

AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS AND
DEVELOPER

Relating to the Development
of the Property Commonly Known as Chiles Ranch

THIS AGREEMENT is entered into this _____, 2009, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and New Urban Development, (herein the "Developer"), pursuant to the authority of Sections 65913.4 and 65864 et seq. of the Government Code of the State of California.

Recitals

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.

The Developer owns in fee or has a legal or equitable interest in certain real property (ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in the City of Davis (herein the "Property"). The Developer desires to amend the General Plan Use Land Designation of the Property from "Residential Low-Density" to "Residential Medium-Density" to develop consistent with the General Plan of the City (herein the "General Plan"), including but not limited to the Project Approvals for the Property, as described in this Agreement. The Developer also desires to rezone the Property from a mix of Agriculture (A) and Residential One and Two Family (R-2) zoning to a residential Planned Development (PD) to permit the development of a residential subdivision on the Property. Development of the Property will include construction of new affordable housing and market rate housing uses.

To offset such amendments and rezoning the Developer has agreed to pay certain addition fee with respect to development of the Property, and to pay all other amounts in

effect at the time of payment thereof, and to develop the subject Property in accordance with the City's ordinances, rules, regulations and polices in effect as of the approval of the development by the City of the subject Property.

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

Land use entitlements have been approved by the City for the Property. The Land Use entitlements are set forth on Exhibit B attached hereto and incorporated herein (hereinafter the "Project Approvals"). The Land Use entitlements contain project conditions and mitigations that assure compliance with the General Plan and zoning regulations and cannot be changed without further entitlement processes.

Developer seeks to comply with the project conditions of approval and develop the Property in accordance with the General Plan and the Project Approvals for the Property. Development of the Property pursuant to the Project approvals is hereinafter called the "Project."

This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Developer to make significant investments in public infrastructure and other improvements, assure compliance with the conditions of approval, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for 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, provide for affordable housing and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

In exchange for the benefits to the City, 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 65865.3.

Agreements

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

General Provisions.

[Sec. 100] Property Description and Binding Covenants. The Property is located north of E. Eighth Street, south of Regis Drive, east of the Davis Cemetery, and west of Mesquite Drive and is more particularly described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. The 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. It is intended and determined 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.

[Sec. 101] Project Description.

A. The Final Planned Development Permit approval is for a 108 unit residential subdivision. All of the units shall be no greater than two stories or 30-feet in height with the exception of lots 14 and 17 being restricted to single-story, and lots 1-13 being restricted to one and a-half stories. Of the 108 units, 76 will be detached dwellings, 12 will be attached dwellings; and 20 will be condominium units.

There shall be an affordable housing component, which shall be composed of 22 low moderate income units. The low moderate income units will consist of 20 condominium units and one attached unit. There are 5 two-bedroom units; 16 three-bedroom units, and 1 one-bedroom unit. The affordable housing plan for low and moderate income levels as defined by the County of Yolo.

The remaining 86 units shall be sold as market rate units.

[Sec. 102] Term and Effective Date.

A. This Agreement shall commence and its effective date shall be thirty days after approval by the City Council. The term of Agreement shall extend for a period of _____ thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto, subject to the provisions of Section 104 hereof.

4-A. Automatic Termination Upon Completion of the First Re-sale of Residential Unit.

(a) This Agreement shall be terminated automatically, without any further action by any party or need to record any additional document, with respect to any single family residential lot within the Property, upon completion of first resale for a dwelling unit upon such residential lot and conveyance of such improved residential lot by the Developer to a bona-fide good-faith purchaser in accordance with the terms of this Agreement.

B. 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 408 hereof.

C. The City shall cause any such written notice of termination to be recorded with the County Recorder within ten (10) days of receipt of such notice.

D. 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 the tentative subdivision map;

[Sec. 103] Equitable Servitudes and Covenants Running With the Land.

A. 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 D, 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 D. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.

[Sec. 104] Right to Assign; Non-Severable Obligations.

A. Upon the express written assignment by the Developer and assumption by the assignee of such assignment and the conveyance of the Developer's interest in the Property related thereto, the Developer shall be released from any further liability or obligation under this Agreement related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property.

B. 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.

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

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

b) The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to the portion of the Chiles Ranch Subdivision that is the subject of the assignment.

D. 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 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) days after receipt of written request for such approval, such approval shall be deemed to be approved.

E. The City, upon receipt of a written request therefore from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of the Developer under this Agreement, provided that all defaults by the Developer under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to the Developer and specifying the address for such notice, the City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to the Developer, all notices given to the Developer describing all claims by the City that the Developer has defaulted hereunder. If the City determines the Developer is not in compliance with this Agreement, the City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on the developer. Each Mortgagee shall have the right during the same period available to the Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in the City's notice.

F. The Specific Development Obligations set forth in Article II, Section B [Sec. 201], are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

G. Notwithstanding subsection B above, mortgages, deeds of trust, sales and leases-back 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 the acquisition of the Property, 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.

H. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the Subdivision Tentative Map identified in Exhibit A, it being recognized that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, and this Agreement.

[Sec. 105] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 8 hereof. 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 amount 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 reasonable necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

[Sec. 106] 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.

[Sec. 107] Operating Memoranda. 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, they shall effectuate such clarifications, minor changes or minor adjustments through operating memoranda approved in writing by the parties. "Minor" as used above shall not include any changes to the Development that is not substantially in conformance with the project approvals given for the project presented to the City Council and do not include any change to the number and/or price and resale restrictions for the affordable and work force housing set forth herein. Unless required by law, no such operating memorandum shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

Development of the Property.

[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, the Development Standards in effect that the time this Agreement was approved, as set forth in Exhibit B (i.e. the General Plan, any applicable Specific Plan, etc.), and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Developer understands that, no changes or amendments can be made that are inconsistent with the conditions of approval without the approval of such changes or amendments by the City Council.

Developer hereby agrees to develop the Project in accordance with the Project approvals, including the conditions of approval and the mitigation measures for the Project, and the Development Standards and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Without limiting the foregoing, Developer understands and agrees that substantial construction must be commenced within eighteen months of approval of this Agreement, unless an extension is granted by the City, as set forth below. As used herein, the term "Project Approvals" includes the conditions of approval and the mitigation measures for the Project. Nothing in this section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 106, supra.

[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 Exhibit C and Exhibit D 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. Supplemental Residential Fee. In addition to all other fees to be paid by the residential development of the Chiles Ranch Subdivision, the Developer shall pay to the City the sum of \$3,000 upon the issuance of a building permit for each and every market-rate residential unit with the Chiles Ranch Subdivision. For purposes hereof, a market-rate residential unit shall mean and refer to an ownership housing unit with the Chiles Ranch Subdivision that is not required by the City to be sold at a City-designated price that is affordable to moderate or low income household, as such affordability is defined in the City of Davis Municipal Code, Section 18.06.020.

2. Greenhouse Gas Emissions Reduction Requirement. The project shall meet the greenhouse gas emission reduction standards adopted by the City Council by Resolution #06,166, Series 2008, and Resolution #09-043, Series 2009. The 108 unit project shall mitigate 259.2 MT of CO₂, consistent with the "Chiles Ranch Mitigation Scenario", as follows.

- a) 2% Credit for Medium Density
- b) 5% for transit route within one-quarter (1/4) mile radius of the Property
- c) 35% above current (2005) Title 24 standards
- d) Installation of 37kW of household photovoltaics within the Chiles Ranch Subdivision
- e) The Developer shall demonstrate to the satisfaction of the Building Division prior to issuance of building permit that each unit within the Chiles Ranch Subdivision has been installed with components to facilitate future photovoltaic.

