Community Development and Sustainability Director shall not be required of the applicant/developer.

8. **Duplicates.** In the event of duplicate conditions of approval and there shall be no issues and one of duplicate conditions of approval may be deleted. However, in the event that the duplicate conditions of approval provisions differ, then, the more restrictive conditions of approval shall prevail.
9. **Run With The Land.** The terms and conditions of this approval shall run with the land and shall be binding upon and be to the benefit of the heirs, legal representatives, successors, and assignees of the property owner.
10. **Other Applicable Requirements.** The project approval is subject to all applicable requirements of the Federal, State, City of Davis and any other affected governmental agencies. Unless otherwise provided in the Development Agreement, approval of this request shall not waive compliance with all sections of the Municipal Code, all other applicable Federal, State and City Ordinances, and applicable Community or Specific Plans or Design Guidelines in effect at the time of building permit application. The duty of inquiry as to such requirements shall be upon the applicant.
11. **Fees.** The developer shall obtain all appropriate permits, if any, and pay all required fees and fees as specified in the Development Agreement, and other applicable fees not addressed in the Development Agreement.
12. **Development Impact Fees.** The developer shall pay the appropriate fees established in the Major Projects Financing Plan pursuant to the General Plan, except as specified in the Development Agreement. Final fee categories shall be as adopted by the City Council in the Major Project Financing Plan and shall be paid at the time of certificate of occupancy or as otherwise required by law, except as specified in the Development Agreement.
13. **School Impact Fees.** The owner shall pay school facilities fees to the Davis Joint Unified School District (DJUSD), in the current amount adopted by the DJUSD at the time building permits are issued.
14. **Sewer and Water Connection Fees.** Water Connection and Sewer Connection fees shall be paid as specified in the Development Agreement, or otherwise at the time of recordation of the Parcel Map or as required by law.
15. **Signage.** Applicant shall pay for the installation of any project signage, which shall be reviewed under a separate application. All signage shall comply with the requirements of Zoning Ordinance Section 40.26.020 for signs and shall require review and approval by the Department of Community Development and Sustainability Department. Signage consistent with an approved sign program or the citywide sign design guidelines may be processed as a Minor Improvement.
16. **Fire Safety Requirements.** Plans shall be submitted to the Fire Department for review and approval prior to issuance of building permits. All new development shall comply with the fire safety requirements of the California Fire Code and California Building Code as adopted by the City of Davis.
17. **Police Safety Requirements.** Plans shall be submitted to the Police Department for review and approval prior to issuance of building permits. All new development shall comply with the City Building and Security Ordinance and other safety recommendations and requirements regarding building security, prior to issuance of building permits.

18. **Sustainability.** Project will maximize photovoltaics to the greatest extent feasible. Unless otherwise prohibited by applicable law and regulation, the balance of the electricity for the Project shall be purchased through the Valley Clean Energy Alliance's "100% Green" tariff, when it becomes available, provided the rates are competitive within 10% of PG&E's utility rates, or the next highest "Green" tariff rate within 10% of PG&E's rates.
19. **Sustainable Communities Consistency.** Prior to issuance of building permits the developer shall submit confirmation that the Project building is 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.
20. **LEED Gold Equivalency.** Prior to issuance of the building permit, the developer shall submit confirmation that the Project as designed will achieve LEED Gold equivalent rating.
21. **Mitigation Measures.** The applicant shall comply with and satisfy the mitigation measures, which are part of Environmental Impact Report (SCH#2016082073) prepared for the project.
22. **Contingencies.** This project is contingent upon the adoption of General Plan Amendment Resolution, which permits the land use change.
23. **Compliance with Conditions of Approval.** Prior to issuance of Certificate of Occupancy, conditions of approval and required improvements deemed necessary for a Certificate of Occupancy shall be completed or secured by the applicant to the satisfaction of the Community Development & Sustainability Department.

III. ZONING STANDARDS

24. **Development Standards.** The project's development standards shall comply with those established for Lincoln40 in the Gateway / Olive Specific Plan and as amended in the future.
25. **Outdoor Amenities.** The use of the various outdoor amenities shall comply with the City's Noise Regulations, Municipal Code Chapter 24.
26. **Affordable Housing.** The project shall comply with Article 18.05 of the Davis Municipal Code through the project specific affordable housing plan as described in Exhibit F to the project Development Agreement.
27. **Security Plan.** Prior to final or occupancy of the project, the applicant shall submit a final security plan for review by the Police Department and Community Development and Sustainability Department.
28. **Property Maintenance.** Property owner(s) is/are responsible for maintaining all building, bike facility, yards, structures, parking areas and other improvements in such a manner, which does not detract from the appearance of the surrounding area. Driveways and parking areas shall be maintained in an attractive and suitable fashion with any potholes, significantly cracked or uneven paving and any other significant damage repaired in a timely fashion throughout the life of the project.

