ORDINANCE NO. 2585

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING THE DEVELOPMENT AGREEMENT FOR THE UNIVERSITY COMMONS PROJECT

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

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

WHEREAS, the Developer of the site desires to carry out the development for the University Commons Project ("Project") on the approximately 8.25-acre property located at 737-885 Russell Boulevard (APN: 034-253-007) as described in the Development Agreement (the "Property) consistent with the General Plan, as amended, and the Development Agreement (the "Development Agreement"), and the vested entitlements referenced therein; and

WHEREAS, the City Council of Davis adopted project entitlements for the University Commons Project, including the General Plan Amendment, Rezoning and Preliminary Planned Development Permit; and

WHEREAS, the City Council certified the Environmental Impact Report (SCH 2018112044) and the Mitigation Monitoring and Reporting Program adopted therewith for the University Commons Project; and

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

WHEREAS, the Planning Commission held a duly noticed public hearing on May 27, 2020 on the Project entitlements, including the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public and rejected approval of the project; and

WHEREAS, the City Council held a duly noticed public hearing on July 21, 2020 and August 18, 2020 on the Project entitlements, including the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members

of the general public, and reviewed all the information pertaining to the project including the Planning Commission hearing minutes or comments, reports, and all evidence received by the Planning Commission.

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

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

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

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

A. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, in that it establishes certain development rights, obligations and conditions for the implementation of the University Commons Project;

B. The Development Agreement is compatible with the uses authorized therein, and the regulations prescribed for, the general plan designations which will apply to the Property;

C. The Development Agreement is in conformity with public convenience, general welfare and good land use practice;

D. The Development Agreement will not be detrimental to the public health, safety and general welfare;

E. The Development Agreement will not adversely affect the orderly development of the Property or the preservation of property values; and

F. The Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

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

A. The Recitals set forth in this Ordinance, which are deemed true and correct;

B. The City's General Plan, as amended;

C. Resolution No. 20-124, adopted by the City Council on August 25, 2020 certifying the University Commons Project EIR (SCH#2018112044) and Mitigation Monitoring and Reporting Program, which Resolution and exhibits are incorporated herein by reference as if set forth in full;

D. The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 20-125 prior to adoption of this Ordinance;

E. All City staff reports (and all other public reports and documents) prepared for the Planning Commission and City Council, relating to the Development Agreement and other actions and entitlements relating to the Property, including all attachments hereto;

F. All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Amendment to the Development Agreement, and other actions relating to the Property; and

G. All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

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

SECTION 6.
Upon the effective date of this Ordinance, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Davis

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

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

SECTION 9.
This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if the General Plan Amendment is approved at a later date, then the effective date of this Ordinance shall be the date on which the General Plan Amendment becomes effective.

INTRODUCED on the 25th day of August, 2020, and PASSED AND ADOPTED by the City Council of the City of Davis on this 15th day of September, 2020, by the following vote:

AYES: Carson, Frerichs, Lee, Partida

NOES: Arnold

Gloria J. Partida
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT

BY AND BETWEEN

THE CITY OF DAVIS AND BRIXMOR

Relating to the Development of the Property Commonly Known as University Commons

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 15th day of September, 2020, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and California Property Owner I, LLC (the "Developer"). This Agreement is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This agreement refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

Recitals

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et seq.* of the Government Code which authorizes any

city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject

B. of the development project application.

C. The Developer owns in fee certain real property as described in Exhibit A attached hereto and incorporated herein by this reference. Developer seeks to develop the property as a retail commercial and residential vertical mixed use development project (the "Project"). The Project will consist of approximately 136,800 square feet of new retail commercial space, 13,200 square feet of existing retail commercial for a total of approximately 150,000 square feet, and residential units with 894 beds. The Project will include structured parking, signage, landscaping, site amenities, and other improvements outlined in the project entitlements.

D. This Agreement is voluntarily entered into by Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the approximately 8.25± acre property located on the north side of Russell Boulevard and bordered by Anderson Road and Sycamore Lane (APN 034-253-007) ("the Property"), and further detailed in Recital D below. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

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

(1) Certification of the EIR and adoption of the Mitigation Monitoring Plan for the Project.

(2) General Plan Amendment #2-18;

(3) Rezone and Preliminary Planned Development #3-18;

(3) Development Agreement #2-19.

F. This Agreement will provide certainty with respect to planning and orderly development of the Project and will enable the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements and public services, build-out the Project consistent with the desires of the City to develop at a pace that will assure integration of the Project into the existing community, and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

G. In exchange for the benefits to the City, the Developer will be assured that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code Section 65864.

AGREEMENT

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

ARTICLE 1 General Provisions.

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

B. [Sec.101] Effective Date and Term. The effective date of this Agreement shall be the date the Ordinance adopting this Agreement is effective. The term of this Agreement (the "Term") shall commence upon the effective date and shall extend for a period of fifteen (15) years thereafter, unless said Term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties, subject to the provisions of Sections 105 through 106 hereof. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect, except as noted in Section 407 hereof.