3. Tree Appraisal and Mitigation Fees. The Property was surveyed in July 2007 by a certified arborist. The Tree Summary Report included and identified 265 trees

on the site. The report identified trees to remain and trees to be removed. Subsequently, in March 2008, a "Tree Appraisal Summary" was provided indicating species, condition and appraisal value of the 265 trees. Consistent with City of Davis Municipal Code, Chapter 37.03.070, Tree Planting, Preservation and Protection, the loss of trees on the Property shall be mitigated through the planting of trees on site and/or off site. An inch for inch credit is given for each tree planted towards the total inches of trees removed. If in the City Urban Forest Manager determines that no feasible alternative exists to fully mitigate the impact, or there are other considerations for alternative mitigation, the applicant shall pay into the Tree Preservation Fund an amount determined by the Director Based on the appraisal value of the trees to be removed. In total 221 trees would be removed and approximately 217 new trees would be planted. Based upon the Tree Survey Report, the appraisal value of the trees to be removed is \$175,150.

The city recognizes that the Property is unique. The site was formerly a farm and orchard. The ordinance is intended to mitigate the loss of heritage trees and trees of significance for very large projects, and for smaller project which typically contain only a small number of trees. The Property contains significantly more trees than any other similarly sized parcel in the city, some marginal and near the end of their life span; others deformed and providing little canopy. The new trees to be planted would be geared toward species suitable for the climate to ensure longevity. The number of trees to be planted would over time provide canopy to mitigate loss of canopy of the trees slated for removal. Accordingly, the otherwise required fee has been modified as shown below.

- a) The Developer shall provide tree mitigation in the amount of \$50,000.
- b) The value of the new trees to be planted in the Chiles Ranch Subdivision shall be credited towards 3(a) in the amount of \$28,210.
- c) The remaining \$21,790 shall be deposited into the city's Tree Planting, Protection and Preservation Fund Developer prior to issuance of Demolition Permit.
- d) The Developer shall make a contribution to Tree Davis in the amount of \$3,500.

4. Architectural Diversity. Small Builder lots shall not be required in the Chiles Ranch Subdivision City of Davis Municipal Code, Section 18.01.060(b). The intent of this requirement is to encourage the development of architecturally diverse neighborhoods, with a mix of housing types, densities, prices and rents and designs in each new development area. The General Plan also includes goals, policies and actions (Urban Design) that promote design standards for new single family residential development that create variability of lot sizes, FARs, setbacks, building height floor plans, and architectural styles/treatments within each new development area. The Chiles Ranch Subdivision would be consistent with these goals and policies. The development will include a mix of lot sizes, a variety of setbacks, and alternating heights throughout the subdivision. The Chiles Ranch Subdivision will provide a diverse, yet cohesive neighborhood with complementary housing types, sizes, and elevations. The developer shall provide all of the following in the Chiles Ranch Subdivision.

- a) Detached single family dwellings
- b) Attached single family dwellings
- c) Condominium units
- d) Fifteen Diverse Elevations

5. Roadway Improvements. The Developer of the Chiles Ranch Subdivision shall provide the following roadway improvements.

6. Street Gutter Modification. The Developer shall modify the gutter at the intersection at Mesquite Drive and E. Eighth Street to provide for a potential future bus route on E. Eighth Street. The modifications proposed entail reducing the grade-change to accommodate a bus traversing gutter. The edges of the new gutters will match existing pavement grades, and no other paving modifications are proposed. The Developer obligation shall be limited to gutter modification proposal submitted to the Community Development Department on December 11, 2008, or modifications substantially similar in scope and anticipated Developer costs. The gutter modification is subject to review and approval by the Public Works Department and the City Engineer.

7. Traffic Calming. The Developer shall provide up to two traffic calming features, such as radar speed box(es) or speedtable(s) in the vicinity of the project in consultation with the Public Works Department. The total cost to the Developer for traffic calming measures shall not exceed \$15,000. Final determination of method(s) and placement(s) of potential traffic calming measures shall be subject to review and approval of the Public Works Director and/or City Engineer.

8. Fiscal Impacts. The Developer will pay applicable City Development Impacts Fees and Residential Impact Fees as set forth in Exhibit C-5. The payment of fees shall be paid at time of issuance of Certificate of Occupancy for each residential unit.

9. Community Improvements. The City and Developer have agreed that certain improvements to the area in the vicinity of the project site are important to maintaining and improving the quality of life for the community. Therefore the Developer and the City have agreed to provide improvements to the project site and vicinity in accordance with the improvements described in Exhibit C-7.

[Sec. 202] Development Timing. Developer shall be obligated to construct such improvements and provide funding at the times set forth in this Agreement. Developer must also initiate and pursue development of the Project as set forth herein.

A. Initial commencement of development. Developer has an approved Tentative Map for the Project. The project shall be constructed in two Phases. A reduced copy of the Tentative Map is attached as part of Exhibit At. The city has also approved a Final Planned Development and Design Review Approvals. Pursuant to these approvals, Developer must commence substantial construction on the Project within eighteen (18) months of the Effective Date of this Agreement which may be extended pursuant to City of Davis Municipal Code, Section 40.32.110.

B. Failure to Proceed in a Timely Manner. After commencement of construction, if the Developer ceases construction of infrastructure improvements and/or does not finalize any residential units for occupancy for a period exceeding forty eight (48) months this Agreement shall terminate unless extended by the City as set forth herein. Developer may request an extension of the Agreement and these performance obligations if the City is involved in litigation, initiative or referendum proceedings, or other circumstances that affect the City's ability to provide building permits and/or water or sewer connections, in which case City shall grant an extension for the same time as the

time period during which sewer or water connections or building permits are unavailable. In the event the City approves a moratorium on water or sewer hook-ups or building permits or other entitlements necessary for the Project to proceed, then the period during which the moratorium is in effect shall not count towards the forty eight (48) month period. Developer may request and City may not unreasonably withhold approval of extensions not to exceed six months at a time for reasons other than lack of sewer, water, or drainage capacity, or other circumstances affecting the City's ability to provide building permits or sewer, water, or drainage capacity, provided the Developer continues to undertake good faith efforts to proceed with Development and further provided that any extension beyond twelve (12) months will require that the Development impact fees for the project be adjusted to those in effect at the time of issuance of the building permit.

[Sec. 203] Rules, Regulations and Official Policies.

A. For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of 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 Section 104 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 consistent 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.

- i. 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 or action by any governmental jurisdiction other than the City 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.

B. 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).

- ii. 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.

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

D. 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 approval 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.

E. 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:

F. 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;

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

(a) 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.

(b) 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. Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, the Developer and the City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Entitlements. The 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 on a uniformly applied, City-wide or area-wide basis and directly concerns a public health or safety issue, in which case the City shall treat the Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because the City had inadequate sewage treatment capacity to meet the demand therefore (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the property, so long as the City was also denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity, however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

I. City Cooperation. The City agrees to cooperate with the Developer in securing all permits which may be required by the City. In the event state or federal laws or regulations enacted after this Agreement has been executed, or actions of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

[Sec. 204]. Fees, Exactions, Conditions and Dedications.

A. Except as provided herein, 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.

(1) Developer shall pay all City Development Impact Fees applicable to the Project in the amounts in effect at the time of the issuance of Certificate of Occupancy. Developer shall pay all impact fees imposed by or on behalf of other public agencies, such as the school district or the County of Yolo, in the amounts applicable to the Project on the date the fees are paid.

(2) City may charge and 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 basic at the time the application is submitted for those permits, as permitted pursuant to California Government Code section 54990 or its successor sections(s)

(3) The Developer shall pay \$855,518.76 in City Park In-lieu fees. The park in-lieu fee for each residential unit will be paid at the time of collection of major project impact fees for that unit, prior to Certificate of Occupancy.

(4) The developer shall pay a one-time lump sum in the amount of \$258,000 for (86 market rate units) which shall be paid in full prior to issuance of the first residential building permit issued. The contribution will be utilized for the purposes of community enhancements.

(5) Except as specifically permitted by this Agreement or mandated by state or federal law, 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 City's approval of an amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and (b) the City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the

subsequently adopted development exaction does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

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

Obligations of the Developer.

[Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement as described in Exhibit C, the Project Approvals and the subsequent discretionary approvals referred to in Section 201, if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Section 400 hereof.