29. **Landscape Maintenance.** The property owner shall be responsible for the installation and maintenance of all landscaping, including street trees, from the back of the curb to their project. All utility lines (water lines), if currently operated by the City, shall be disconnected and patched into the developments irrigation system.
30. **Trash Maintenance.** The entire site shall be kept free of trash or debris at all times.
31. **Demolition.** The applicant/developer is encouraged to offer any of the existing buildings to any person(s) interested in relocation of the building. The applicant/developer is encouraged to make such a relocation effort possible.
32. **Cultural Resources.** The following statement shall be included on all construction documents: “If subsurface paleontological, archaeological or historical resources or remains, including unusual amount of bones, stones, shells or pottery shards are discovered during excavation or construction of the site, work shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further measures to reduce any cultural resource impact before construction continues.”

IV. BUILDING DESIGN AND SUSTAINABILITY

33. **Approved Building Design.** No substantive deviations from the approved building design may be permitted without Design Review approval. However, minor changes may be approved through the minor improvement application process.
34. **Material Board.** The design, placement and color of the building materials shall be consistent with the approved colors and materials, except as modified by the conditions of approval for the project. Minor changes in materials and color selection may be made through the Community Development Department’s Minor Improvement process. Final details and material and color samples shall be provided on the working plans to the satisfaction of the Community Development Department prior to the issuance of permits.
35. **Approval Letter.** The applicant shall attach a full copy of the approved project letter to the Building Application Submittal.
36. **Water Submetering.** The applicant shall install separate smart water submeters for all units and applicable spaces. Smart water meters will help tenants understand in real time when, where, and how much water (in gallons) they are consuming on a daily basis.
37. **EV Charging.** The project shall comply with the current City standards for EV charging facilities in multi-family development and incorporate the required facilities and improvements in the construction documents prior to issuance of building permits.
38. **Construction and Materials.** The plan review set shall include adequate detailing of application, construction and materials proposed of all exterior architectural enhancements including but not limited to building and window trim, depth of recessed features, grout or reveal width/depth, awning materials, trellis construction, building material application such as tile/brick. Adequate detailing may necessitate the use of cross-sections.
39. **Light Fixtures.** All wall mounted building lighting shall be submitted for review and approval by the Director of Community Development prior to issuance of permits. All lighting fixtures shall be

complementary to the building architecture. Outdoor lighting shall be low wattage, the minimum necessary to light the intended area, and fully shielded to minimize off-site glare.

40. **Roof Mounted Equipment.** All roof appurtenances, including air conditioners and other roof mounted equipment and/or projections (excluding photovoltaic systems) shall be screened from view and the sound buffered from adjacent properties and streets. Such screening shall be architecturally integrated with the building design to the satisfaction of the Community Development & Sustainability Department prior to the issuance of building permits.
41. **Building Design.** Applicant shall work with City staff on design adjustments to enhance the building architecture. Minor changes to the design, materials, roof forms, and other architectural elements may be processed as a Minor Improvement application. Substantial changes require Design Review.
42. **Water and Energy Conservation Plan.** The applicant shall prepare and implement a resident Information and Incentive Plan for Water and Energy Conservation subject to review and approval of the Director of Community Development and Sustainability, as set forth in the Development Agreement.

V. AFFORDABLE HOUSING

43. **Affordable Housing.** The affordable housing requirements are addressed in the Development Agreement.

VI. PRIOR TO ISSUANCE OF BUILDING PERMIT

Fire Department

44. **Fire Department Requirements.** Prior to the issuance of permits, the owner/developer shall obtain approval from the fire department that:
- a. All necessary public services, including water service and fire hydrants, meet fire department standards; and
 - b. Vehicle access is sufficient to accommodate fire department equipment and fire sprinklers are provided in any building over 5,000 square feet.
 - c. Buildings exceeding 3 stories or 30 ft in height require two means of fire apparatus access.
 - d. Where the vertical distance exceeds 30 ft, approved aerial fire apparatus access roads shall be provided.
 - e. Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 ft, exclusive of shoulders.
 - f. Provide required hydrants on the plans.
 - g. Buildings which are 5 stories and will require NFPA 13 system.
 - h. Indicated stairwells on plans to have roof fire access
45. **Fire Access.** All Fire Department access and fire lanes shall be posted as “No Parking, Fire Lane.” Signage, paint and location are subject to review and approval by the Fire Department.
46. **EVA.** Bollards, entry gates and other obstructions shall be subject to review and approval of the Fire Department.

47. **Fire Access during Construction.** Prior to completion of streets, building permits may be issued, provided fire vehicle access is maintained to all hydrants and from hydrants to all structures prior to commencing wood construction.
- Details of Fire Department access to hydrants and structures shall be approved by the Fire Department.
 - Where structures are built or under construction, all adjacent streets shall be paved or graveled.

