ORDINANCE NO. 2596

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF DAVIS, JOHN OTT, AN INDIVIDUAL, AND BLUE BUS L.P., A CALIFORNIA LIMITED PARTNERSHIP RELATING TO THE DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS PLAZA 2555

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 November 29, 2017, the Sacramento Area Council of Governments issued a consistency letter confirming that the Plaza 2555 project is consistent with the 2016 Metropolitan Transportation Plan/Sustainable Communities Strategy; and

WHEREAS, City Council determined based on the findings set forth in Resolution No. 20-177 that the Plaza 2555 Project satisfies all of the criteria of a Transit Priority Project and is exempt from further environmental review pursuant to Public Resources Code Section 21155.1; and

WHEREAS, the City Council of Davis adopted project entitlements for the Plaza 2555 Project, including the General Plan Amendment, South Davis Specific Plan Amendment, Rezoning and Preliminary Planned Development Permit, and Affordable Housing Plan; and

WHEREAS, Developer desires to carry out the development of the approximately 7.34 gross acre property located at 2555 Cowell Boulevard (APNs 069-530-030 and 031) as described in the Development Agreement (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 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 August 29, 2018 on the Plaza 2555 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 Plaza 2555 Project entitlements.

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 Plaza 2555 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; and

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. 20-178, adopted by the City Council on November 17, 2020 which Resolution and exhibits are incorporated herein by reference as if set forth in full;
D. The City's South Davis Specific Plan, as amended by the South Davis Specific Plan Amendment adopted by the City Council by Resolution No. 20-179 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 Development Agreement and other actions and entitlements relating to the Property, including all attachments thereto;
F. All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Development Agreement, and other actions and entitlements relating to the Property; and
G. 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, 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 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 7. Upon the effective date of this Ordinance, the City Manager and the City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City.

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 General Plan Amendment is approved at a later date, then the effective date of this Ordinance shall be the date on which the General Plan Amendment becomes effective.

INTRODUCED on the 17th day of November, 2020, and PASSED AND ADOPTED by the City Council of the City of Davis this 1st day of December, 2020, by the following vote:

AYES: Arnold, Carson, Frerichs, Lee, Partida

NOES: None

Gloria J. Partida
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A

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 JOHN OTT AND BLUE BUS L.P.

Relating to the Development

of the Property Commonly Known as Plaza 2555

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this_____day of _____, 2020, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and JOHN OTT, an individual, and BLUE BUS L.P., a California limited partnership (John Ott and Blue Bus L.P. jointly, 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 properties divided into two parcels as described in Exhibit A attached hereto and incorporated herein by this reference. Developer seeks to develop on a portion of the site the Plaza 2555 residential, high-density, apartment project (the "Project"). The Project will consist of up to 200 units and approximately 500 bedrooms. The Project proposes row-house style (townhouse) and stacked flat apartment units in two- and three-story buildings separated by landscaping. Specifically, the Project proposes a mix of micro (studio), 1-bedroom, 2-bedroom, and 3-bedroom apartment units. The Project will include a leasing office, commercial space that could support a day care or other permissible uses, multiple indoor activity areas, pedestrian pathways, landscaped courtyards, common open space areas, approximately 283 vehicle parking spaces, 2 bicycle parking spaces per unit, and an approximately 1acre, but in no event less than 0.90 acres, land contribution site for transitional housing, supportive housing, or related services that support low income households. The land contribution site will include approximately 61 additional parking spaces to be leased back to the Project for at least 10 years.

C. The Project was determined to be statutorily exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 21155.1 (Transit Priority Project) of the Public Resources Code.

D. 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 approximately 7.34 acre property located at 2555 Cowell Boulevard (APNs 069-530-030 and 031) (" the Property"), and further detailed in Recital E below. 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.

E. 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) General Plan Amendment #1-17 (Residential High Density)

(2) South Davis Specific Plan Amendment #1-17

(3) Zoning Amendment: from PD 7-95 to PD # 1-17

(4) Affordable Housing Plan #1-17

F. 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.

G. 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 Section 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 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 sections 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 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.

Developer has informed the City that John Ott intends to transfer all his interest in the Project to Blue Bus L.P., a California limited partnership currently comprised of the following partners: RPC Davis, LLC, John Ott, and Richard Harris. If this transfer occurs prior to the commencement of any construction on the Project, Ott and Blue Bus shall provide written notice to City of this transfer and approval of this transfer shall be deemed approved upon receipt of the notice. Thereafter Blue Bus L.P. shall be the Developer under this Agreement. If the transfer does not occur prior to the commencement of construction then the transfer shall be subject to the provisions of this section.