[Sec. 301] Developer Obligations. Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement, the Project Approvals, and the Additional Developer Requirements.

[Sec. 302] City's Good Faith in Processing.

A. Developer and City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act, for the processing of parcel and final maps.

B. With City approval, Developer may utilize an expedited plan check process for the review of improvements plans and building plans for the Project. Within two (2) weeks of a written request by Developer, City shall determine whether expedited plan check is feasible for the requested work. If City determines that expedited plan check is feasible, City shall retain an outside consultant for review of Developer improvement plans and building plans. Such outside consultant shall be at the sole selection of the City and shall be paid for at the sole cost and expense of Developer. Upon written request, Developer shall advance a deposit sufficient to cover the City's estimated costs of retaining the outside consultant. Such deposit shall be replenished as necessary, from time to time, to assure that the City shall not bear any of the cost of the outside consultant.

Default, Remedies, Termination.

[Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

A. 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;

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

[Sec. 401] Enforcement of Special Conditions. Before any subdivision, parcelization, lot line adjustment or building permit is issued for any residential uses on the Property; the Developer shall establish and implement a legal mechanism approved by the City to assure enforcement of this Agreement and the Special Conditions, as applicable to such residential property.

[Sec. 402] Developer 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. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

[Sec. 403] 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 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.

A. The City Manager shall provide thirty (30) days prior written notice of such periodic review to Developer. Such notice shall require 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 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. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by Developer.

B. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this

Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council.

C. 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 Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

[Sec. 404] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar Bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

[Sec. 405] 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 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.

[Sec. 406] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that 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.

[Sec. 407] Invalidity of Agreement.

A. 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.

B. 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 410 hereof.

[Sec. 408] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Property, nor shall it affect any other covenants of Developer specified in this Agreement to continue after the termination of this Agreement.

b. Effect of Termination. If this Agreement is terminated following any event of default by the Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent the Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

Hold Harmless Agreement.

[Sec. 500] Hold Harmless Agreement. Developer hereby agrees to and shall hold 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.

A. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action; provided, however, that the City and Developer shall each bear their own respective costs, if any, arising from such defense. Such agreement by Developer does not include any agreement to indemnify the City and its elective and appointive boards, commissions, officers, agents and employees from any such legal actions.

B. The City acknowledges that the foregoing liability of the Developer shall be limited to the Developer's interest in the Property and that neither the Developer nor any of its members, partners, officers, shareholders, employees or agents shall have any personal liability.

Project as a Private Undertaking.

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

Consistency With General Plan.

[Sec. 700] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

Notices.

[Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the parties as set forth below.

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:

New Urban Development, LLC
c/o Don Fouts and Steve Sherman
1930 E. Eighth Street, Suite 100
Davis, CA 95616

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.

Recordation.

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

Entire Agreement.

[Sec. 1000] 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 four (4) exhibits which constitute the entire understanding and agreement of the parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

Exhibit A: Description of the Property

Exhibit B: Project Approvals and Development Standards

Exhibit C: Specific Development Obligations

Estoppel Certificate.

A. 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, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt. The City acknowledges that the certificate may be relied upon by transferees and mortgagees of the Developer.

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

CITY OF DAVIS

By _____
Ruth Asmundson
Mayor

Attest _____
Zoe Mirabile
City Clerk
"CITY"

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

DEVELOPER

By _____
Don Fouts, DEVELOPER

Steve Sherman, DEVELOPER

EXHIBIT C-1

PUBLIC UTILITIES AND DRAINAGE

1. The developer will comply with the mitigation measures and conditions of approval identified in the Mitigated Negative Declaration and/or required by the tentative map.

EXHIBIT C-2

ENVIRONMENT, TECHNOLOGY & ENERGY EFFICIENCY

1. All residential units shall meet the then current Title 24 rating at time of construction, plus 10%, or equivalent if this rating system is discontinued.
2. All single-family units and townhouses shall have a whole house fan with timer thermostat and/or outdoor air sensitivity.
3. At least twelve (12) of the market rate units, shall have a 1 kW Photovoltaic (PV) component and the remaining market rate units shall have provide energy efficiency features that will provide an equivalent energy savings to a 1 kW PV system. This does not preclude putting PV systems upon the other units to provide this savings. The details of how this will be accomplished will be worked out with staff, prior to issuance of building permits.

EXHIBIT C-3

VISITABILITY AND ACCESSIBILITY STANDARDS

VISITABILITY

1. Required for all units.
2. Means accessible standards implemented for entry into the unit (path of travel and zero entry threshold) and throughout the ground floor from the street and a bathroom on the first floor (including grab bar backing reinforcements in the bathroom walls).
3. All builders are required to provide for all home purchasers an option to have their house fully accessible at the cost of the home purchaser.

ACCESSIBILITY

1. The developers of the market rate lots shall provide to future buyers the city-approved **AB 1400** checklist of universal design features, stating the availability of each feature and its cost, based on the construction cost, design, and timing. The cost of each feature shall not exceed a reasonable market cost (i.e. the cost should be comparable to the per square foot costs of the remainder of the unit)

EXHIBIT C-4

COUNTY ISSUES

1. Developer will pay the applicable Yolo County service fee at the time payment is due. City, Developer, and County may make provision for Developer to pay the County component of the impact fee to the City, to be forwarded to the County.

EXHIBIT C-5

FISCAL IMPACTS

DEVELOPMENT IMPACT FEES

1. The Developer will pay project impact fees based upon the City's Fee Schedule in effect at time of issuance of the building permit.
2. Residential impact fees will be based on a square footage basis. At the time of the issuance of the first building permit, projected impact fees will be calculated based upon the 31-unit project and then allocated per square foot in accordance with the provisions of the zoning and development agreement. Project fees for the school district will be adjusted to reflect increases or decreases in City-wide Development Impact fees as they are approved by the City. City may determine that water and sewer connection fees for single-family units shall be assessed on a per-unit basis due to the timing of payment. At the time of issuance of each building permit, City will review the square footage fees to reflect the actual number of units and square footage to assure that fees are fully accounted for and paid, regarding of whether the developers build to the maximum allowed square footage and units.

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EXHIBIT C-6

AFFORDABLE HOUSING

AFFORDABLE UNITS AND TIMING

1. Concurrently with the recordation of the final map, Developer shall also record the affordable housing deed restrictions against the affordable housing lots. The deed restrictions shall be approved by the City prior to recordation.
2. The affordable units may be constructed in two phases. Phase 1 shall consist of a minimum of four affordable units. Developer shall commence with construction of the Phase 1 affordable units not later than 24 months after the date of recordation of a Final Map for the Project or prior to the issuance of the 13th building permit for a market rate unit, whichever comes first. Developer shall commence Phase 2 within 90 days of commencement of Phase 1. As used herein, "commencement" means issuance of building permits and initiation of construction of the first unit within each phase.
3. A hardship exemption would be available to extend the period prior to the required construction commencement for 12 additional months if hardship can be reasonably demonstrated by the developer to the City Council.
4. Once construction commences, the developer shall work continuously on construction of each affordable housing phase, consistent with good building practices. The developer shall complete construction of all affordable units within each phase no later than nine (9) months from the issuance of the first building permit for the first affordable unit within each phase. .
 - i. As used herein, "completion" means issuance of certificate(s) of occupancy for the units.

ASSURANCES OF HOW AFFORDABLE UNITS WILL BE CONSTRUCTED

1. Concurrently with recordation of the final map, a lien will be placed upon all of the affordable (low/moderate) lots to assure that these lots are constructed with affordable units. In addition, a lien in favor of the City will be recorded against lots 18 and 26, two market rate lots, to secure timely construction and completion of the affordable units. In the event that the developer fails to construct and complete the affordable units as specified in Timing above, City may cause lots 18 and 26 to be sold and the proceeds there from used to complete the construction of the affordable units.