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

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

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

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

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

2. Except as to an assignment by Developer to an affiliate or entity in which Developer is a member or holds an ownership interest, 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 development experience and financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment.

(b) Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If City receives a public records request for any information designated a "trade secret" City shall notify the assignee and assignor of such request prior to releasing the material in question to the requesting party. If the assignee directs the City not to release the material in question, the assignee shall indemnify the City for any costs incurred by City, including but not limited to staff time and attorney's fees, as a result of any action brought by the requesting party to obtain release of the information and/or to defend any lawsuit brought to obtain such information. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing to the Developer at the address set forth in Section 900, or as alternatively described in Section 104,

and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) calendar days after receipt of written request for such approval, such assignment shall be deemed to be approved.

3. The Specific Development Obligations set forth in Section 201, are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, other than in accordance with this Section 103, that attempts to sever such conditions shall constitute a default under this Agreement and, subject to the procedure set forth in Section 400, and shall entitle the City to terminate this Agreement in its entirety.

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

5. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations

and be consistent with the General Plan, the Project Approvals and this Agreement. Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer's business structure, such as: (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates, or an entity in which Developer is a member or holds an ownership interest; and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

E. [Sec. 104] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 9 hereof. Alternatively, formal written notices, demands, correspondence and communications between the City and the Developer may be sent by electronic mail (e-mail) and shall be deemed sufficient upon confirmation of receipt of the e-mail by recipient Party. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. The Developer shall give written notice to the City, at least thirty (30) days prior to the close of escrow, of any sale or transfer of any portion of the Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the acreage and location of the land sold or transferred, and the name and address of a single person

or entity to whom any notice relating to this Agreement shall be given, and any other information reasonably necessary for the City to consider approval of an assignment pursuant to Section 103 or any other action City is required to take under this Agreement.

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

G. [Sec. 106] Major Amendments and Minor Amendments.

1. Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land for public use or purposes; (d) provisions regarding Developer's fulfillment of its obligations to make fair share financial contributions to off-site road and bike and pedestrian improvements as set forth in this Agreement; (e) changes to conditions, terms, restrictions or requirements applicable to subsequent discretionary actions; (f) an increase in the density or intensity of use of the Property or the maximum height or maximum gross square footage, which shall not include changes to residential unit count pursuant to Section 201(10) below unless they impact the maximum height or maximum gross square footage of the Property; or (g) other monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council, and mutual consent of the Parties. Any amendment which is not a Major Amendment shall be deemed a Minor Amendment subject to Section 106(2) below. The City Manager or his or her delegee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 106(1)

or a Minor Amendment subject to Section 106(2) below. The City Manager's determination may be appealed to the City Council.

2. Minor Amendments. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 106(1), they shall effectuate such clarifications, minor changes or minor adjustments through a written Minor Amendment approved in writing by the Developer and City Manager or his or her designee. Minor amendments authorized by this subsection may not constitute an "amendment" for the purposes of Government Code sections 65867, 65867.5, and 65868. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement. Revisions to the residential unit count, as described in Section 201(10) below may be handled through a Minor Amendment.

ARTICLE 2 Development of the Property.

A. [Sec. 200] Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer shall have a vested right to develop, but not the affirmative obligation to proceed with the development of, the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement and the Project Approvals attached hereto as Exhibit B and incorporated herein by reference, and any

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

The Developer hereby agrees that development of the Project shall be in accordance with the Project Approvals, including any conditions of approval as adopted by the City, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Nothing in this Section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 106(2), *supra*. Nothing in this Agreement shall require Developer or Landowner to construct the Project or to pay fees for any portion of the Project that Developer or Landowner does not construct.

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

1. Development Impact Fees Connections Fees, and Community Enhancement Funds. The Developer shall pay Development Impact Fees, Connection Fees, and Community Enhancement Funds identified in Exhibit C.

2. Affordable Housing Requirements. The Developer shall meet affordable housing requirements as set forth in Exhibit D.

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

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

5. Residential Occupancy Management Plan. Developer shall implement the Residential Occupancy Management Plan set forth in Exhibit G.

6. Parking Management Plan. Developer shall implement the Parking Management Plan set forth in Exhibit H.

7. Construction of or Fair Share Contributions to Off-Site Road, Bike and Pedestrian Improvements. The Developer shall make its fair share financial contributions to off-site road and bike and pedestrian improvements as set forth in Exhibit I entitled "Developer Fair Share Contributions to "Construction of or Off-Site Road, Bike and Pedestrian Improvements".

8. Landscaping and Water Conservation Measures. The Developer shall implement the Landscaping and Water Conservation Measures set forth in Exhibit J.

9. Reimbursement for Property Taxes. Prior to issuance of building permit, Developer shall record a covenant on the title to the Project Site regarding property tax payments. The covenant shall include a permanent obligation for the property owner to make payments to the City in lieu of the City's share of otherwise-required property taxes in the event that the Property is acquired or master leased by an entity exempt from payment of property taxes. Wording of the covenant is subject to review and approval of the City Attorney.