Pavements

48. **Pavement Design.** At submittal of improvement plans, applicant shall provide details of pavement improvements, including type, thickness, and other design details subject to review and approval of the City Engineer. All street sections shall be designed based on the subgrade "R" value and the Traffic Index (TI). The TI for streets shall be as follows:

<u>Street Classification</u>	<u>TI</u>
Major Arterials	10.0
Minor Arterials	8.0
Collectors	7.5
Modified Locals	6.5
Local	5.5
Cul-de-sac	5.0
Private	5

Pavement design shall be consistent with the recommendations stated in the soils report.

49. **Textured/Colored Pavement.** Textured/colored pavement may be provided across all driveways' entrances. They could be of brick/tile pavers, exposed aggregate, integral color concrete, colored asphalt, or any combination thereof. Full samples shall be submitted to the Community Development & Sustainability Department for review and approval prior to the issuance of building permits.
50. **Soils Report.** Applicant shall provide soils report concurrent with submission of improvement plans. Prior to the issuance of permits, the applicant shall have a soils investigation report prepared and the applicant shall comply with all recommendations contained within the report.
51. **Roadway Improvements Required.** Applicant shall construct roadway improvements on Olive Drive, and Hickory Lane including sidewalk, curb, and gutter improvements, and recommended improvements in the Development Agreement and mitigation measures, subject to the review and approval of the City Engineer. Applicant shall construct striping improvements at Olive and Richards intersection as identified in the project mitigation measures. Applicant shall also work with the City Engineer to implement additional bicycle striping and or delineation enhancements at the westbound Olive Drive segment of the Olive and Richards intersections such as striped bike boxes and/or bike lane delineators subject to review and approval of the City Engineer.
52. **Hickory Lane Intersection.** Applicant shall provide the conceptual design for the future configuration of the 3-way intersection of Hickory Lane and Olive Drive, and construct the improvements subject to the review and approval of the City Engineer.
53. **Olive Drive Bike Path** To the extent it is feasible to the satisfaction of the City Engineer, applicant shall locate a twelve (12) foot wide bicycle/ pedestrian path with a minimum four (4) foot wide

separation from the south edge of pathway pavement to back of curb or as otherwise approved by the City Engineer. Applicant shall provide landscape and irrigation improvements on both sides of the path to match the existing landscape design along Olive Drive, subject to the review and approval of the City Engineer.

54. **Transportation Study** Applicant shall implement mitigation measures contained in Section 4.11 of the Lincoln 40 EIR transportation study conducted as part of the project review, subject to the review and approval of the City Engineer.

55. **Bike Parking.** The applicant shall provide 725 bike parking spaces with 25% of the bike parking being short-term and 75% of the spaces being long term.

Right-of-Way, and Easements

56. **Right of Way.** Applicant shall submit any required right of way vacation, or dedication applications, and exhibits, subject to the review and approval of the City Engineer.

57. **Easements.** Utilities located within common access areas shall be privately owned and maintained. Provisions shall be made for easements for common access, drainage, utilities and provisions for maintenance and repair of any shared utilities, driveways, or walkways. These provisions shall be subject to the review and approval of the Public Works Director and/or the City Attorney prior to the recordation of the reservation of easement. Reservation of the easements for reciprocal access, drainage, utilities and maintenance for shared facilities for this subdivision shall be shown on the grant deed exhibits.

A 10 foot wide Public Utility, Signage and Maintenance Easement (P.U, S. & M.E. shall be provided behind the future sidewalk on Olive Drive.

58. **Hickory Lane Right of Way Vacation.** The right of way of Hickory Lane shall be obtained prior to any initial construction activities on the subject site. Applicant shall have two right of way vacation options listed below.

- a. City Vacates All of Hickory Lane. City vacates the entirety of the right of way, while reserving a public utility easement over existing utilities. The applicant shall submit a letter of agreement between the applicant and the two property owners at the corner of Hickory Lane and Olive Drive confirming that an easement will be granted conditioned upon the City vacating the Hickory Lane ROW allowing for the proposed project to use Hickory Lane for the proposed project drive way.
- b. City Vacates a Portion of Hickory Lane. Applicant shall provide written evidence of outreach to property owners to obtain an access easement to the satisfaction of the City Engineer, and the City shall vacate a portion of the Hickory Lane right of way to the end of the cul-de-sac, and reserve a public utilities easement. Applicant shall enter a permanent maintenance agreement with the City to maintain roadway and sidewalk improvements along Hickory Lane, subject to the review and approval of the City Engineer.