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2. In lieu of the lien against lots 18 and 26, Developer may provide alternative security, such as an irrevocable letter of credit in the amount of the cost of construction of all the affordable units, if such security is approved by the community Development Director and the City Attorney.
3. The Developer shall issue escrow instructions to the escrow officer which would require the officer to report the sales of all market rate lots to City staff so that the City can track when the timing of the construction of affordable units should commence.

ACCESSIBILITY

1. All affordable units shall be first-floor accessible as set forth in 2, below.
2. Means accessible standards implemented for entry into the unit from the street (path of travel and zero entry threshold) and throughout the ground floor, and a bathroom (including grab bar backing reinforcements in the bathroom walls) and bedroom to be located on the first floor

DISCLOSURE

1. Standard provisions shall be implemented for disclosure and buyer selection, as established by the Affordable Housing Ordinance and the Social Services Commission. Disclosure documents and the process and standards for buyer selection shall be approved by the city.

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EXHIBIT C-7

COMMUNITY IMPROVEMENTS

~~BIKE/PEDESTRIAN CONNECTIONS TO AND FROM THE PROPERTY~~

- ~~1. A bike and pedestrian trail shall be constructed to connect the Church property adjacent to the Putah Creek channel from the current bike terminus to Mace Ranch.~~
- ~~2. A minimum landscaped buffer shall be provided adjacent to both sides of the path only for maintenance.~~
- ~~3. The developer is subject to reimbursement by the owner of the LDS property for the development of this path, when the property develops.~~
- ~~4. The improvement plans for the trail shall be developed by the developer and submitted subject to the review and approval of Parks and Community Services staff prior to the issuance of first building permit for the project. Timing for completion of said improvements for trail shall be established within the Improvement Agreement in the Final Map process.~~

FOCUSED TRAFFIC STUDY

- ~~1. The Developer shall provide a focused traffic study subject to the review and approval of the City Engineer prior to the recordation of the Final Map.~~
- ~~2. The study will be provide impacts of the project and the General Plan build out for the two church sites and suggest mitigation measures for impacts to the vicinity of the project on Mace and Montgomery.~~
- ~~3. The traffic study will provide the following items:~~
 - ~~a. Improvements on the Mace/Montgomery intersection for pedestrian/bikes.~~
 - ~~b. Traffic calming on Mace and Montgomery in the vicinity of the project~~
- ~~4. The developer will pay “fair share” for future improvements identified within the study to mitigate impacts. The schedule for the “fair share” payments shall be established in the Improvement Agreement in the Final Map Process.~~
5. Improvements required as a result of the traffic study and the traffic shall be reimbursable to the developer at the time of the other properties development.

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6. Improvements should be phased to help distribute costs to the developer.
7. No improvements shall be required until such time as an improvement agreement is approved at the time of the Final Map approval.
8. Traffic calming is recommended for the intersection of Cottonwood and Redbud for the north bound traffic on Cottonwood. The mitigation measures for traffic calming shall be identified within the traffic study. The mitigation measures shall be subject to the review and approval of the City Traffic Engineer.

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Findings and Conditions of Approval

Final Planned Development #10-06 Findings:

1. **PROJECT DEVELOPMENT TIME LIMIT.** The property owner can commence substantial construction within eighteen months from the date of the final planned development approval and intends to complete the construction with a reasonable time, in that the developer has agreed to comply with this condition.
2. **CONFORMANCE TO REQUIREMENTS.** The proposed development conforms to the general plan and any specific plans approved for that area by the City in that, the development has been shown to comply with the General Plan, the South Davis Specific Plan and zoning in the analysis of the staff report to the Planning Commission dated January 24, 2007, and as may be amended herein.
3. **CIRCULATION.** The auto, bicycle and pedestrian traffic system shall be adequately designed to meet anticipated traffic and has been designed to provided the minimum amount of interference with each other in that, the proposed project has considered pedestrian and bicycle circulation in developing the site plan and meets the City's standards for private driveways, circulation, and number and dimension of parking spaces.
4. **ENVIRONMENTAL.** The City adopted Negative Declaration #10-92 and has determined that the revised project does not significantly alter the effects upon the environment as previously analyzed. Pursuant to Section 15162 of CEQA, the Willowbank Unit #10 subdivision is not required to conduct further environmental review.
5. **ADEQUACY OF THE DEVELOPMENT.** Any residential development shall constitute a residential environment of sustained desirability and stability in harmony with the character of the surrounding neighborhood. The applicant has demonstrated that sites for public facilities are adequate to serve the anticipated population and that standards for open space are at least equivalent to standards otherwise specified in the City's Zoning Ordinance, in that the project meets or exceeds the City's required standards for parking, open space, setbacks, building heights, lot coverage, the requirements of PD 4-92, and has been shown to compatible with the surrounding development as described in the staff report.
6. **COMPATIBILITY.** The project as conditioned maintains the lot spacing and size patterns of adjacent development and addresses the privacy impacts to the properties to the west of the project site by retaining a single story restriction on the lots adjacent to the development to the west.

Final Planned Development #10-06 Conditions:

1. **SUBSTANTIAL CONFORMANCE.** The project shall be completed in substantial conformance to the plans contained within the staff report and date stamped October 24, 2006, except as modified herein. Design changes that require modifications to uses, elevations or site features shall be submitted for review and approval through the planning review process as a Final Planned Development. Prior to issuance of Certificate of Occupancy, all conditions of

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approval and required improvements shall be completed to the satisfaction of the Community Development Department.

2. **TIME LIMITS.** The approval period for Final Planned Development #10-06 shall become null and void after a period of 18 months from the approval date. If either the use permit has not been used or if substantial construction in good faith reliance on the approval has commenced subsequent to such approval. The Community Development Director may extend the expiration date for one or more periods not exceeding a total of 18 months upon a showing that the circumstances and conditions upon which the approval was based have not changed. A formal application, all required exhibits and plans, and related application fees must accompany requests for time extension.
3. **DEVELOPMENT AND MAINTENANCE.** The site shall be developed and maintained in accordance with the approved plans which include site plans, architectural elevations, exterior materials and colors, landscaping and grading on file in the Community Development Department, the conditions contained herein, Municipal Code regulations, PD 4-92 regulations.
4. **USES.** Permitted, conditionally permitted and accessory uses shall comply with those listed by PD 4-92 Ordinance, unless otherwise specified herein.
5. **DEVELOPMENT STANDARDS.** Are those as shown on the Final Planned Development Map. Final setback details for both first and second floors, including lot coverage, usable open space, parking per lot and floor area ratio shall be provided by the applicant prior to the issuance of building permits. Any substantial deviations from these standards will require a revision to the Final Planned Development.
6. **APPROVAL.** The Final Planned Development Permit approval is for a 31-unit single family subdivision. 23 market rate lots and 8 low to moderate income single family lots. The lot layout shall be in substantial compliance with the Final Planned Development Map contained within this staff report, except as modified herein. Any changes to the Map shall require an additional discretionary action for approval subject to the determination of the appropriate process by the Community Development Department staff.
7. **CONTINGENCIES.** This project is contingent upon the approval of Tentative Map Application #05-06, Affordable Housing Plan #01-06, and Development Agreement #06-06, and 18 months from the date of approval unless extended pursuant to Section 40.39 of the Zoning ordinance.
8. **LOT AREA, AND YARD REQUIREMENTS.** Lot area and yard requirements shall be as designated on the Final Planned Development Map.
9. **BUILDING HEIGHT.** Building height shall not exceed 30-feet or two stories except for lots 5 – 8, and 21 – 24 which shall not exceed one story and shall not exceed 20 feet in height.