Except as provided in the paragraph immediately above, 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 identity, 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 and assignor 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, other than in accordance with this Section 103, that attempts to sever such conditions shall constitute a default under this Agreement and, subject to the procedure set forth in Section 400, 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, exclusive of the transfer to Blue Bus L.P. set forth in Section 103(2)(a) above, 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 9 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) provisions regarding Developer's fulfillment of its affordable housing obligations; (e) changes to conditions, terms, restrictions or requirements applicable to subsequent discretionary actions; (f) an increase in the density or intensity of use of the Property or the maximum height or maximum gross square footage; or (g) 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, and mutual consent of the Parties. 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. Minor amendments authorized by this subsection may 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 any conditions of approval 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. Development Impact Fees and Connections Fees. The Developer shall pay Development Impact Fees and identified in Exhibit C.

2. Units Rented by the Bed. The Developer agrees that no more than 50% of the total units in the Project shall be rented by the bed rather than by the unit. Changes to this requirement may be made through a Minor Amendment process described in Section 107 of this Agreement. If Developer proposes a Minor Amendment to this Section, Developer shall provide materials demonstrating the need to deviate from the 50% unit rentals minimum requirement, and City Manager may approve or disapprove the Minor Amendment in his or her sole discretion.

3. Intentionally Reserved.

4. Affordable Housing. The Developer shall comply with the affordable housing requirements as set forth in Exhibit D.

5. Local Hiring Program. The Developer, shall implement a Local Hiring Program as set forth in Exhibit E.

6. Environmental Sustainability. The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. Developer shall implement the items described in Exhibit F.

7. Reimbursement for Property Taxes. Prior to issuance of building permit, Developer shall record a covenant on the title to the Project Site, excluding the land contribution 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.

8. Unit Mix: The maximum number of bedrooms in a Project unit shall not exceed (3) bedrooms.

9. Bus Shelters: The Developer shall construct a standard bus shelter at the southwest corner of Research Park Drive and Cowell Blvd., which property is owned by the City, subject to all required City approvals.

10. Rental Parking Spaces: The Developer shall impose upon tenants a separate rental payment for parking spaces at Plaza 2555. Such rental payment for parking spaces shall be separate from residential rental rates imposed upon tenants at Plaza 2555. If a

tenant does not rent a parking space, the rental payment will not be imposed upon the tenant. The purpose of the rental payment for parking requirement is to discourage vehicle trips and incentivize alternative, sustainable forms of transportation, such as public transportation, biking, or walking.

11. Improvements at the Property to be constructed by the Developer include, but are not limited to, the following frontage improvements:

(a) The City may, in its sole discretion, require the construction of a bike lane with buffer along the Cowell Blvd project frontage at Developer's expense. The buffer final design will be subject to City approval and will not be a concrete barrier but rather other nonpermanent delineator barriers.

(b) To facilitate pedestrian travel between the project and Playfields Park and the 'W' Line bus stop, a mid-block pedestrian crossing will be constructed along the Research Park Drive project frontage. The crossing will be located near the Playfields Park entrance and include a signed and marked crosswalk and a pedestrian actuated RRFB to alert approaching motorists of cross pedestrian / bicycle traffic.

C. [Sec. 202] Subsequent Approvals. The Developer's vested right to develop pursuant to this Agreement is subject to subsequent discretionary approvals. In reviewing and acting upon subsequent discretionary approvals, and except as set forth in this Agreement, the City shall not impose any conditions that preclude development of the Project for the uses or the density and intensity of use set forth in this Agreement. Any subsequent discretionary approvals, except conditional use permits, shall become part of the Project Approvals once approved and after all appeal periods have expired or, if an appeal is filed, if the appeal is decided in favor of the approval. The known subsequent approvals are set forth in Exhibit B.

Design review approvals and Final Planned Development approvals are subject to review pursuant to the procedures set forth in Chapter 40 of the Davis Municipal Code, and shall remain in effect for the term of the Agreement. A Final Planned Development application that is consistent with this development agreement, the provisions of the Preliminary Planned Development, and that is in conformity with the General Plan and Article 40.22 of the Davis Municipal Code shall be presumed valid, subject to all appropriate findings by the Planning Commission and/or City Council, as set forth in Section 40.22.110.

D. [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.

E. [Sec. 204] [Intentionally Reserved]

F. [Sec. 205]. [Intentionally Reserved

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

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, 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; 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).

1. 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. Design, Construction, and Improvement Plans. All project construction and improvement plans for the Project, shall comply with the rules, regulations and design guidelines in effect at the time the construction improvement plans are 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. No such waiver is recognized for rights vesting in accordance with the decision of *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976); 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.

(d) 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.

H. [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 issuance of a

certificate of 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 Developer obtaining a certificate of 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 Section 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; however, such additional fees, charges, dedication requirements, or improvement requirements shall relate only to the Major Amendment and shall be delineated in the Major Amendment.; 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 Section 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 Section 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 National Pollution Discharge Elimination System ("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. All improvements necessary to service new development shall be completed prior to issuance of a certificate of occupancy for the Project or any portion of the Project.