Waste Removal

59. **Trash Enclosures.** Trash enclosures shall comply with the City's Stormwater Management and Discharge Control Ordinance (Ordinance) as amended over time. In addition, all required trash enclosure areas shall be constructed with a minimum 6' high wall and shall have a self-closing gate constructed of solid metal materials and attached to posts embedded in concrete. Details of trash enclosure design shall be submitted for review and approval by the Community Development & Sustainability Department and Public Works Department prior to the issuance of building permits. Trash enclosure and recycling areas shall be adequately screened from public view and shall be architecturally compatible with proposed building design by utilizing consistent materials and colors.
60. **Davis Waste Removal.** Documentation of approval from Davis Waste Removal for the quantity, location and size of proposed project trash and recycling enclosures shall be submitted with the building permit application. Documentation shall also include verification from Davis Waste Removal will be able to serve the project for garbage, recycling and green waste removal and that their vehicles will be able to accommodate waste removal from the proposed toter areas. Times and locations for garbage and green waste storage adjacent to streets may be limited through the use of signage or other means. Provisions for such limitations shall be submitted at the time of Final Map and shall be subject to review and approval of the City Engineer. If signage is used to limit storage, Applicant shall pay for installation of signs.
61. **Construction Waste Recycling.** Project shall comply with the City's Construction and Demolition Ordinance for diversion of construction and demolition waste from the landfill, through recycling, reuse and or waste reduction. Compliance shall be demonstrated as set forth in section 32.04.080 of the Davis Municipal Code. Prior to issuance of building permit, the applicant shall submit to the City for review and approval a Construction Waste Recycling Program for the project including provisions for participation in the County Wood Waste Reduction program or equivalent. The recycling program should include the recycling and re-use of all construction materials and garbage generated by the construction work, such as shipping boxes and packing materials, beverage containers, metal scraps, etc.

Utilities

62. **Sewer Capacity Study.** An updated sewer capacity study may be required at the time of construction documents for review and approval of the City Engineer.
63. **Utility Plan.** A utility plan shall be approved by all applicable utility providers prior to the issuance of permits for any building. The applicant shall prepare a final site plan and elevations of all on-site mechanical equipment (including HVAC condensers, transformers, switch boxes, backflow devices, PG&E transformers, etc.) and specifics of how such equipment shall be screened from public view. This plan, with an approval stamp from the City of Davis Community Development & Sustainability Department, shall be submitted by the applicant to the utility provider for review. Any necessary changes or deviations from the approved utility location and/or screening shall be reviewed by the Community Development & Sustainability Department prior to installation and may be subject to discretionary Design Review processing and fees by the Community Development & Sustainability Department.
64. **Size and Locations** All sizes, locations and grades of the utilities, including private common utilities to serve this project shall be subject to the review and approval of the City Engineer. Concurrent with submission of the improvement plans, Applicant shall submit improvement plans for the public improvements subject to review and approval of the City Engineer.

65. **Dry Utilities.** Prior to approval of the improvement plans, Applicant shall submit locations of joint trench and other dry utilities. Details shall include but not be limited to the following: HVAC, gas meters, and electrical boxes for each unit and service points, conduit wire sizes, and poles numbers for street lights.
66. **Backflow Prevention Equipment.** Backflow prevention devices may be required for units within this development. Prior to issuance of building permits for any structure within the subdivision, plumbing plans shall be submitted subject to the review and approval of the City Engineer.
67. **Equipment Screening.** All ground mounted utility appurtenances such as transformers, AC condensers, backflow devices, etc., shall be located out of public view and adequately screened in such a manner as to minimize the visual and acoustical impact. To the extent possible, equipment shall be located behind the building setback, on the side of the building or outside public view. Equipment within public view shall be screened to the satisfaction of the Community Development and Sustainability Director and may include a combination of landscaping and/or masonry or lattice walls or berms. All gas and electrical meters shall be concealed and/or painted to match the building.
68. **Street Lighting.** Final street lighting design, including location and number of fixtures, are subject to the review and approval of the City Engineer.
69. **Exterior Lighting.** All exterior residential lighting shall be directed so as to not adversely impact traffic or adjacent sites. Light standards should generally not exceed 15 feet in total height and shall comply with the provisions of the City's Outdoor Lighting Control Ordinance as well as the City's Security Ordinance. A detailed on-site lighting plan, including a photometric diagram and details of all exterior light fixtures shall be reviewed and approved by the Community Development & Sustainability Department and Police Department prior to the issuance of permits.

Stormwater and Drainage

70. **Erosion Control Plan Required.** An Erosion Control plan shall be prepared by a registered Civil Engineer, for review and approval by the City Engineer prior to commencement of construction of improvements. This plan shall incorporate the following requirements:
- a. This plan will include erosion control measures to be applied during the rainy season (the months of October through April, inclusive). These measures may include limitations on earth moving activities in sensitive areas during this time period.
 - b. This plan will include methods of revegetating denuded earth slopes. Revegetation will be accomplished by a method which reseeds and temporarily protects the ground so that 90% germination is achieved. Future building pads are not subject to this requirement, although measures will be required to contain sediments.
 - c. The developer shall implement wind erosion and dust control measures to be applied on a year-round basis. This shall include an effective watering program to be implemented during earth moving activities. Erosion control measures may include limitations on earth moving activities in sensitive areas during the rainy season.
 - d. All sediments generated by construction activities shall be contained by the use of sediment traps, such as silt fences, settling basins, perimeter ditches, etc.
 - e. When building construction will be delayed beyond the next rainy season, the developer shall provide erosion control measures on each individual lot.