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10. **LOT COVERAGE.** Shall be the same as R-1-8 requirements with the exception of lots 5 – 8, and 21 – 24. These lots shall be permitted maximum lot coverage of 40% plus 500 square feet.
11. **FLOOR AREA RATIO AND OPEN SPACE.** Shall the same as R-1-8 requirements.
12. **BUILDING PERMITS.** The applicant shall obtain all appropriate and necessary building permits for the project.
13. **LOT #9 SETBACKS.** Lot #9 on the Final Planned Development map may be allowed to switch setbacks for the street side yard and front yard. The revised Final Planned Development Map set submitted to the Community Development Department in Condition #14 below shall reflect the desired change.
14. **FINAL PLANNED DEVELOPMENT SET.** Prior to issuance of building permits the applicant shall submit a reproducible copy of the Final Development plan set, with all conditions of approval incorporated or clearly listed on the plans. The plan set shall not be accepted as the Final Planned Development Set until the Community Development Director has signed and dated the set. The applicant shall provide two prints of the signed set to the Community Development Department. Electronic copies are recommended.
15. **ELECTRIC VEHICLE RECHARGE.** All new garages shall be pre-wired for EV recharge stations.
16. **TEMPORARY STRUCTURES.** Any temporary building, trailer, commercial coach, etc. installed or used in connection with construction of this project shall comply with the requirements of Section 40.26.360 of the Municipal Code.
17. **COMMUNICATION TECHNOLOGY.** New residential and commercial projects shall include infrastructure components necessary to support modern communication technologies such as conduit space within joint utility trenches for future high-speed data equipment and flexible telephone conduit to allow for easy retrofit for high-speed data systems.
18. **CABLE READY.** The applicant shall work with the cable company to provide installation of cable conduit and pull cables at the time of the other public infrastructure improvements.
19. **TITLE 24 REQUIREMENTS.** The building(s) shall exceed by a minimum of 10%, the Title 24 requirements in effect at the time of building permit issuance.
20. **HIGH EFFICIENCY HEATING/COOLING EQUIPMENT.** High efficiency water heaters and heating and cooling equipment shall be specified in the initial building permit plan set subject to review and approval by the Community Development Department.
21. **NATURAL VENTILATION.** All of the south facing windows on the upper floor(s) of the building(s) shall be operable to allow natural ventilation of units/tenant spaces. Adequate natural ventilation must be demonstrated prior to issuance of occupancy for all units.

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22. **ENERGY EFFICIENCY MEASURES.** Each dwelling within the subdivision shall incorporate structural/design elements that result in energy savings. The following measures shall be incorporated into the designs of each market rate lot.
- Adequate south facing roof area shall be provided for potential installation of a PV system.
 - Install junction box for future inverter.
 - Run the appropriate conduit from service panel to the junction box and from the junction box to the south facing roof area.
 - No roof penetrations, such as roof vent pipes or other devices, shall be located within the south facing roof area designated for PV installation.
 - Appropriate brackets shall be mounted on the south facing roof area for potential future mounting of PV panels.
 - The roof trusses shall be designed to support the weight of the potential future PV panels.
23. **FRONT GARAGE LIMITATIONS.** Garage doors shall not dominate facades of houses. Garage doors shall be designed with detailing to avoid the monotonous, large flat surfaces. Three-car garage openings may be permitted if appropriately designed to blend in with the streetscape envisioned herein. The mass of the garage shall constitute no more than 50 percent of the width of the front elevation of each house. Driveway paving shall be in conformance with the requirements for single family dwellings within Section 40.25.080(5) of the zoning ordinance as amended over time. Detached garages located within the rear one-half of the lots are encouraged.
24. **FRONT ENTRY FEATURES.** Architectural features shall be used to accent or distinguish front entries for the market rate lots. Architectural features shall include but are not limited to porches, raised landings, stoops, covered entry ways, additional windows, additional trim, alternative colors or materials from the main front façade. If porches are to be used, no single dimension of the porch shall be less than 6-feet.
25. **FRONT YARD LANDSCAPING.** The homebuilder shall be responsible for installing front yard landscaping. Landscape designs for each lot shall be individually subject to the review and approval of the Community Development staff prior to issuance of the building permit for each lot. Installation and review and approval of installation shall occur prior to issuance of occupancy. All landscaping plans shall use the criteria of the City's Water Conservation in New Construction Landscaping Ordinance as a guide. In no case, shall the front yard provide turf area in excess of 50% of the front yard. All lots are required to install and maintain at least one street tree subject to the review and approval of the City's Urban Forest Manager. Street tree planting details shall be submitted with front yard landscaping. Landscape and irrigation plans shall specify the following:
- a. Location, size and quantity of all plant materials:
 - b. A plant legend specifying species type (botanical and common names) container size, maximum growth habit, and quantity of all plant materials.
 - c. Location of all pavements, fencing, buildings, accessory structures, parking lot light poles, property lines, and other pertinent site plan features;

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- d. Planting and installation details and notes including soil amendments;
 - e. Existing trees on site shall be identified. Identification shall include species type, trunk diameter at 4'-6" above adjacent grade, and location on site. Trees planned for removal or relocation shall be marked on the plans, methodology to preserve trees in place shall be provided on the plans;
 - f. Details of all irrigation (drip and sprinkler) as well as all equipment such as backflow, controller and controller and meter devices identified;
 - g. Two deep watering tubes per tree planted in an isolated parking lot planter island.
26. **TREE PLANTING.** [For trees planted as part of the front yard landscaping shall be a minimum of 15 gallons in size.] All trees shall be planted and staked in accordance with Parks and Community Services Department standards. All parking lot trees shall be irrigated with a minimum of two deep watering tubes.
27. **LANDSCAPING WITHIN THE PUBLIC RIGHT OF WAY.** All landscaping within the public right of way shall be maintained by the property owner and all utility lines (water lines) which are currently operated by the City shall be disconnected and patched into the developments irrigation system.
28. **TREE MAINTENANCE.** All trees planted or preserved in accordance with this approval with the exception of City street trees shall be trimmed and maintained per guidelines established and approved by the International Society of Arboriculture (ISA). Any pruning of the trees, other than light pruning of no more than 25 percent of the foliage within any one growing season, requires review and approval of a Tree Modification Permit prior to the commencement of the work.
29. **TREE INVENTORY AND PROTECTION.** The developer shall provide an arborist report that provides an inventory and condition of the trees located on the project site prior to the commencement of any grading or construction activities. The report shall provide recommendations with regards to the removal and protection of any trees located upon the project site.
30. **CONTINUED MAINTENANCE.** The applicant shall maintain all landscaped areas in perpetuity upon completion and they shall be kept free from weeds and debris and maintained in a healthy, growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days.
31. **GOOD NEIGHBOR RELATIONS.** The applicant shall provide contact information to vicinity property owner to be used to report concerns during construction. In addition, the construction supervisors for each lot shall post contact information on the individual construction sites for the duration of construction activities. Contact information shall include construction supervisor name, phone and e-mail information, address and company name and text that reads "For construction contact information or to report complaints, please contact the following:"

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32. **SMALL BUILDER / INDIVIDUAL BUYER.** The applicant/developer has agreed to sell 15% of the market-rate lots would be sold to small builders for development. All of the small-builder lots shall be developed with homes, consistent with development standards approved for the subdivision, by individuals and/or small builders. No more than 10% of the small-builder lots shall be sold to any one small builder per year. The small builder shall not be a person representing large developers in the purchase. The applicant shall provide the city with information on the small builders who purchased the lots for record keeping and verification, prior to filing of building permit application for the lots. The developer has consented to this small builder-requirement.
33. **VISITABILITY.** All market rate lots shall be made visitable in accordance with the City's standards for visitability. Unit visitability shall include the following features on the ground/primary floor: one zero threshold entry at ground or primary floor of the unit, an accessible path to the zero threshold entry, an accessible path of travel within the unit on its ground or primary floor (wider hallways and doorways), an accessible half or full bath on the ground or primary floor (with the inclusion of grab bar backing reinforcements for easy grab bar installation), and an accessible common room.