ARTICLE 3 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 material 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. 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 4 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 material 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 reasonable 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, after advising the Developer in writing of the specific areas of concern, the City Manager may, with written notice to the Developer, 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, other than the City, 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 such time as developers should reasonably have known 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 the appeal period has expired following the issuance of a final order 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 5 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

ARTICLE 6 Prevailing Wages.

A. [Sec. 601] Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California Labor Code Section 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 7 Project as a Private Undertaking.

A. [Sec. 700] 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 8 Consistency With General Plan.

A. [Sec. 800] 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 9 Notices.

A. [Sec. 900] 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:

Blue Bus L.P.
PO Box 4400
Davis, CA 95617
Attn: Richard Harris
E-mail: sequoia.frontdesk@gmail.com

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 10 Recordation.

A. [Sec. 1000] 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 11 Estoppel Certificates.

A. [Sec. 1100] 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, 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 Developer to execute an estoppel certificate shall not be deemed a default. In the event Developer does not respond within the required thirty (30) day period, City may send a second and final request to Developer and failure of Developer to respond within fifteen

(15) days from receipt thereof (but only if City's request contains a clear statement that failure of Developer to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by Developer of the estoppel certificate and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of City to execute an estoppel certificate shall not be deemed a default. In the event City fails to respond within the required thirty (30) day period, Developer may send a second and final request to City, with a copy to the City Manager and City Attorney, and failure of City to respond within fifteen (15) days from receipt thereof (but only if Developer's request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by City of the estoppel certificate and may be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees.

ARTICLE 12 Provisions Relating to Lenders

A. [Sec. 1200] 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 900 above.

B. [Sec. 1201] 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 13 Entire Agreement.

A. [Sec. 1300] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of thirty-six (36) pages and seven (7) 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:	Legal Description of the Property
Exhibit B:	Project Approvals and Subsequent Approvals
Exhibit C:	Development Impact Fees and Connection Fees
Exhibit D:	Affordable Housing Plan
Exhibit E:	Local Hiring Program
Exhibit F:	Environmental Sustainability Implementation Plan
Exhibit G:	Memorandum of Agreement

[Signatures on following page]

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: _____
Gloria Partida
Mayor

Attest: _____
Zoe Mirabile
City Clerk

APPROVED AS TO FORM:

_____
Inder Khalsa
City Attorney

_____
Corinne I. Calfee
Opterra Law, Inc.

"DEVELOPER"

BLUE BUS L.P., a California limited partnership

By: _____
Name: _____
Title: _____

JOHN OTT, an individual

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description

The land described herein is situated in the State of California, County of Yolo, City of Davis, described as follows:

Parcels 2 and 3 as shown on Parcel Map no. 5100, filed for record November 16, 2016, in Map Book 2016, Pages 101-102, Yolo County Records.

Excepting therefrom all of the minerals of every kind, oil, gas and other hydrocarbon substances lying 500 feet or more below the surface of the herein described property, without however, the right of surface entry.

APNs: 069-530-030 and 031

EXHIBIT B

Project Approvals and Subsequent Approvals

Project Approvals

General Plan Amendment #1-17.

South Davis Specific Plan Amendment (SPA) #1-17.

Zoning; Preliminary Planned Development #1-17.

Development Agreement #3-18 By and Between the City of Davis, and John Ott and Blue Bus L.P.

Affordable Housing Plan 1-17.

Subsequent approvals

Final Planned Development.

Design Review.

EXHIBIT C

Development Impact Fees and Connection Fees

Development Impact Fees and Connection Fees

Notwithstanding any other provisions of this Agreement and the Municipal Code, the development impact fees and connection fees set forth in this Exhibit C shall be paid by the Project developer.

DEVELOPMENT IMPACT FEES

Development impact fees shall be paid by the developer in accordance with AB 1600, based on the impacts of the Project, as set forth in the table below. These fees shall be payable prior to the Certificate of Occupancy being issued for the Project. The Developer has the right to pay any development impact fees associated with the Project at any given time after the first Building Permit has been issued to avoid upcoming increases. If fees are not paid by the fifth year, following issuance of building permit they shall be recalculated in accordance with rates applicable at the time.