10. Residential Unit Mix. The maximum number of bedrooms in any Project unit shall not exceed four (4) bedrooms. A minimum of fifty five percent (55%) of the total units in the Project shall be comprised of studios, one (1), two (2) and three (3) bedroom units. In no event shall the total Project four (4) bedroom units exceed forty five percent (45%) of the total

unit count. Any modification by Developer to the total unit count at the time of submittal of the Final PD shall be subject to evaluation by City to determine whether or not the potential environmental impacts resulting from the modified total unit count are addressed within the analysis contained in the project EIR or whether additional environmental analysis shall be required pursuant to CEQA.

11. Unit Distribution. The Developer shall design the residential portion of the Project in a manner that allocates a portion of the studio, one (1), two (2), and three (3) bedroom units into one area of the Project.

12. Residential Floors. Residential housing shall be limited to four (4) stories over a retail podium.

13. Rental Program. The rental program shall include units available for rent by the bed as well as options to rent by the unit.

14 Pedestrian and Bicycle Access. A gated pedestrian access to the project site from the north shall be evaluated as part of the final PD submittal. The ultimate inclusion of a pedestrian gate shall be evaluated in light of potential issues relating to location, land use compatibility, noise attenuation, lighting, hours of operation, safety and security.

C. [Sec. 202] Subsequent Approvals and Subsequent Actions.

1. Subsequent Approvals. The Developer has the vested right to develop Project pursuant to and consistent with this Agreement and the Project Approvals and is subject only to subsequent discretionary approvals for the Project or portions of the Project, including approval of a Final Planned Development and Design Review. In reviewing and acting upon these

subsequent discretionary approvals, and except as set forth in this Agreement, the City shall not impose any conditions that preclude the development of the Project for the uses or the density and intensity of use set forth in this Agreement. Any subsequent discretionary approvals, except conditional use permits, shall become part of the Project Approvals once approved and after all appeal periods have expired or, if an appeal is filed, if the appeal is decided in favor of the approval.

Conditional use permits may be reviewed and approved by the City during the term of this Agreement but shall not "vest" under this Agreement and will terminate if not used as set forth in the City's Municipal Code, including its Zoning Ordinance. The term of any conditional use permit shall be determined by the City's Zoning Regulations or conditions of approval of the conditional use permit and shall not be extended by reason of this Agreement.

2. Subsequent Actions. Subject to applicable law relating to the vesting provisions of development agreements, Developer and City intend that except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances, growth control measures and initiatives or referenda, other than a referendum that specifically overturns City's approval of the Project Approvals, that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative or referendum shall not apply to the Project Approvals and the Project. Notwithstanding any other provision of this Agreement, Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied

on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby.

D. [Sec. 203] Development Timing. In developing the Project, Developer shall be obligated to comply with the terms and conditions of the Project Approvals and this Development Agreement at those times specified in either the Project Approvals or this Development Agreement. Parties acknowledge that the Developer cannot at this time predict with certainty when or the rate at which the Property would be developed. Such decisions depend upon numerous factors, including market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and the Developer to hereby acknowledge and provide for the right of the Developer to develop the Project in such order and at such rate and times as the Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Development Agreement, and that without such a right, the Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute (California Government Code § 65864 *et seq.*), City Council Resolution 1986-77 and this Development Agreement. The Developer will use its best efforts, in

accordance with sound business judgment and taking into consideration market conditions and other economic factors, in whether or not to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Project Approvals.

E. [Sec. 204] Rules, Regulations and Official Policies.

For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, applicable to the development of the Property, including the maximum height and size of proposed buildings, consistent with this Development Agreement and with Project Approvals, shall, to the extent applicable, be those rules, regulations and official policies in force on the effective date of the ordinance enacted by the City Council approving this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement pursuant to Sections 105 through 106 hereof. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Article 2, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property; This Section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations.

In the event state or federal laws or regulations enacted after the date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended only to the degree necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies).

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

2. Design, Construction, and Improvement Plans. All Project construction and improvement plans shall comply with the rules, regulations and design guidelines in effect at the time the construction improvement plans are approved. Unless otherwise expressly provided in this Agreement, all city ordinances, resolutions, rules regulations and official policies governing the design and improvement and all construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit is granted. Ordinances, resolutions, rules, regulations and official policies governing the design,

improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time the applicable permit approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City or the date construction for the public improvements is commenced, whichever occurs first.

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

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

(a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use entitlements for

the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

(b) The Developer waives, for itself and its successors and assigns, the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Agreement and land use entitlements for the Property obtained while this Agreement is in effect. No such waiver is recognized for rights vesting in accordance with the decision of *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976); and

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

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

F. [Sec. 205]. Fees, Exactions, Conditions and Dedications.

1. Except as provided herein, the Developer shall be obligated to pay only those fees, in the amounts with applicable future adjustments as set forth in this Agreement, and make those dedications and improvements prescribed in the Project Approvals and this

Agreement and any Subsequent Approvals. Unless otherwise specified herein, City-imposed development impact fees and sewer and water connection fees shall be due and payable by the Developer prior to the issuance of a certificate of occupancy for the building in question. As set forth expressly in this Agreement, Developer shall be entitled to a credit for certain impact fees previously paid with respect to the existing development on the Property.