Tentative Map Application #05-06 Findings:

1. Consistent with the provisions of CEQA, Negative Declaration #10-92 was prepared for this project. That Negative Declaration declares that the project, as conditioned or mitigated, will have no significant impacts on the environment.
2. In accordance with Section 36.06.080 of the City's Subdivision Ordinance, the proposed subdivision of land complies with requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act, the City's Subdivision Ordinance, the Municipal Code, and the General Plan.
3. A subsequent Final Map shall be filed with the City to reconfigure one existing lot into 31 new lots, a greenbelt lot and public right of way.

Tentative Map #05-06 Conditions:

1. **TIME LIMITS.** This approved tentative map shall expire 24 months after approval by the City Council. Extensions may be granted in accordance with Section 66452.6 of the Subdivision Map Act.
2. **REVISED MAP.** The applicant shall provide a revised Tentative Map. The map shall provide the appropriate dimensions for lot 31 and provide the required delineations of the Agricultural Transition zone dedication to the City and the Agricultural Buffer zone. The map is required to be submitted prior to signature of the map by the Community Development Director and subject to review and approval of the Community Development Department and City Engineer.

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3. **RECORDATION OF THE MAP.** The applicant shall record the map within the approved time period and provide two copies of the map with all of the requirements in accordance with Chapter 37.05 of the Davis Municipal Code.
4. **CONFORMANCE.** The project shall be in substantial conformance with the plans submitted to the City on October 24, 2006 unless otherwise conditioned herein or upon approval of subsequent revisions.
5. **GRADING PLAN.** A grading plan of the project shall be prepared by a registered Civil Engineer, for the review and approval of the City Engineer.
6. **FEES.** The developed shall pay the appropriate sewer and water connection fees at the time of issuance of building permits.
7. **STREET LIGHTING.** Final street lighting design, including location and number of fixtures, are subject to the review and approval of the City Engineer.
8. **EASEMENTS.** Subdivider shall be responsible for acquiring all easements, rights of way, necessary to serve the project. Provisions shall be made for easements for common access, drainage, utility and provisions for maintenance of any shared driveways. These provisions shall be subject to the review and approval of the Public Works Director and the City Attorney prior to the recordation of the Final Map. Reservation of the easements for reciprocal access, drainage, utility and maintenance for shared facilities for this subdivision shall be shown on the Final Map.
9. **ACCESS TO MONTGOMERY AVENUE.** Subdivider shall provide for the relinquishment of direct vehicular access to Cottonwood Drive and Montgomery Avenue, from the curb return on Montgomery to the beginning of the ~ 376 foot tangent section of the street.
10. **ACCESS TO MONTGOMERY AVENUE FROM LOT 31.** Subdivider shall provide for the relinquishment of direct vehicular access to Montgomery Avenue from Lot 31.
11. **IMPROVEMENT PLANS FOR MACE BOULEVARD AND MONTGOMERY AVENUE.** Offsite right of way on Mace Boulevard and Montgomery Avenue shall be provided by Subdivider, as necessary to construct roadway improvements to connect the project to the developed properties to the north and west, subject to the review and approval of the City Engineer. Improvements shall include, but are not necessarily limited to street, sidewalk, and drainage improvements.
12. **ROADWAY IMPROVEMENTS TIMING.** Subdivider shall construct roadway improvements to connect the project to the developed properties to the north and west, subject to the review and approval of the City Engineer. Such improvements shall be completed prior to issuance of a certificate of occupancy for any structure on the 16th lot proposed for development, or prior to two years from the date of recordation of the Final Map of this subdivision, whichever occurs first.

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13. **IMPROVEMENT PLANS FOR PEDESTRIAN /BIKE PATHWAY FROM GREENBELT TO MACE BOULEVARD.** Subdivider shall construct buffer/pathway improvements in the easement area adjacent to the Putah Creek Drainage Channel, subject to the review and approval of the Parks and Community Services director and the City Engineer.
14. **IMPROVEMENT PLANS FOR PARCEL A.** Subdivider shall construct greenbelt/pathway improvements within Parcel A concurrently with the adjacent street improvements, subject to the review and approval of the Parks and Community Services director and the City Engineer.
15. **IMPROVEMENT PLANS FOR MONTGOMERY AVENUE.** Subdivider shall provide the conceptual design for the portion of Montgomery Avenue from the project limits to Mace Boulevard, and for the portion of Mace Boulevard from the southerly limits of Willowbank No. 9, to Montgomery Avenue, subject to the review and approval of the City Engineer.
16. **IMPROVEMENT PLANS FOR INTERSECTION AT MACE AND MONTGOMERY.** Subdivider shall provide the conceptual design for the future configuration of the 3-way intersection of Mace and Montgomery. Subdivider shall provide for the design and shall construct improvements to the intersection, subject to the review and approval of the City Engineer.
17. **TRAFFIC STUDY IMPROVEMENTS.** Subdivider shall implement recommended improvements contained in the transportation study conducted as part of the project review, subject to the review and approval of the City Engineer.
18. **IMPROVEMENTS TO COTTONWOOD DRIVE.** Subdivider shall construct full street improvements on Cottonwood Drive including curb and gutter improvements on the east side (it is recommended that sidewalk improvements be constructed at the same time). A 10 foot wide P.U, T.P, S. & M.E. shall be provided behind the future sidewalk. Traffic calming devices shall be installed on the right-of-way subject to the review and approval of the City's Traffic Engineer.
19. **IMPROVEMENTS TO BAYBERRY LANE.** Subdivider shall construct full street improvements on Bayberry Lane including curb and gutter improvements on both sides of the street (it is recommended that sidewalk improvements be constructed at the same time). A 10 foot wide P.U, T.P, S. & M.E. shall be provided behind the future sidewalk. The final width of the right-of-way shall be 44-feet and be subject to the review and approval of the City's Traffic Engineer.
20. **NAME OF BAYBERRY LANE.** Subdivider shall provide a revised name consistent with the other street names for the Willowbank area for the street titled "Bayberry Lane" on the proposed Tentative Map prior to approval of the Final Map by City Council. The name of the street shall be subject to the consideration of the City Council.
21. **GRADING PLAN REVIEW.** Prior to approval of grading plans for this subdivision, Subdivider shall satisfy the City Engineer that the proposed grading will not adversely affect adjacent properties, particularly the property labeled Howell Trust on the map. In addition, retaining

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walls shall be provided by the Subdivider wherever the grade differential between adjacent lots is 0.5 feet or greater. Masonry retaining walls shall be provided when such grade differential is 1.0 feet or greater.

22. **UTILITIES REVIEW.** All sizes, locations and grades of the utilities to serve this project are subject to the review and approval of the City Engineer.
23. **SHARED ACCESS FOR AFFORDABLE LOTS.** Provisions for access, private utilities, drainage, and maintenance for lots employing a shared driveway (Lots 14-17, inc., and Lots 27-30, inc.) shall be subject to the review and approval of the City Engineer and/or City Attorney and shall be recorded concurrently with the Final Map.
24. **AGRICULTURAL TRANSITION ZONE.** The dedication of the 50-foot agricultural transition zone shown as the southern half of Lot #31 shall be accepted by the City in fee title dedication only. The applicant shall submit two copies of a revised tentative map to the Community Development Department subject to review and approval of Planning Division staff and the City Engineer prior to the issuance of building permits. Said map shall be made ready for signature of the Community Development Director.

Affordable Housing Plan #01-06 Findings:

1. **COMPLIANCE.** In accordance with Chapter 18.05 of the Davis Municipal Code the project complies with all of the requirements for affordable housing.