DEVELOPMENT IMPACT FEE RATES

Residential Development Impact Fee's	**Multi-Family Rate Studio/1-Bedroom**	**Multi-Family Rate 2 Plus Bedrooms**
Roadways	$2,628.00	$4,262.00
Parks	$3,277.00	$3,827.00
Open Space	$564.00	$659.00
Public Safety	$622.00	$685.00
Drainage	$85.00	$85.00
General Facilities	$1,156.00	$1,730.00
Total	$8,332.00	$11,248.00

Commercial Retail Development Impact fees	**Commercial Rate per 1,000 sf**	**Commercial Day Care Per 1,000 sf**
Roadways	$17,456.00	$3,491.00
Parks	$730.00	$730.00
Open Space	$126.00	$126.00
Public Safety	$933.00	$933.00
Drainage	$118.00	$118.00
General Facilities	$860.00	$860.00

Total	$20,223.00	$6,258.00

South Davis Development Impact Fees in Mello Roos District 1990-4

CONNECTION FEES

Connection fees are due at the time of first building permit.

Water 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 and the Developer has not yet paid the fee, then the Project shall be subject to the lower fee. This connection fee is calculated when a complete building permit application is received by the City, as determined by the City Building Official and City Engineer.

Sewer 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 and the Developer has not yet paid the fee, then the Project shall be subject to the lower fee. This fee is calculated when a complete building permit application is received by the City, as determined by the City Building Official and City Engineer.

EXHIBIT D

Plaza 2555
Affordable Housing Plan
Updated: September 28, 2020

The Plaza 2555 project proposes a mix of affordable housing elements—on-site affordable housing and a land contribution to the Yolo Crisis Nursery—that address particular unmet housing needs within the City of Davis ("City"); meet the affordability requirements for a Sustainable Communities Project ("SCP") under Public Resources Code section 21155.1(c); and respect the neighborhood context. Because this project would be entirely privately funded, the components of the affordable housing plan can be both straightforward and flexible.

Background

In 2017 and 2018, we met with community members, activists, and decision-makers and developed a proposed affordable housing plan to best align with the community's then-current needs. We repeatedly heard that the City has an unmet need for small units and for bedrooms that are deeply affordable to low-income residents. We developed a Plan that addressed those needs. However, a number of other concurrent projects also addressed the same needs.

We heard from the Planning Commission and City Council in 2018 a concern that the City had already approved a number of residential projects that would focus on students and that the City would prefer future residential projects, including Plaza 2555, to focus on families rather than students.

Since then, we have continued to meet with community members, activists, decision-makers, and community groups. We have revised the Plaza 2555 Affordable Housing Plan to incorporate the feedback that we received and to respond to certain new community needs to expand and strengthen the social services safety net, especially for families.

Affordable Housing Plan

There are two components of the revised Plaza 2555 Affordable Housing Plan: on-site affordable rental units and a land contribution to the Yolo Crisis Nursery, as described more fully below.

1.) On-Site Affordable Rental Units for Very Low Income (Sustainable Communities Project).

Consistent with Public Resources Code Chapter 4.2, 21155.1, Section (c)(1), Plaza 2555 will include 5% of the rental units to be rented at an affordable rent to very low income households. If the resulting requirement is a fraction, it shall be rounded up to the next whole number. The unit mix of these very low income units shall be as follows: it will include at least 3 two-

bedroom units and at least 3 micro units. The remainder of the affordable units shall be one-bedroom units.

Very low income is defined by the statute as those households with a gross income of no more than 50% of the Area Median Income ("AMI"), adjusted for household size appropriate for the unit. We plan to use Yolo County as the "area" for calculation of applicable AMI.

With the proposed project of 200 units, Plaza 2555 would provide 10 units that are affordable to very low income households. Three of these would be two-bedroom units, four would be one-bedroom units, and three would be micro units. At current standards, the rent for such units would be 30% of the income for a household earning 50% of the AMI.

a. Qualifying Criteria

Plaza 2555's affordable housing program will be open to residents who qualify for conventional affordable housing. All affordable housing residents must demonstrate that they meet the income criteria at the appropriate level for the housing they seek. For purposes of determining eligibility, "income" shall be defined as set forth in 25 Cal. Code Regs. §6914.

Plaza 2555 management may also implement additional selection criteria, and shall ensure that all selection criteria are in conformance with all applicable laws, including but not limited to the Federal Fair Housing Act, the California Fair Employment and Housing Act, and the California Unruh Act.

b. Affordable Rent Rate Determination

For on-site affordable housing, the annual rent will equal thirty percent (30%) of fifty percent (50%) of Yolo County AMI for a Very Low Income household.

Utilities will be included in the rental rate, however costs for excessive utility use will be passed through to residents as they are to market rate tenants in order to discourage waste, enforce the project's strong water conservation efforts, and encourage the sustainable environment and reduced carbon-footprint promoted by Plaza 2555.

The on-site affordable units shall be maintained and rented as part of Plaza 2555 in perpetuity. This affordable housing plan shall be implemented through a Regulatory Agreement and Restrictive Covenants (the "Regulatory Agreement") which shall be recorded against the Plaza 2555 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 and shall be in a senior position to any deeds of trust or other security instruments recorded against the Plaza 2555 property for any purpose.

c. Reporting

Plaza 2555 management will provide an annual report in a form approved by the City no later than November 30th of each year to the City of Davis showing the number of units participating in the Program for the lease year that commenced that fall, as well as compliance with qualification criteria of the program.