2. Except as otherwise provided by this Agreement, the Developer shall, for a period of five (5) years following the Effective Date of this Agreement, pay the fee amount in effect at the time of the Project Approvals. The City retains discretion thereafter to revise such fees as the City deems appropriate, in accordance with applicable law. After the five (5) year period referenced in this Sub-Section 205 (2), if the City revises such fees on a city-wide basis (as opposed to revising such fees on an *ad hoc* basis that applies solely to the Project) prior to the Developer obtaining a certificate of occupancy, then the Developer shall thereafter pay the revised fee. The Developer may, at its sole discretion, participate in any hearings or proceedings regarding the adjustment of such fees. Nothing in this Agreement shall constitute a waiver by the Developer of its right to challenge such changes in fees in accordance with applicable law, provided that the Developer hereby waives its right to challenge the increased fees solely on the basis of any vested rights that are granted under this Agreement.

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

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

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

(a) The City may impose reasonable additional fees, charges, dedication requirements, or improvement requirements as conditions of the City's approval of a Major Amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; however, such additional fees, charges, dedication requirements, or improvement requirements shall relate only to the subject Major Amendment and shall be delineated in the Major Amendment.

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

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

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

G. [Sec. 206] Completion of Improvements. All improvements necessary to service new development shall be completed prior to issuance of a certificate of occupancy for the Project or any portion of the Project.

ARTICLE 3 Obligations of the Developer.

A. [Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement, the Project Approvals, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any material term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals, or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer

under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Article 4 hereof.

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

C. [Sec. 302] City's Good Faith in Processing. The City agrees that it will accept, in good faith, for processing, review and action, all complete applications for General Plan, Final Planned Development and/or amendments, zoning, special permits, development permits, or other entitlements for use of the Property in accordance with this Agreement.

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

ARTICLE 4 Default, Remedies, Termination.

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

After the notice specified above and expiration of the thirty (30) day period, if such default has not been cured or Developer has failed to reasonably prosecute and/or implement a cure in the manner set forth in the notice, the other Party to this Agreement may at its option:

1. Terminate this Agreement, in which event neither Party shall have any further rights against or liability to the other with respect to this Agreement or the Property; or

2. Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

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

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

C. [Sec. 402] Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him or her to

be required in order to ascertain compliance with this Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement pursuant to the procedures set forth in Sections 105, 106, and 400. The costs of notice and reasonable related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by the Developer.

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

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

D. [Sec. 403] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to pandemic resulting in a declared state of emergency, war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, moratoria or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of such time as developers should reasonably have known of the commencement

of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

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

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

F. [Sec. 405] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of

this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

G. [Sec. 406] Invalidity of Agreement.

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

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

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

ARTICLE 5 Hold Harmless Agreement.

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

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

ARTICLE 6 Prevailing Wages.

A. [Sec. 601] Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California Labor Code Section 1720, *et seq*., and 1770 *et seq*., as well as California Code of Regulations, Title 8, Section 16000 *et seq*. ("Prevailing Wage

Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects, as defined. If work on off-site improvements pursuant to this Agreement is being performed by Developer as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws., Developer agrees to fully comply with such Prevailing Wage Laws.

ARTICLE 7 Project as a Private Undertaking.

A. [Sec. 700] Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between the Developer and the City is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 8 Consistency With General Plan.

A. [Sec. 800] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan, as amended by the General Plan Amendment approved as part of the Project Approvals.

ARTICLE 9 Notices.

A. [Sec. 900] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the Parties as set forth below, or alternatively via e-mail as set forth in Section 104.

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

City Manager
City of Davis

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

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

Andrew Gracey
Brixmor Property Group
Vice President Re/Development, West
1525 Faraday Avenue, Suite 350
Carlsbad, CA 92008
E-mail: andrew.gracey@brixmor.com

With a copies to:

Brixmor General Counsel
Steve Siegel
Brixmor Property Group
EVP, General Counsel & Secretary
450 Lexington Avenue, Floor 13
New York, NY 10017
steven.siegel@brixmor.com

George Phillips
Phillips Land Law, Inc.
5301 Montserrat Lane
Loomis, CA 95650
E-mail: gphillips@phillipslandlaw.com

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

ARTICLE 10 Recordation.

A. [Sec. 1000] When fully executed, this Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

ARTICLE 11 Estoppel Certificates.

A. [Sec. 1100] Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the

certifying Party: (a) this Development Agreement is in full force and effect and a binding obligation of the Parties; (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting Party may designate a reasonable form of certificate (including a lender's form) and the Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, and other mortgages. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Developer to execute an estoppel certificate shall not be deemed a default. In the event Developer does not respond within the required thirty (30) day period, City may send a second and final request to Developer and failure of Developer to respond within fifteen (15) days from receipt thereof shall be deemed approval by Developer of the estoppel certificate (but only if City's request contains a clear statement that failure of Developer to respond within this fifteen (15) day period shall constitute an approval) and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of City to execute an estoppel certificate shall not be deemed a default. In the event City fails to respond within the required thirty (30) day period, Developer may send a second and final request to

City, with a copy to the City Manager and City Attorney, and failure of City to respond within fifteen (15) days from receipt thereof shall be deemed approval by City of the estoppel certificate (but only if Developer's request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) and may be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees.