71. **Grading Plan.** The Applicant shall submit a final grading plan for the project prepared by a registered Civil Engineer, concurrent with the subdivision improvement plans for review and approval of the City Engineer. The Applicant shall provide information showing where all proposed grading cuts/fills will occur within the canopy of any existing trees to remain to the Urban Forest Manager. All accessibility features and bicycle access routes are to be clearly delineated on the site.
72. **Stormwater System Sizing.** The storm water design calculations for detention and water quality require review at the full design level. These systems may increase in size pending full review of the design at time of construction documents.
73. **Hydromodification Requirement.** As required by Section E.12.f. of the Phase II Small MS4 General Permit, the hydromodification requirement for sites that create or replace 1 acre or more of impervious surfacing is for the 2-year 24 hour storm event. The accepted source for the 2-year 24 hour storm event comes from the NOAA website for the Hydrometeorological Design Studies Center using the Precipitation Frequency Data Server. Using the Davis 2 WSW EXP Farm (04-2294) station, the figure for the 2-year 24 hour storm event is 2.26 inches.
74. **Stormwater Quality Plan.** The applicant and developer shall provide prior the issuance of building permits subject to the review and approval of the City Engineer a complete SW Quality Diagram the provides all of the following:
- a. The total amount of existing vs. proposed impervious surfaces for the project.
 - b. All site design measures identified on the plan consistent with Section E.12.b. of the Phase II Small MS4 General Permit.
 - c. All of the drainage sheds delineated with each corresponding treatment control measure clearly identified on the plan.
 - d. Direction of flow for all drainage. All drainage on site should be directed to treatment control measures and bioretention areas.
 - e. All final calculations for each drainage shed to show sizing for treatment control measures, bioretention areas for the 85th percentile 24 hour storm event for Davis. The calculations should show weighted imperviousness of each drainage shed, the flow or volume dependent upon the treatment control measure selected, the sizing required of the treatment control measure to treat the amount of flow or volume generated and the methodology chosen to determine calculations.
 - f. Final detailed cross-sections for engineered substrate of the proposed bio-retention areas and pervious paving.
 - g. Final detailed cross-sections for treatment control measures.
75. **Stormwater Calculations.** The storm water quality design calculations for retention shall need to be confirmed to be consistent with the standards of Section E.12.f. of the Phase II Small MS4 General Permit. The developer/applicant shall provide calculations with the submittal of the construction plans with the application for a building permit to demonstrate consistency with this standard. The developer/applicant may be required to go through additional discretionary permits if the proposed retention systems are required to be modified in order to comply with standards of the Phase II Small MS4 General Permit. The applicant and developer shall assume all risk and responsibility for all associated costs and time with redesign and obtaining additional discretionary permits
76. **Grading Plan Review.** Prior to approval of grading plans for this project, the applicant shall satisfy the City Engineer that the proposed grading will not adversely affect adjacent properties. In addition, retaining walls shall be provided by the developer wherever the grade differential between adjacent

lots is 0.5 feet or greater. Masonry retaining walls shall be provided when such grade differential is 1.0 feet or greater.

77. **Drainage Plan Required.** An on-site drainage plan to serve the subdivision shall be submitted for review and approval of the City Engineer concurrent with the subdivision improvement plans. On-site drainage improvements shall be designed to collect and convey the 10% storm flows. Final calculations for the 10% and 1% storm events shall be provided.
78. **Stormwater Maintenance Agreement.** A stormwater maintenance agreement shall be submitted subject to the review and approval of the Public Works Director prior to the issuance of the building permits. A copy of the fully executed and recorded SW maintenance agreement shall be provided to the Public Works Director prior to occupancy.
79. **Stormwater Pollution Prevention Plan (SWPPP)** The developer shall submit a full SWPPP, subject to the review and approval of the Public Works Director prior to the issuance of building permits. The SWPPP shall be developed by a State of California certified QSD. The SWPPP shall be submitted along with a completed NOI and WDID number.
80. **Supporting plantings.** All supporting plantings and supporting supplementary irrigation for all bioretention areas and treatment control measures shall be included in a landscape plan set subject to review and approval of the Public Works Director prior to the issuance of building permits. No plant species identified on the California Invasive Plant Inventory Database shall be permitted on site.

Landscaping

81. **Tree Modification Permit.** A Tree Modification Permit is required prior to removal of the trees or pruning of any protected trees.
82. **Tree Mitigation.** The applicant shall comply with the City's Tree Preservation Ordinance to mitigate for the removal of trees of significance (5" or greater dbh) or other protected trees on the property. Mitigation may include replanting the equivalent dbh of the removed trees on-site or off-site, or an in-lieu fee payment to the Tree Preservation Fund prior to issuance of building permits, as determined by the Urban Forest Manager and Community Development and Sustainability Department. Replacement trees shall be shown and included in the construction documents.