2.) Land Contribution to Yolo Crisis Nursery.

In addition, Plaza 2555 also proposes to contribute approximately one (1) acre of land, but in no event less than 0.9 acres (the "Contribution Land") to the Yolo Crisis Nursery ("YCN") for the purpose of YCN creating a new, larger YCN facility that will better meet the needs of families in Yolo County.

The Yolo Crisis Nursery provides a "home away from home" for children ages zero to five whose families are in crisis and in need of supportive services. It is a short-term residence for at-risk children who can stay for up to 30 days while their families receive wrap-around services. YCN helps connect families with what they need to ensure that the families remain safe and that they have or find housing. Families remain connected with YCN for up to a year, ensuring that the families have the referrals and resources to resolve their crisis.

YCN predominantly serves very low and extremely low-income income families referred by other Yolo County social services agencies. Even though YCN does not itself income-qualify its clients, in practice 99% of the children that YCN serves come from families that are eligible for Medi-Cal. The income threshold for Medi-Cal eligibility is lower than the "very low income" threshold. Furthermore, 72% of the children come from families who are at risk of experiencing homelessness. One of the goals for YCN is to provide support for families so that they may avoid homelessness. In sum, the effect of YCN's work is to serve families at the lowest income levels.

There are only four crisis nurseries in California, and YCN is the only nursery to operate under multiple licenses in order to serve a range of children of various ages. The need for the crisis nursery is growing, but the current facility cannot be expanded to meet the growing need while still complying with the licensing requirements. A larger facility is needed.

Contributing land to the YCN supports the community's social services safety net for very low income families, enabling children to remain safe and supporting their families through crisis. The need for such services in Davis is high and may be growing: the proportion of families from Davis that YCN helped in fiscal year 19/20 doubled in comparison to the proportion from Davis in fiscal year 18/19. The land contribution would provide a significant benefit to the community for the purpose of serving people at the lowest income levels.

In the unlikely event that YCN cannot accept the Contribution Land from Plaza 2555, Plaza 2555 will offer the Contribution Land as a dedication to the City. The City shall have no obligation to accept such dedication, and in the event that the City does not accept the land dedication,

Plaza 2555 proposes to pay an annual fee to the City equal to 1.1% of the annual gross rental income of the project (the "Annual Fee"). This alternative compliance would align with prior City entitlements elsewhere.

a. *Land Contribution Process*

Plaza 2555 and YCN shall negotiate an option agreement pursuant to which YCN may exercise its option to acquire the Contribution Land, contingent upon certain conditions precedent being met, including compliance with the Subdivision Map Act and issuance of discretionary approvals by the City for the Plaza 2555 project. YCN shall have a certain time period within which to exercise its option after the occurrence of such conditions precedent. The agreement with YCN shall also specify a.) city utility extension sized for 30 apartment units to be completed by Plaza 2555 on the Contribution Land; b.) lease terms pursuant to which Plaza 2555 shall have the right to lease certain parking located on the Contribution Land for a 10-year term, with an additional 5-year extension option depending upon then-current parking needs.

If YCN does not exercise an option to acquire the Contribution Land, Plaza 2555 shall offer the Contribution Land to the City for dedication. The City shall have 180 days from said offer to accept the Contribution Land. If the City does not accept the Contribution Land, Plaza 2555 shall instead pay the Annual Fee and Plaza 2555 shall have no further obligation to either YCN or the City with regard to the contribution of land.

b. *Deed Restriction Process*

The City has required certain restrictions to be covenants running with the land on the Contribution Land if such land is acquired by YCN. After compliance with the Subdivision Map Act and immediately prior to and in conjunction with the conveyance of the Contribution Land to YCN, Plaza 2555 and City shall execute and record a Memorandum of Agreement creating covenants running with the Contribution Land.

The covenants shall specify that YCN, and its successors in interest, shall not sell or lease the Contribution Land to any person or entity other than Plaza 2555 for limited parking purposes or other than a not-for-profit corporation approved by City.

The City agrees to subordinate its covenants to financing obtained by YCN on the condition that the City be provided loan documents to review and negotiate an agreement with the lender to provide notice of default or changes in loan terms to the City.

Prior to any transfer of any interest in the Contribution Land by YCN, YCN shall provide City with at least 90 days prior written notice of the proposed transferee, together with a description of the proposed use by the transferee.