ARTICLE 12 Provisions Relating to Lenders

A. [Sec. 1200] Lender Rights and Obligations.

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

2. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer and which remain unpaid as of the date such Lender takes possession of the Property

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

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

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

5. Other Notices by City. A copy of all other notices given by City to Developer pursuant to the terms of this Agreement shall also be sent to any Lender who has requested such notices at the address provided to City pursuant to Section 900 above.

B. [Sec. 1201] Right to Encumber. City agrees and acknowledges that this Agreement shall not prevent or limit the owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device. City acknowledges that any Lender may require certain interpretations of the agreement and City agrees, upon request, to meet with the owner(s) of the property and representatives of any Lender to negotiate in good faith any such request for interpretation. City further agrees that it shall not unreasonably withhold its consent to any interpretation to the extent such interpretation is consistent with the intent and purpose of this Agreement.

ARTICLE 13 Entire Agreement.

A. [Sec. 1300] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of thirty six (36) pages and ten (10) exhibits which constitute the entire understanding and agreement of the Parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

Exhibit A:	Legal Description of the Property
Exhibit B:	Project Approvals
Exhibit C:	Development Impact Fees, Connection Fees and Community Enhancement Funds
Exhibit D:	Affordable Housing Plan
Exhibit E:	Local Hiring Program

Exhibit F:	Environmental Sustainability Implementation Plan
Exhibit G:	Residential Occupancy Management Plan
Exhibit H:	Parking Management Plan
Exhibit I:	Construction of or Fair Share Contributions to Off-Site Road, Bike and Pedestrian Improvements
Exhibit J:	Landscaping and Water Conservation Measures

[Signatures on following page]

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

"CITY"

CITY OF DAVIS

By: _____
Gloria J. Partida
Mayor

Attest: _____
Zoe S. Mirabile, CMC,
City Clerk

_____

"DEVELOPER"

California Property Owner I, LLC, a Delaware limited liability company

By: _____
Matthew Berger
Title: Executive Vice President – West Region

By: _____
Name:
_____
Title:
_____

APPROVED AS TO FORM:

_____
Inder Khalsa
City Attorney

EXHIBIT A

Legal Description

APN 034-253-007

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF DAVIS, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lot 273, University Farms Unit No. 7, according to the official Plat thereof, filed for record in the Office of the Recorder of Yolo County, California on April 22, 1963 in Book 6 of Official Maps, at Pages 4 and 5.

Excepting therefrom all oil, gas, petroleum and other hydrocarbon substances and all other minerals within and underlying and which may be produced from said property together with certain subsurface rights incidental thereto but not the right to drill and/or tunnel into, under or through said property above a depth of 500 feet measured from the surface as reserved on the map hereinabove referred to.

EXHIBIT B

Project Approvals

(1) Certification to the EIR for the Project

(2) General Plan Amendment #2-18;

(3) Rezone and Preliminary Planned Development PD 3-18 (University Commons);

(4) Development Agreement #2-19.

EXHIBIT C

Development Impact Fees, Connection Fees and Community Enhancement Funds

I. General Provisions

Notwithstanding any other provisions of this Agreement and the Municipal Code, the development impact fees ("Development Impact Fees") and connection fees ("Connection Fees") set forth in this Exhibit C shall be paid by the Project as modified in this Exhibit C. All other fees, connection fees, and payments shall be subject to the general provisions of Article 2, Section H of this Agreement and the Municipal Code. All other fees, connection fees, and payments shall be subject to the general provisions of the Municipal Code. All development impact fees, connection fees and community enhancement funds paid by Developer shall be calculated consistent with the terms of this Development Agreement and this Exhibit C using the final square footage and unit count contained in the approved Final Planned Development.

The Developer and the City hereby agree to apply for and fully support funding under the Statewide Community Infrastructure Program ("SCIP") or similar mutually agreeable program, provided that the Project meets the requirements for the financing. The application shall be at Developer's option, and following Developer's written notification to City of its intention to apply.

II. Development Impact Fees

Development Impact Fees shall be paid by the Developer in accordance with AB 1600 and are based on the impacts of the Project and must be reasonably related to the cost of the service provided by the local agency as set forth in the tables below. To the extent that Developer or its predecessor(s) in interest paid Development Impact Fees for commercial square footage that is being demolished to accommodate the Project, such previous fee payments shall be credited against the Development Impact Fees owed to City by Developer for the Project, meaning Developer or its predecessor(s) in interest shall pay Development Impact Fees on net new square footage.

Unless provided otherwise in this Development Agreement or this Exhibit C, payment of Development Impact Fees for the Project shall be payable prior to the Certificate of Occupancy being issued for the Project.