In addition, the Arborist Report has the following specific mitigation measures, which shall be met:

Two Landmark Cork Oak Trees

The two landmark cork oaks trees along Olive Drive that will be affected by the project has improvement within their protection zones; described below.

Tree #	TPZ (Ft.)	Description of Proposed Development
40	53	Building and wall on piers 30' west of trunk, sidewalk 13' northwest and 22' west of trunk
41	57	Building 48' northwest of trunk; wall on piers 13' west of trunk; sidewalk 8' west, 44' west, 38' northwest, and 48' northeast of trunk.

In order to minimize development impacts, the following specific design features and construction methods shall be observed within the modified tree protection zones (MTPZ) of both trees (along with the tree preservation guidelines below). The improvement plans shall include the design details and construction methods within the trees' protection zones, which are summarized below.

- All work within the MTPZ's of the trees is to be supervised by the Consulting Arborist;

- Overbuild for the building is to be limited to the path surrounding the building (use shoring as needed);
- The grading limits of the building closest to the trunk within the protection zone of tree #40 will need to be excavated with water and any roots 2" or larger pre cut prior to excavation;
- The MTPZ's are to be fenced off and protected from soil disturbance prior to demolition and throughout the construction period;
- Concrete walkways are to be installed on grade with no soil scarification;
- Walls are to be installed on grade on piers avoiding roots >2" in diameter;
- A drip irrigation system (emitters on 2' centers in MTPZ where possible) is to be installed under 4 inches of woodchip mulch, which will be maintained at that thickness.
- The trees will need to be irrigated once every two weeks (during the spring through fall) to wet the soil to a three-foot depth, continuing indefinitely;
- The Consulting Arborist should inspect the trees throughout the construction period and every spring and summer for at least three years following the end of construction. The inspection would include an assessment of and recommendations to improve tree health, preservation measures and irrigation management.

Trees Modification Guidelines. The guidelines presented below shall be followed for all trees to be preserved to ensure the least impact considering the project site plan.

- Indicate surveyed trunk locations and tree protection zones (TPZ's) as described in attached table on all construction plans for trees to be preserved. Note, where infrastructure is located within protection zones, indicate a modified tree protection zone (MTPZ) as close to infrastructure as possible (minimize overbuild).
- Engage the Consulting Arborist to revise development impact assessment (as needed) for trees to be preserved once construction plans are drafted.
- Tree preservation measures should be indicated on all construction plans.
- Avoid grading, compaction, trenching, rototilling, vehicle traffic, material storage, spoil, waste or washout or any other disturbance within tree protection zones (TPZ's or MTPZ's).
- Conduct a meeting to discuss tree preservation guidelines with the Consulting Arborist and all contractors, subcontractors and project managers prior to the initiation of demolition and construction.
- Prior to any demolition activity on site, identify (tagged) trees to be preserved and install tree protection fencing in a circle centered at the tree trunk with a radius equal to the defined tree protection zone (see table) or as indicated on the construction plans for MTPZ's. Tree protection fences should be made of chain link with posts sunk into the ground. These fences should not be removed or moved until construction is complete. Avoid soil or above ground disturbances within the fenced area.
- Any pruning required for construction or recommended in this report should be performed by an ISA Certified Arborist or Tree Worker. Pruning for necessary clearance should be the minimum required to build the project and performed prior to demolition.
- Any work that is to occur within the protection zones of the trees should be monitored by the Consulting Arborist.
- If roots larger than 1.5 inches or limbs larger than 3 inches in diameter are cut or damaged during construction, contact Consulting Arborist as soon as possible to inspect and recommend appropriate remedial treatments.
- All trees to be preserved should be irrigated once every two weeks during non-Winter months to uniformly wet the soil to a depth of at least 18 inches under and beyond their canopies.

83. Landscape Plan Required. Detailed landscape and irrigation plans shall be submitted and approved by the Community Development and Sustainability and Parks and Community Services Departments prior to the issuance of building permits. Landscape plans shall specify the following:

- a. Location, size and quantity of all plant materials;
- b. A plant legend specifying species type (botanical and common names), container size, maximum growth habit, and quantity of all plant materials;
- c. Location of all pavements, fencing, buildings, accessory structures, parking lot light poles, property lines, and other pertinent site plan features;
- d. Planting and installation details and notes including soil amendments;
- e. Existing trees on site shall be identified. Identification shall include species type, trunk diameter at 4'-6" above adjacent grade, and location on site. Trees planned for removal or relocation shall be marked on the plans, methodology to preserve trees in place shall be provided on the plans;
- f. Details of all irrigation (drip and sprinkler) as well as all equipment such as backflow, controller and meter devices identified;
- g. Two deep watering tubes per tree planted in an isolated parking lot planter island.