Affordable Housing Plan #01-06 Conditions:

1. **SUBSTANTIAL CONFORMANCE.** The project shall be completed in substantial conformance to the plans presented within this staff report and date stamped October 24, 2006, except as modified herein. Design changes that require modifications to uses, elevations or site features shall be submitted for review and approval through the Planning review process as a revision to the Affordable Housing Plan. Prior to issuance of Certificate of Occupancy, all conditions of approval and required improvements shall be completed to the satisfaction of the Community Development Department staff.
2. **APPROVAL.** The approval is for 8 affordable units. Four of the units shall be three bedroom units, and the other four units shall be two bedroom units.
3. **MATERIALS AND DESIGN.** The affordable units will use similar design materials and are clustered to be of a similar scale as the projected size of the future custom market rate units.
4. **APPROVED AFFORDABLE HOUSING BUILDING DESIGN.** No substantive deviations from the approved building design may be permitted without Design Review approval. However, minor changes may be approved through the minor improvement application process.
5. **REQUIRED UNITS.** The project shall include the construction of a minimum of eight ownership units that shall be sold at prices affordable to households from low to moderate incomes (referred to herein as the low-moderate income units), as defined in Article

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18.05.020 of the City of Davis Municipal Code. These affordable units shall be under construction within eighteen months from the date of final approval.

6. **AFFORDABLE UNIT SALE PRICES.** The affordable units shall be priced affordable to households with incomes from 80% to 120% of Area Median Income, with an average price affordable to a household at 100% of Area Median Income. The actual prices for these units will be set based on the city's approved prices at the time of unit construction completion.
7. **AFFORDABLE HOUSING DISTRIBUTION.** Prior to issuance of building permits, the developer shall submit a plan for marketing the affordable units and selecting and qualifying the buyers, subject to review and approval by the City Manager's Office and the City Attorney. Developer shall recognize that any commitments for sale of the units without City approval are invalid and are counter to this affordable housing plan approval. This plan shall be in compliance with the City of Davis Buyer/Tenant Selection Guidelines and the city's "workforce" preference system.
8. **INCOME ELIGIBILITY ON AFFORDABLE FOR-SALE UNITS.** Households purchasing the eight low-moderate income units shall have a gross annual income that is at or below 120% of Area Median Income for Yolo County, adjusted for household size, at the time of purchasing a low-moderate income unit.
9. **AFFORDABILITY REQUIREMENTS.** Required affordable low-moderate income units shall remain affordable over time and continue to ensure affordable housing opportunities for future income eligible households. The following requirements shall be established in a deed restriction recorded to the low-moderate income units and shall be subject to review and approval by the City Manager's Office prior to sale of the unit:
 - Owner-Occupancy Requirement, the Project developer agrees to record this requirement to each affordable unit, using the City's standard deed in accordance with Section 18.04 of Davis Municipal Code.
 - A Right of First Refusal, including the 1% administrative fee for carrying out this right that allows the City of Davis the opportunity to either purchase the unit upon resale or present a buyer for the unit within 60 days of a notice from the seller indicating their intent to sell, closing escrow on the unit within 90 days of notice or as agreed upon by buyer and seller. In cases where the city gives up its right or does not provide a buyer in 90 days, the owner of the unit shall also have a 90 day deadline to sell the unit before the Right of First Refusal goes back into effect.
 - Sustained Affordability, in accordance with Section 18.05.050 of the Davis Municipal Code, which should specifically include an appreciation cap through a restriction recorded to the deeds of the affordable units.
 - Resale Report requirement will be recorded to the deed for each affordable unit, as part of the City's standard deed to be used that all future owners of the affordable units clear the City of Davis resale report prior to the close of escrow in future sells of the unit, in all circumstances where the unit is not exempt from the city's resale inspection. No findings in the city's resale report shall be transferred to the subsequent buyer of the unit.

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10. **AFFORDABLE HOUSING DISCLOSURE.** Developer shall provide written notice to all purchasers of lots or homes within the subdivision of the location and zoning for the affordable housing units until construction on these units is complete. The disclosure shall explicitly note that the affordable housing units are to be developed for low and moderate income households. Wording is subject to review and approval by the Community Development Department.
11. **RESALE RESTRICTION.** Project developer agrees to record the City's required resale restriction to the deed of each affordable unit.
12. **BUYER SELECTION PROCESS.** Project developer is proposing to use the City's Buyer Selection Guidelines in marketing the units, carrying out the required lottery to identify buyers, and qualifying buyers of the affordable units.
13. **ACCESSIBILITY.** The project developer is proposing that all eight of the affordable units be first-floor accessible, in accordance with the project's Development Agreement.

General Requirements Fees and Time Limits

1. **RUN WITH THE LAND.** The terms and conditions of this approval shall run with the land and shall be binding upon and be to the benefit of the heirs, legal representatives, successors, and assignees of the property owner. The permit expires if unused for six or more months.
2. **REVISED PLANS.** Revised plans incorporating all conditions of approval for this project shall be coordinated and submitted to the Community Development Department as one package in accordance with plan check requirements. All plans including site, grading, landscape, irrigation, mechanical and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, encroachment, building, etc.) Any changes to the size, colors, construction materials, design or location of any structure on site, or other site or landscape improvements shall not be made without prior City approval.
3. **FIRE ACCESS.** All Fire Department access and fire lanes shall be posted as "No Parking, Fire Lane." Signage, paint and location are subject to review and approval by the Fire Department.
4. **FENCES.** All fence footings and foundations shall be galvanized steel, reinforced concrete, or masonry or treated wood materials in contact with the ground will be permitted. All required notes/details shall be provided on plans prior to the issuance of permits.
5. **PERIMETER FENCING.** A 6-foot fence shall be constructed along the all perimeters of the site with the exception of the areas along Cottonwood Drive. If a double fence condition will result, then the developer shall make a good faith effort to work with the adjoining property owners to provide a single fence. Developer shall notify, by mail, all contiguous property owners at least 30 days prior to the removal of any existing walls/fences along the project's perimeter. The final design of any perimeter walls, landscaping and sidewalks shall be included in the required landscape plans and shall be subject to review and approval by the Community Development Director and City Engineer.

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6. **UTILITY PLAN.** A utility plan that shall be approved by all applicable utility providers shall be prepared prior to the issuance of permits. The applicant shall prepare a final site plan and elevations of all on-site mechanical equipment (including HVAC condensers, transformers, switch boxes, backflow devices, PG&E transformers, etc...) and specifics of how such equipment shall be screened from public view. This plan, with an approval stamp from the City of Davis Community Development Department, shall be submitted by the applicant to the utility provider for review. Any necessary changes or deviations from the approved utility location and/or screening shall be reviewed by the Community Development Department prior to installation and may be subject to discretionary Design Review processing and fees by the Community Development Department.
7. **EXTERIOR STORAGE.** All outside storage areas shall be permanently screened from view. Design details shall be reviewed and approved by the Community Development Department prior to the issuance of permits.
8. **EQUIPMENT SCREENING.** All ground mounted utility appurtenances such as transformers, AC condensers, backflow devices, etc., shall be located out of public view and adequately screened in such a manner as to minimize the visual and acoustical impact. Screening may include a combination of landscaping and/or masonry or lattice walls or berming to the satisfaction of the Community Development Director. Whenever possible, utility transformers shall be placed in underground vaults. All gas and electrical meters shall be concealed and/or painted to match the building.
9. **CONSTRUCTION AND MATERIALS.** The plan review set shall include adequate detailing of application, construction and materials proposed of all exterior architectural enhancements including but not limited to building and window trim, depth of recessed features, grout or reveal width/depth, awning materials, trellis construction, building material application such as tile/brick. Adequate detailing may necessitate the use of cross-sections.
10. **LIGHT FIXTURES.** All wall mounted building lighting shall be submitted for review and approval by the Community Development Department prior to issuance of permits. All lighting fixtures shall be complementary to the building architecture. Commercial looking "wall packs" are not permitted.
11. **SECURITY ORDINANCE.** In accordance with the City's security ordinance. All building numbers and individual units shall be identified in a clear and concise manner including proper illumination.
12. **FENCING.** Concurrently with application for the first building permit, developer shall submit a plan showing location and design for all fences adjacent to public or private open space, roads, or bicycle paths, subject to review and approval by the Community Development Department. Amendments to the approved fencing plan may be considered through the Design Review process.