City shall have 60 days following receipt of said notice to approve or disapprove the proposed transferee in its sole and absolute discretion. The City shall retain a first right of refusal to acquire the Contribution Land and any associated improvements at the same terms and conditions offered by the proposed transferee or another amount as agreed upon by the parties. In the event City does not accept the proposed transferee within said period, the transferee shall be deemed disapproved and YCN shall not transfer any interest in the Contribution Land to the proposed transferee.

The City shall have a right of first refusal to acquire the Contribution Land in the event that YCN goes into default or foreclosure, or in the event YCN offers the property for sale to an entity that is not approved by the City. The City shall also have a right to cure or correct any default and to acquire the property from the lender in the event of default.

The covenants in the Memorandum of Agreement shall be deemed to be covenants running with the land, binding on all successors in interest. The final covenants shall be reviewed and approved by the City Attorney prior to recordation. The covenants are made expressly for the benefit of the City and City shall have full authority and standing to enforce the terms of the Memorandum of Agreement.

c. *Day care*

Plaza 2555 plans to include a daycare on site. If a day care is operated on site, Plaza 2555 will encourage the operator to accept vouchers or other subsidies.

EXHIBIT E

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 E, 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 extend throughout the construction of the Project until the final certificate of occupancy for the Project has been issued by the City.

EXHIBIT F

ENVIRONMENTAL SUSTAINABILITY IMPLEMENTATION PLAN

LEED Obligations

The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. The Developer shall meet or exceed Leadership in Energy & Environmental Design ("LEED") Gold standards, utilizing the City of Davis's identified existing and additional reach code requirements in CALGreen Tier 1 and 2, California Energy Code and Davis Municipal Code.

Transportation

The Project is oriented and designed to encourage the use of alternative transportation, including pedestrian, bike, and public transit, rather than cars, and the Project is directly accessible through landscaped walkways. The Project has prioritized pedestrian, bus, and bike access up front at the most visible corner of the Project, and has located the majority of vehicle parking and circulation at the rear of the site. Buses, bikes, delivery, drop-off, package pick-up, car share, ride hailing, and the office and lobby all converge at this point in conjunction with proposed pedestrian amenities. Electric vehicle charging infrastructure is provided at the project, as per the City of Davis EV Charging Plan approved Resolution 17-023.

- Bicycle Access: In order to encourage bicycle transit, the Project will provide the following amenities:
    - Bicycle Parking spaces in accordance with Article 40.25A of the Municipal Code; and
    - Work benches, tools and air pumping units for bicycle maintenance and minor repair in a secure area on site.

- Car Share: Two dedicated car share (Zipcar, or similar) spaces will be located in the Project parking area.

- Ride Hail: In conjunction with the car share area, the applicant will provide a convenient pullout and turnaround for ride hail/share Transportation Network Companies (TNCs).

- Vehicle Parking: All parking for multifamily rental units shall be charged separately from rent charges. Any resident may have the option of renting "parking-free housing." The parking scheme is designed to encourage residents to utilize alternative forms of transportation. On-site parking will be provided in the following four (4) pricing tiers, each with a separate, increasing cost.

    1. Tier 1: Car Share, Ride Hail, flex spaces, and drop-off at The Plaza entrance. These spots shall be provided at no cost.

2. Tier 2: Additional Long-Term Parking for the infrequent driver. These shall be low cost.
3. Tier 3: Less convenient Economy Parking for those who use their cars less frequently. The cost of these shall fall between Tier 2 and 4.
4. Tier 4: Premium parking for those who choose to pay more for the privilege of convenience. These shall be the highest cost.

Electric vehicle charging spaces will be provided at all tiers at no additional cost to residents (for EV spaces compared to non-EV), other than the cost of charging.

A conduit system shall be provided in parking areas allowing for future expansion of EV charging stations to serve all parking areas in the future. The final design shall be reviewed and approved by the City Engineer.

Site/ Landscape

The Developer will achieve reductions in irrigation demand in conformance with the state Model Water Efficient Landscape Ordinance (MWELO) by minimizing turf areas, selecting drought-tolerant landscaping, utilizing smart, high-efficiency, weather-based irrigation systems, and protecting soil moisture and integrity by maintaining a top dressing of mulch.

The Developer will attain sustainable landscape management by implementing a landscaping plan, with the following features:

- Hardscapes and parking areas will be shaded with canopy trees and structures in conformance with shade ordinances to minimize the heat island effect and to mitigate seasonal climate extremes. In the event solar installations are proposed for parking areas, canopy trees can be situated elsewhere on the site.
- "Cool paving" options will be considered for large pavement areas.
- Bike and pedestrian paths will be constructed of concrete (no asphalt)
- Shade trees will be placed extensively on site, as set forth in a Landscape Plan to be reviewed and approved by the City.