84. **Parking Lot Shading.** Plans and construction shall comply with the City's Parking Lot Shading and Master Parking Lot Tree list guides. A separate parking lot shading diagram shall be reviewed and approved by the Community Development & Sustainability Department prior to issuance of building permits. The parking lot shading diagram shall include all light poles and utility boxes. Parking lot trees shall be located so as to not interfere with parking lot light poles.

85. **Maintenance Statement.** The following statement shall be included on the final landscape plan set: "All landscaped areas shall be maintained in perpetuity upon completion and kept free from weeds and debris and maintained in a healthy, growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days. Significant trimming or pruning will not be permitted without prior City approval. Trees shall be planted and continuously maintained throughout the parking lot drive aisles to insure that within 15 years after establishment of the parking lot; at least fifty percent (50%) of the parking area will be shaded at noon in August."

86. **Engineered Soil.** The applicant shall incorporate engineered soil under the multi-use pathway and driveway entrances, subject to review and approval of the City Arborist and Public Works Department. Measures shall be shown in the construction documents prior to issuance of permits.

87. **No Thorny Plants Near Paths.** No plants with thorns or barbs shall be planted within 5 feet of a walking path or the public right-of-way.

88. **Tree Planting.** All trees shall be a minimum of 15 gallons in size. All trees shall be planted and staked in accordance with Parks and Community Services Department standards. All parking lot trees shall be irrigated with a minimum of two deep watering tubes.

89. **Landscaping Plan.** The developer shall submit detailed landscape plan prior to building permit application submittal for the City review and approval.

90. **Landscaping Standards.** Shrubs shall be a minimum of 5 gallons in size. Ground cover may be 1 gallon or less in size. Ground cover areas shall be supplemented with additional larger size materials to provide variation and texture.

91. **Accent Landscaping.** Bark and other surface materials may be utilized in planter areas as a mulch or accent material. Large areas that utilize only bark, decomposed granite, or other surface/mulch material are not acceptable and shall include shrubs, trees and groundcover to provide variation, texture and shade.
92. **Water Efficient Landscaping Requirements.** The project shall comply with the Water Efficient Landscape requirements of the City as required by the State. Verification of compliance with this ordinance shall be to the satisfaction of the Community Development & Sustainability Department and shown on the building permit plans set with the irrigation plan.
93. **Irrigation Systems.** All plant materials, including ground cover shall be serviced with an automatic irrigation system. All irrigation systems shall be subject to review and approval by the Community Development & Sustainability Department and the Public Works Department prior to issuance of permits.
94. **Parking Lot Planters.** Minimum parking lot planters shall be provided in accordance with the City's Parking Lot Shading Guidelines. A minimum 6' by 6' planting area shall be provided for each tree planted in a tree well or planter strip. A minimum 6' by 8' planting area shall be provided for each tree planted in a planter island. Planter dimensions are measured from the interior side of the curb.
95. **Perimeter Walls/Fencing.** As applicable to the project, applicant agrees to construct privately owned and maintained perimeter fencing or other improvements, subject to the approval of the Parks and Community Services Director, where any lots of this Development abut any existing or proposed public lands, including drainage ponds, drainage channels, greenbelts, and/or parks. Applicant agrees to construct said fencing at the time of building construction on each of the respective lots, and also agrees that City may withhold final occupancy approval on any such abutting lots, until such fencing is constructed.
- Applicant agrees to prepare sketches and plans for such perimeter fencing, including proposed location, subject to the review and approval of the Community Development Department prior to issuance of the first building permit.
- Applicant further agrees that the fencing shall be installed on private property adjacent to the property line.
96. **Landscaping Inspection.** Landscaping shall be installed consistent with the approved landscape plan prior to final certificate of occupancy and inspected by Planning staff. All trees shall be planted and staked in accordance with Parks and Community Services Department standards.

VII. PRIOR TO DEMOLITION, GRADING, OR SITE DISTURBANCE

97. **Encroachment Permit Required.** All work within the public right-of-way (ROW), including but not limited to utilities and grading, shall be explicitly noted with the building plans. The applicant shall obtain all necessary encroachment permits from the City of Davis Public Works Department prior to issuance of building permits for all work and construction that encroach within or over the public right-of-way, including, but not limited to: balconies, fire ladders, outdoor restaurant seating, bike racks, water meters, backflow devices, signs and curb/gutter/sidewalk improvements.
98. **Biological Clearance Application.** Prior to issuance of a demolition, grading, building permit or other improvement activities on the site, a biological clearance application shall be submitted by the

applicant for review by the City and may include a biological survey as established in the Mitigation Monitoring Plan. The study shall be consistent with City ordinances and shall address whether there are endangered and/or protected species on the site. The applicant shall implement all mitigation measures that are identified as required as a result of the survey. The survey shall be conducted not less than thirty days prior to any grading activity. The applicant shall implement all mitigation measures that are identified as required as a result of the survey consistent with the mitigation measures set forth in the project EIR.