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13. **APPLICANT’S RESPONSIBILITY TO INFORM.** The applicant shall be responsible for informing all subcontractors, consultants engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein in the City of Davis Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City.
14. **CONFLICTS.** When exhibits and/or written conditions of approval are in conflict, the written conditions shall prevail.
15. **INDEMNIFICATION.** The applicant shall defend, indemnify, and hold harmless the City of Davis, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City of Davis concerning this approval, including but not limited to any approval of condition of approval of the City Council, Planning Commission, or Community Development Director. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees and agents in the defense of the matter.
16. **ENCROACHMENT PERMIT REQUIRED.** All work within the public right-of-way, including but not limited to utilities and grading, shall be explicitly noted with the building plans. The applicant shall obtain all necessary encroachment permits from the City of Davis Public Works Department prior to issuance of building permits for all work and construction that encroach within or over the public right-of-way, including, but not limited to, balconies, fire ladders, outdoor restaurant seating, bike racks, water meters, backflow devices, signs and curb/gutter/sidewalk improvements.
17. **SCHOOL IMPACT FEES.** The owner shall cooperate with the School District to the extent authorized by State law in establishing school funding mechanisms for new subdivisions and in-fill development to ensure that the impacts of such development on school facilities are fully mitigated...

Grading, Site Development, Site Plan and Parking

A. Prior to Grading or Site Disturbance

18. **CONSTRUCTION MANAGEMENT PLAN.** Prior to issuance of any permit or inception of any construction activity on the site, the developer shall submit a construction impact management plan including a project development schedule and “good neighbor” information for review and approval by the Community Development and Public Works Departments. The plan shall include, but is not limited to, public notice requirements for periods of significant impacts (noise/vibration/street or parking lot closures, etc.), special street posting, construction vehicle parking plan, phone listing for community concerns, names of persons who can be contacted to correct problems, hours of construction activity, noise limits, dust control measures, and security fencing and temporary walkways. Work and/or storage of material or equipment within a City right-of-way may require the separate receipt of an Encroachment Permit.

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19. **GRADING PLAN REQUIRED.** The applicant shall submit a final grading plan concurrent with the initial building plan check submittal to the Community Development Department. All ADA accessibility features and bicycle access routes are to be clearly delineated on the site.
20. **DRAINAGE PLAN REQUIRED.** An on-site drainage plan shall be submitted for review and is subject to the approval of the City of Davis Public Works Department prior to the issuance of permits.
21. **EROSION CONTROL PLAN REQUIRED.** An Erosion Control plan shall be prepared by a registered Civil Engineer, for review and approval by the City Engineer prior to the issuance of permits. This plan shall incorporate the following requirements:
 - a) This plan will include erosion control measures to be applied during the months of October through April. These measures may include limitations on earth moving activities in sensitive areas during this time period.
 - b) The developer shall implement wind erosion and dust control measures to be applied on a year-round basis. This shall include an effective watering program to be implemented during earth moving activities.
 - c) The plan will include methods for revegetating denuded earth slopes. Revegetation will be accomplished by a method which reseeds and temporarily protects the ground so that 90% germination is achieved. Future building pads are not subject to this requirement, although measures will be required to contain sediments.
 - d) All sediments generated by construction activities shall be contained by the use of sediment traps, such as silt fences, settling basins, perimeter ditches, etc.
 - e) When building construction will be delayed beyond the next rainy season, the developer shall provide permanent erosion control measures on each individual lot.

Prior to Construction

22. **PRECONSTRUCTION MEETING.** Prior to the start of any work on-site, the applicant shall request and attend a preconstruction meeting to include project superintendent, architect, subcontractors, as well as City representatives including Community Development and Public Works.

Prior to Certificate of Occupancy

23. **COMPLIANCE WITH CONDITIONS.** Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the City of Davis Community Development Department. The site and buildings shall be inspected for compliance prior to the issuance of a certificate of occupancy.

Ongoing

24. **UNDEVELOPED SITE MAINTENANCE.** The applicant shall be responsible for the ongoing maintenance and upkeep of undeveloped portions of the project site in accordance with the

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City of Davis Municipal Code. The applicant shall consult with Public Works for use of Best Management Practices to manage erosion control on the site.

25. **TRASH MAINTENANCE.** The entire site shall be kept free of trash or debris at all times.
26. **BACKFLOW EQUIPMENT.** Backflow prevent valve wheels and stems shall be maintained in a manner which enables inspection in order to determine whether or not the valve is open.
27. **CONSTRUCTION WASTE RECYCLING.** Prior to issuance of permits, the applicant shall submit to the City for review and approval a Construction Waste Recycling Program for the project including provisions for participation in the County Wood Waste Reduction program or equivalent. The recycling program should include the recycling and re-use of all construction materials and garbage generated by the construction workers, such as shipping boxes and packing materials, beverage containers, metal scraps, etc.
28. **SOILS.** Prior to the issuance of permits, the applicant shall have a soils investigation report prepared and the applicant shall comply with all recommendations contained within the report.
29. **FIRE DEPARTMENT REQUIREMENTS.** Prior to the issuance of permits, the owner/developer shall obtain approval from the fire department that: a) All necessary public services, including water service and fire hydrants, meet fire department standards; and b) Vehicle access is sufficient to accommodate fire department equipment add fire sprinklers are provided in any building over 5,000 square feet.

During Construction

30. **CONSTRUCTION TIMES AND NOISE IMPACTS/MITIGATION MEASURES.** The developer/applicant shall be responsible for informing all subcontractors and construction crews about construction start and finish times including appropriate ambient noise impacts consistent with city code and of all applicable mitigation measures.
31. **EXCAVATION.** If subsurface paleontological, archaeological or historical resources or remains, including unusual amount of bones, stones, shells or pottery shards are discovered during excavation or construction of the site, work shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further measures to reduce any cultural resource impact before construction continues.
32. **NOISE REDUCTION PRACTICES.** The applicant shall employ noise-reducing construction practices. The following measures shall be incorporated into contract specifications to reduce the impact of construction noise.
 - a) All equipment shall have sound-control devices no less effective than those provided on the original equipment. No equipment shall have an un-muffled exhaust.
 - b) As directed by the City, the developer shall implement appropriate additional noise mitigation measures including, but no limited to, changing the location of stationary

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construction equipment, shutting off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, or installing acoustic barriers around stationary construction noise sources.

33. THE AIR QUALITY DURING CONSTRUCTION. The following actions shall be taken during construction to minimize temporary air quality impacts (dust):

- a) An effective dust control program should be implemented whenever earth-moving activities occur on the project site. In addition, all dirt loads exiting a construction site within the project area should be well watered and/or covered after loading.
- b) Apply water or dust palliatives on exposed earth surfaces as necessary to control dust emissions. Construction contracts shall include dust control treatment in late morning and at the end of the day, of all earth surfaces during clearing, grading, earth moving, and other site preparation activities. Non-potable water shall be used, where feasible. Existing wells shall be used for all construction purposes where feasible. Excessive watering will be avoided to minimize tracking of mud from the project onto streets.
- c) Grading operations on the site shall be suspended during periods of high winds (i.e. winds greater than 15 miles per hour).
- d) Outdoor storage of fine particulate matter on construction sites shall be prohibited.
- e) Contractors shall cover any stockpiles of soil, sand and similar materials.
- f) Construction-related trucks shall be covered and installed with liners and on the project site shall be swept at the end of the day.
- g) Revegetation or stabilization of exposed earth surfaces shall be required in all inactive areas in the project.
- h) Vehicle speeds shall not exceed 15 miles per hour on unpaved surfaces.

34. OZONE PRECURSORS DURING CONSTRUCTION. In order to minimize the release of ozone precursors associated with construction, the following standard requirements developed by the Yolo/Solano APCD shall be implemented:

- a) Construction equipment and engines shall be properly-maintained.
- b) Vehicle idling shall be kept below ten minutes.
- c) Construction activities shall utilize new technologies to control ozone precursor emissions, as they become available and feasible.
- d) During smog season (May through October), the construction period shall be lengthened so as to minimize the number of vehicles and equipment operating at the same time.