The applicant proposes to utilize creative site stormwater management strategies and best practices in conformance with applicable codes, regulations, and sustainability rating systems. Creative stormwater management strategies will include the following measures:

- Connected series of stormwater treatment planters;
- Rain gardens;
- Pervious paving to reduce impervious surface area as needed

Tree Commitments

Developer will submit formal landscape plans for City review and approval as part of its application for the project's Final PD. Specific tree commitments include the following:

- Landscaping shall provide shading of parking areas.

- Developer will utilize best practices for tree planting and root establishment. Specifically, Developer commits to the use of structured soils or suspended pavement to allow successful tree root development, to the satisfaction of the City's Urban Forest Manager.

- When planting in parking areas or along paved walkways, Developer will size pavement treatment area to adequately accommodate the tree varietal's intended size.

- Planting practice and ongoing tree health shall be subject to 3rd party verification by the City's Urban Forest Manager or a mutually agreed upon arborist. The maintenance and growth of all onsite trees will be biennially monitored by a third-party arborist who will provide recommendations to improve tree health such as pruning, mulch and irrigation practices. Inspection, maintenance and replacement costs shall be borne by the Developer or services district. Compliance with arborist recommendations is mandatory and failure to comply shall be considered a violation of project entitlements and subject to penalty. If, five years from the original date of planting, a tree is not growing at its anticipated rate or is otherwise showing signs of failure, that tree will be identified by the Urban Forest Manger or arborist who, at his or her discretion, may require tree replacement at Developer's expense.

- Attainment of shading requirements shall be demonstrated within 15 years of planting. Failure to meet shading requirements shall be considered a code violation and subject to penalty until remedied through additional plantings.

- Any removal of an established tree will be authorized in accordance with the then current Tree Planting, Preservation and Protection Ordinance. Existing trees that are removed shall be mitigated consistent with the mitigation requirements specified in the project mitigation monitoring program. For newly planted trees that are planted as part of the project that are proposed for tree removal wherein the desired removal is to accommodate the installation of photovoltaic solar array or other comparable renewable energy technology shall not be subject to a tree mitigation fee or other payment to the tree preservation fund.

Project/Site Air Quality

The applicant proposes to establish vegetation barriers adjacent to Interstate 80. The vegetation barriers will consist of border plantings as identified in the Landscape Plan from Interstate 80. Vegetation barrier species will be selected with the following guiding characteristics:

- Minimal seasonal effects (no deciduous plants)
- Low allergen, low BVOC-producing, non-poisonous
- Urban hardy
- Low maintenance
- Drought tolerant
- Preferably native and/or adapted species
- Non-invasive

Solid Waste

Developer will increase solid waste diversion from landfill of total waste created on site to a minimum of 75% at buildout (current standards require 65%).

Energy/Water Efficiency

The project will provide separate water and electrical meters to every unit.

To the fullest extent possible, the project will provide an all-electric development to eliminate natural gas, thereby reducing GHG emissions and carbon-based energy. All cooking appliances shall be electric.

Solar PV will meet City of Davis residential reach code requirements. The City of Davis Residential Energy Reach code, adopted in 2017 requires that 'low-rise multi-family comply with Tier 2 CALGreen (25% compliance margin) requirement for energy efficiency by employing energy efficiency measures and installing a PV system sized to offset a portion of the total household energy use based on TDV energy (consistent with CA Energy Commission's Solar PV Ordinance, or offsetting approximately 80% of total building electricity use). This Davis approach is referred to as PV-Plus. These measures shall apply.

Any purchase of electricity required to achieve the desired net-zero energy profile for the site and common area spaces (not provided by on-site rooftop photo-voltaic electrical generation) shall be purchased at the highest renewable rate available (100% if applicable) from the project's utility.

To the fullest extent possible, the project will provide a microgrid-ready and battery storage-ready project, including Smart Building design and load management technology.

Energy/Water Efficiency Incentives and Outreach

The applicant will provide education and outreach to residents to encourage environmentally sustainable practices, such as pamphlets outlining strategies for water and energy reduction.

This plan assumes that tenants will pay their own electricity charges, which will provide an incentive for conservation.

Unless water is individually metered, starting once the Project reaches 90% occupancy, and occurring every month thereafter, Developer shall provide a $50 gift card to the residents in the. 3-bedroom unit type, with the lowest water usage. No unit can receive a gift card for more than two (2) consecutive months.

EXHIBIT G

Memorandum of 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

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE CITY OF DAVIS AND JOHN OTT AND BLUE BUS. L.P.

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into this_____ day of _____, 20__, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and JOHN OTT, an individual, and BLUE BUS L.P., a California limited partnership (John Ott and Blue Bus L.P. jointly, the "Developer"). This agreement refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

Recitals

A. Developer owns certain real property located at the intersection of Cowell Boulevard and Research Park Drive ("Plaza 2555"), including the real property described in Exhibit A hereto ("YCN Property").