99. **Construction Management Plan.** Prior to issuance of any permit or inception of any construction activity on the site, the developer shall submit a construction impact management plan including a project development schedule and “good neighbor” information for review and approval by the Community Development and Public Works Departments. The plan shall include, but is not limited to, public notice requirements for periods of significant impacts (noise/vibration/street or parking lot closures, etc.), special street posting, construction vehicle parking plan, phone listing for community concerns, names of persons who can be contacted to correct problems, hours of construction activity, noise limits, dust control measures, and security fencing and temporary walkways. Work and/or storage of material or equipment within a City right-of-way shall be reviewed on a case-by-case basis and is subject to review and approval of the City Engineer. Such use of the right-of-way may require a separate Encroachment Permit.
100. **Pre-Construction Meeting.** Prior to the start of any work on-site, the applicant shall request and attend a preconstruction meeting to include project general contractor, owner representative, as well as City representatives including Community Development and Sustainability and Public Works Departments.

VIII. DURING CONSTRUCTION

101. **Construction Times and Noise Impacts.** The developer/applicant shall be responsible for informing all subcontractors and construction crews about construction start and finish times including appropriate ambient noise impacts consistent with city code and of all applicable mitigation measures.
102. **Air Quality During Construction.** The following actions shall be taken during construction to minimize temporary air quality impacts (dust):
- a. An effective dust control program should be implemented whenever earth-moving activities occur on the project site. In addition, all dirt loads exiting a construction site within the project area should be well watered and/or covered after loading.
 - b. Apply water or dust palliatives on exposed earth surfaces as necessary to control dust emissions. Construction contracts shall include dust control treatment in late morning and at the end of the day, of all earth surfaces during clearing, grading, earth moving, and other site preparation activities. Non-potable water shall be used, where feasible. Existing wells shall be used for all construction purposes where feasible. Excessive watering will be avoided to minimize tracking of mud from the project onto streets.
 - c. Grading operations on the site shall be suspended during periods of high winds (i.e. winds greater than 15 miles per hour).
 - d. Outdoor storage of fine particulate matter on construction sites shall be prohibited.
 - e. Contractors shall cover any stockpiles of soil, sand and similar materials.
 - f. Construction-related trucks shall be covered and installed with liners and on the project site shall be swept at the end of the day.

- g. Revegetation or stabilization of exposed earth surfaces shall be required in all inactive areas in the project.
- h. Vehicle speeds shall not exceed 15 miles per hour on unpaved surfaces.

103. **Ozone Precursors During Construction.** In order to minimize the release of ozone precursors associated with construction, the following standard requirements developed by the Yolo/Solano AQMD shall be implemented during construction and included as notes on all construction documents:

- a. Construction equipment and engines shall be properly maintained.
- b. Vehicle idling, including diesel equipment, shall be kept below 5 minutes.
- c. Construction activities shall utilize new technologies to control ozone precursor emissions, as they become available and feasible.
- d. To the extent possible, construction equipment shall be equipped with catalysts and filtration (diesel particulate filters). Where an option exists between two similar pieces of equipment, the newer and/or more controlled piece of equipment shall be used.
- e. During smog season (May through October), the construction period shall be lengthened so as to minimize the number of vehicles and equipment operating at the same time.

104. **Noise Reduction Practices.** The applicant shall employ noise-reducing construction practices. The following measures shall be incorporated into contract specifications to reduce the impact of construction noise.

- a. All equipment shall have sound-control devices no less effective than those provided on the original equipment. No equipment shall have an un-muffled exhaust.
- b. As directed by the City, the developer shall implement appropriate additional noise mitigation measures including, but not limited to, changing the location of stationary construction equipment, shutting off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, or installing acoustic barriers around stationary construction noise sources.

IX. PRIOR TO CERTIFICATE OF OCCUPANCY

105. **Record Drawings.** The Applicant's engineer shall prepare Record Drawings that accurately indicate the completed grades, and improvements. A pad certification letter shall be provided after completion of grading operations. Reproducible mylar copies, AutoCAD Files, and Adobe PDF files of the Record Drawings shall be provided to the City after completion of all improvements.

X. ONGOING

106. **Backflow Equipment.** Backflow prevent valve wheels and stems shall be maintained in a manner that enables inspection in order to determine whether or not the valve is open.

107. **Undeveloped Site Maintenance.** The applicant shall be responsible for the ongoing maintenance and upkeep of undeveloped portions of the project site in accordance with the City of Davis Municipal Code. The applicant shall consult with Public Works for use of Best Management Practices to manage erosion control on the site.

108. **Bike Loan Program by Planning Commission.** The applicant/developer is encouraged to consider the feasibility of instituting a bike loan program as part of amenities offered to prospective Lincoln40 residents.

EXHIBIT B (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

[To be inserted]

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 ExhibitC 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 its 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.