The Developer shall have the option to defer Development Impact Fees for the applicable phase of the Project being constructed which shall be payable 24-months from the first residential unit Certificate of Occupancy being issued for the applicable phase of the Project, provided the Developer provides security for the payment agreement acceptable to the City Manager and City Attorney. Security for the payment shall be in the form of a performance bond or letter of credit, in a form and from a surety acceptable to City, issued to the City securing the outstanding amount of the Development Impact Fees. If the amount due to the City is not paid in full upon the day of the expiration of the 24-month period, a 10% penalty will be assessed. The surety amount shall include the 10% penalty on the outstanding amount of the Development Impact Fees deferred. If the Developer does not pay the entire amount due by 45 days after the date of

the expiration of the 24-month period, the City may call on the surety or letter of credit to pay the entire amount then due, including the 10% penalty. The City Manager and City Attorney have the sole discretion to consider entering into an agreement in lieu of a performance bond or letter of credit regarding the payment of Development Impact Fees provided that the agreement provides adequate leverage in favor of the City relative to collection of the deferred Development Impact Fees.

Developer has the right to pay any Development Impact Fees associated with the Project at any given time to avoid upcoming increases.

If Development Impact Fees are not paid by the fifth (5^{th}) year following the Effective Date of this Agreement, the Development Impact Fees shall be recalculated in accordance with rates applicable at the time.

Development Impact Fees Tables

Commercial Development Impact fees	**Commercial Rate per 1,000 sf**
Roadways	$20,239.00
Parks	$730.00
Open Space	$126.00
Public Safety	$1,078.00
Drainage	$118.00
General Facilities	$928.00
Total	$23,219.00

Residential Development	**Multi-Family Rate**	**Multi-Family Rate**
Impact Fee's	**1-Bedroom**	**2 Plus Bedrooms**
Roadways	$3,047.00	$4,942.00
Parks	$3,277.00	$3,827.00
Open Space	$564.00	$659.00
Public Safety	$700.00	$757.00
Drainage	$85.00	$85.00
General Facilities	$1,249.00	$1,823.00
Total	$8,922.00	$12,093.00

III. Connection Fees

Connection fees are due at building permit and the Public Works Director, can, in his or her sole discretion agree to a postponement to Certificate of Occupancy. To the extent that Developer or its predecessor(s) in interest paid Connection Fees, such previous fee payments shall be credited against the Connection Fees owed to City by Developer for the Project.

Water Connection Fees. Water connection fees paid by the Developer shall not exceed the existing City water connection fee for the first five (5) years from the Effective Date of this Agreement. If the water connection fees decrease during the five-year period, then the Project shall be subject to the lower fee. Thereafter, if the water connection fee has increased, the Developer shall pay the then current water connection fee. Water connection fees will be determined at the time of Utility plan check.

Water Meter Connection Fees

Meter Size	**Charge**
3/4″	$ 10,362.00
1″	17,271.00
1-1/2″	34,541.00
2″	55,254.00
3″	103,612.00
4″	172,682.00
6″	345,376.00
8″	552,311.00

Sewer Connection Fees. Sewer connection fees paid by the Developer shall not exceed the existing City sewer connection fee for the first five (5) years from the Effective Date of this Agreement. If the sewer connection fees decrease during the five-year period, then the Project shall be subject to the lower fee. Thereafter, if the sewer connection fee has increased, the developer shall pay the then current sewer connection fee. Sewer connection fees will be determined at the time of Utility plan check.

Sewer Connection Fees

Residential (per dwelling unit)	**Connection charges**
Multi-family 5 or more units	*$3,320.00*
Commercial (based on flow and quality of discharge to the wastewater facility)	**Connection Charge**
Flow (ccf/day) winter water usage from November – February	*$14,346 ccf/day*
Biological oxygen demand impact to wastewater facility (lbs/day)	*1,556 lbs/day*
Total suspended solids impact to wastewater facility (lbs/day)	*853 lbs/day*

IV. Community Enhancement Funds

Community Enhancement Fund Multiplier for Units in Excess of Three Bedrooms

For any units in the Project that contain more than three bedrooms, additional Community Enhancement Funds shall be paid as follows: A multiplier shall be determined by dividing the total number of bedrooms by the total number of units to determine the average number of persons per unit. The average number of persons per unit shall be divided by the Development Impact Fee occupants per multi-family unit assumption in place at the time of building permit for each building which will result in the Bedroom Count Basis Multiplier that would be applied to the following Development Impact Fee categories: Roadways, Drainage, Parks, Open Space, Public Safety, and General Facilities. Rates are subject to change if any of the multipliers change such as total bed or unit counts.

Applicable to units in excess of 3 bedrooms. The final Community Enhancement Funds Rate will be determined based upon final unit mix.