B. Developer received approval of a Preliminary Planned Development for Plaza 2555, including a General Plan Amendment, South Davis Specific Plan Amendment, Zoning Amendment, Development Agreement, and Affordable Housing Plan on _____, 2020.

C. Pursuant to the Development Agreement with the City dated as of _____, Developer has entered into an option agreement with Yolo Crisis Nursery, a California not for profit corporation ("YCN") whereby YCN has an option to acquire the YCN Property.

D. City has required certain restrictions on the YCN Property to be covenants running with the land, as set forth below.

E. The Parties acknowledge that YCN may obtain financing for improvements to the YCN Property, and the Parties agree that the covenants required by the City are not intended to interfere with, restrict, or otherwise limit YCN's ability to obtain such financing, and the Parties further agree that any restrictions imposed by this Agreement as covenants running with the land shall be subordinated to such financing by the City, subject to the conditions laid out in Paragraph 2 below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. Developer is authorized to deed the YCN Property to YCN subject to the terms hereof.

2. YCN, and its successors in interest, shall not sell or lease the YCN Property to any person or entity other than a.) Developer for parking purposes or b.) a not-for-profit corporation approved by the City. The Parties agree that the term "sell or lease" herein shall not mean or include any agreement YCN may enter into with any third party for the purpose of funding or financing of any improvements on the YCN Property subject to the conditions described in Paragraph 4 of this Agreement.

3. The City shall retain a first right of refusal to acquire the YCN Property and any associated improvements at the lesser amount of the following: (1) the same terms and conditions offered by the proposed transferee, or (2) the fair market value of the YCN Property with the covenants pertaining to this right of first refusal. Nothing herein shall preclude the Parties from agreeing upon an alternative amount in writing.

4. The City will subordinate its interest in the covenants pertaining to the right of first refusal described herein to the lien of a loan or loans to be made to YCN upon satisfaction of the following conditions: (i) the City shall have been provided with a copy of the proposed loan documents at least thirty (30) days prior to their execution; (ii) the proceeds of the loan shall be used to construct the proposed improvements and/or facilities equipment on the YCN Property; and (iii) the City and lender shall have entered into a commercially reasonable agreement by which the lender will provide the City with prompt notice of a default and/or acceleration of the loan and the City shall have the right to cure, on a timely basis, and to redeem the loan upon payment in full of the outstanding amount of principal and accrued interest due on the loan at the time of such payment.

5. In the event of foreclosure under a deed of trust or mortgage on YCN Property, the City shall have the right to exercise its rights under Paragraph 4 of this Agreement to redeem the loan upon payment in full of the outstanding amount of principal and interest due on the loan at the time of such payment. If the City opts not to exercise its rights under Paragraphs 4 or 5 of this Agreement, the covenants pertaining to the right of first refusal shall terminate and have no further force and effect upon title being acquired by a mortgagee, the U.S. Department of Housing and Urban Development ("HUD") or another party upon foreclosure, or upon title being

acquired by a mortgagee or HUD by a deed in lieu of foreclosure, or upon assignment of the mortgage to HUD.

•

6. Prior to any transfer of any interest in the YCN Property to a not-for-profit corporation pursuant to Paragraph 2 of this Agreement, YCN shall provide City with at least at least 90 days prior written notice of the proposed transferee, together with a description of the proposed use by the transferee.

•

7. City shall have 60 days following receipt of said notice to approve or disapprove the proposed transferee in its sole and absolute discretion. In the event City does not accept the proposed transferee within said period, the transferee shall be deemed disapproved and YCN shall not transfer any interest in the YCN Land to the proposed transferee.

•

8. The covenants and restrictions in this Memorandum of Agreement shall be deemed to be covenants running with the land pursuant to California Civil Code section 1468, binding on all successors in interest. The covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon YCN and its successors in interest for the benefit of the City, and such covenants and restrictions shall run in favor of the City without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate. The covenants and restrictions are made expressly for the benefit of the City and City shall have full authority and standing to enforce the terms of the Memorandum of Agreement.

•

9. 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:

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

City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616

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

Blue Bus L.P.
PO Box 4400
Davis, CA 95617
Attn: Richard Harris

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.

10. This Agreement shall be construed and enforced in accordance with the laws of the State of California. 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.

•

11. This Agreement is executed in duplicate originals, each of which is deemed to be an original.

12. This Agreement contains all of the terms, covenants, restrictions and conditions agreed to by City and Developer, and this Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all of the parties to this Agreement or their respective successors in interest.

•

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto execute this Agreement.

"CITY"

CITY OF DAVIS

By:_____

_____
Mayor

Attest: _____

_____
City Clerk

"DEVELOPER"

BLUE BUS L.P.,

a California limited partnership

By: _____
Name: _____
Title: _____

JOHN OTT, an individual

By: _____
Name: _____
Title: _____