Community Enhancement Table

Community Enhancement Funds Rate	
Roadways	**$2,805.87**
Drainage	**$ 48.25**
Parks	**$ 2,172.82**
Open Space	**$ 374.15**
Public Safety	**$ 429.79**
General Facilities	**$ 1035.02**
Total Per Unit in excess of 3 bdrms	**$6,865.93**

The Developer shall have the option to defer Community Enhancement Funds for the applicable phase of the Project being constructed which shall be payable 24-months from the first residential unit Certificate of Occupancy being issued for the applicable phase of the Project, provided the Developer provides security for the payment agreement acceptable to the City Manager and City Attorney. Security for the payment shall be in the form of a performance bond or letter of credit, in a form and from a surety acceptable to City, issued to the City securing the outstanding amount of the Community Enhancement Funds. If the amount due to the City is not paid in full upon the day of the expiration of the 24-month period, a 10% penalty will be assessed. The surety amount shall include the 10% penalty on the outstanding amount of the Community Enhancement Fund deferred. If the Developer does not pay the entire amount due by 45 days after the date of the expiration of the 24-month period, the City may call on the surety or letter of credit to pay the entire amount then due, including the 10% penalty. The City Manager and City Attorney have the sole discretion to consider entering into an agreement in lieu of a performance bond or letter of credit regarding the payment of Community Enhancement Funds provided that the agreement provides adequate leverage in favor of the City relative to collection of the deferred Community Enhancement Funds.

EXHIBIT D

Affordable Housing Plan

Developer will satisfy the City's affordable housing requirements through the development and operation of a privately run fully integrated affordable housing program that will be managed by an ownership entity of the University Commons project consistent with all applicable laws. The program is designed to provide privately subsidized rental housing to qualified residents as defined herein.

Structure of Program

Developer shall include Five percent (5%), not to exceed Thirteen (13) Studio Units and Five percent (5%), not to exceed Thirteen (13) Two Bedroom Units (the "Affordable Units") in the final design of the project subject to the affordable restrictions set forth in this Affordable Housing Plan. There will be no distinction made between the Affordable Units and Units rented as market rate rents. Participants in the program will enjoy the same amenities and living experience as all other residents in the project. University Commons staff will administer both eligibility and suitability of residents consistent with all applicable laws and subject to oversight by the City.

Qualification for Affordable Units

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

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

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

1. Financially Dependent Residents

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

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

2. Financially Independent Residents

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

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

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

3. Affordable Rate Determination

Studio Unit: The monthly rent for each Studio Affordable Unit will not exceed 1/12 of 30% of 80% of Yolo County area median income based on the applicant's household size as determined by HCD for the applicable year. In no event will the monthly rent be based on less than a two-person household income. Maximum occupancy is set at two (2) persons.

Two Bedroom Unit: The monthly rent for each Two Bedroom Affordable Unit will not exceed 1/12 of 30% of 100% of Yolo County area median income based on the applicant's household size as determined by HCD for the applicable year. In no event will the monthly rent be based on less than a three-person household income. Maximum occupancy is set at four (4) persons.

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

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

4. Rent Differential Payment

   To the extent those affordable units reserved for low income households at 80% AMI are not occupied by qualifying residents and rented as market rate units, the difference between the affordable rent and the market rate rent for the period the unit is occupied by the non-qualifying resident shall be contributed to the City's Housing Trust Fund.

5. Marketing

   Developer shall develop and implement a marketing plan for the program that shall be subject a timely review and reasonable approval by the City to the extent that such marketing plan is in conformance with state requirements. University Commons will market using programs on the UC Davis campus that represent traditionally underserved groups, including students, faculty and staff and will also market the Program through Yolo County Housing and the City of Davis.

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

6. Reporting

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

7. Regulatory Agreement

   Subject to the modifications that may be made pursuant to this Section, the required number of Affordable Units shall be maintained and rented as part of the project in perpetuity. The program shall be implemented through a Regulatory Agreement and Restrictive Covenants (the "Regulatory Agreement") which shall be recorded against the Property prior to the issuance of any occupancy permits for the Project. The Regulatory Agreement shall be consistent with the Plan as outlined herein and shall be in a form as approved by the City Manager and City Attorney. The Regulatory Agreement shall

remain in effect in perpetuity (except as it may be amended pursuant to this Section and shall be in a senior position to any deeds of trust or other security instruments recorded against the Property for any purpose.

EXHIBIT E

Local Hiring Program

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

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by Developer and it's contractors at the Project of residents of the City of Davis (the Targeted Job Applicants"), and in particular, those residents who are "Low-Income Individuals" (defined below), to the extent practical given the type of construction required to build the Project.

2. Definitions.

a. "Contract" means a contract or other agreement for the providing of any combination of labor, materials, supplies, and equipment to the construction of the Project that will result in On-Site Jobs, directly or indirectly, either pursuant to the terms of such contract or other agreement or through one or more subcontracts.

b. "Contractor" means a prime contractor, a sub-contractor, or any other entity that enters into a Contract with Developer for any portion or component of the work necessary to construct the Project (excluding architectural, design and other "soft" components of the construction of the Project).

c. "Low Income Individual" means a resident of the City of Davis whose household income is no greater than 80% of the Median Income.

d. "Median Income" means the median income for the Yolo County median income, which is published annually by HUD.

e. "On-Site Jobs" means all jobs by a Contractor under a Contract for which at least fifty percent (50%) of the work hours for such job requires the employee to be at the project site, regardless of whether such job is in the nature of an employee or an independent contractor.

3. Priority for Targeted Job Applicants. Subject to Section 6 below in this Exhibit E, the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority:

a. First Priority: Low Income Individuals living within one mile of the Project;

b. Second Priority: Low Income Individuals living in census tracts throughout the City for which household income is no greater than 80% of the Median Income.

c. Third Priority: Low Income Individuals living in the City, other than the first priority and second priority Low Income Individuals; and

d. Fourth Priority: City residents other than the first priority, second priority, and third

priority City residents.

4. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs related to the construction of the Project by Developer or its Contractors.

5. Outreach. As part of Developer's larger outreach and hiring program to hire the skilled workers required to construct the Project, and so that Targeted Job Applicants are made aware of the availability of On-Site Jobs, Developer or its Contractors shall advertise available On-Site Jobs in the Davis Enterprise or similar local newspaper.

6. Hiring. Developer and its prime contractor shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs, in accordance with their respective normal hiring practices. The City acknowledges that the Developer and Prime contractor shall determine in their respective subjective business judgement whether any particular Targeted Job Applicant is qualified to perform the On-Site Job and whether or not to hire the Targeted Job Applicant for which such Targeted Job Applicant has applied.

7. Term. The Local Hiring Policy shall extend throughout the construction of the Project until the final certificate of occupancy for the Project has been issued by the City.

EXHIBIT F

Environmental Sustainability Implementation Plan

The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. The sustainability and primary energy efficiency standards of the State of California, through CALGreen (California Green Building Standards Code Part 11 of Title 24, California Code of Regulations) and the California Energy Code (Part 6 of Title 24) shall be the basis for compliance of the Project. The base CALGreen requirements meet all of the LEED prerequisites and also earn points towards certification, if desired. The City is currently requiring CALGreen Tier 1 compliance. The Project will be required to meet CALGreen and Energy Code compliance that will be essentially equivalent to LEEDv4 Gold. Project compliance with this commitment shall be satisfactorily demonstrated to the Director of Community Development and Sustainability. As such, formal LEED certification of the Project by the U.S. Green Building Council is not required.

1. The project shall comply with the City of Davis Reach Code. The current Reach Code requires a minimum 10% compliance margin above the 2019 California Building Energy Efficiency Standards (Title 24, Part 6 of the California Code of Regulations) and the buildings and landscaping will be designed to achieve Tier 1 domestic water usage and comply with the Model Water Efficient Landscape Ordinance (MWELO). The analysis necessary for compliance shall be submitted prior to the issuance of Building Permits. The measures could include, but not be limited to, a combination of the following:

- LED lighting with lighting power densities in common spaces, offices, and corridors at least 10% lower than Title 24 prescriptive requirements.
- High-efficacy LED lighting with lighting controls and natural day lighting/ventilation throughout the project.
- Roof-top photo-voltaic electrical panels sized to offset a portion of the total building energy use. Size is the lesser of 80% offset of the building's annual electric load or 15 DC watts per sq. ft. of solar zone. Solar zone is available roof space after required setbacks from parapets and equipment. High efficiency glazing for both manufactured and site-built storefront products that includes low-E coating and either non-metal framing or thermally broken metal framing with U-factors $\leq$ 0.35 and solar heat gain coefficients $\leq$ 0.25.
- Envelope insulation that meets or exceed Title 24 prescriptive requirements, which for metal framed buildings is equivalent to walls with R-21 cavity insulation and R-10 continuous insulation, and roofs with R-28 cavity insulation and R-12 continual insulation.
- High efficiency cooling equipment with SEER values $\geq$ 16; high efficiency heating equipment with AFUE values $\geq$ 90 for gas equipment and HSPF values $\geq$ 9 for electric equipment; high efficiency ventilation systems with fan efficacy $\leq$ 0.35 Watts/cfm2.

2. Electric Vehicle (EV) charging: As per Davis Electric Vehicle Charging Plan requirements, approved by City Council by resolution on February 23, 2017, this Project is required to provide Nine (9) EV Chargers for its commercial square footage and,

Sixteen (16) for its residential units, an additional:

- Level 1 charging at 5% of all spaces (min 2 spaces): 5% of Two Hundred and Sixty Four (264) total required parking spaces = Thirteen Spaces (13) spaces at Level 1 (multiple spaces can be served by a single charger).

- Level 2 charging at 1% of all spaces (min 1 parking space): minimum = 1% of Two Hundred and Sixty Four (264) total required parking spaces = Three (3) spaces at Level 2

- Conduit adequate for 25% Level 2 spaces: 25% of Two Hundred and Sixty-Four (264) spaces = Sixty Six (66) total spaces minus three above = minimum Level 2 conduit to Sixty Three (63) additional spaces.

- Room in panels and capacity to serve 20% of all spaces with Level 1 (Two Hundred and Sixty-Four (264) spaces total) = Fifty Three (53) spaces total in panels.

- Room in panels and capacity to serve 5% of all spaces with Level 2 (Two Hundred and Sixty-Four (264) spaces total) = Thirteen (13) spaces total in panels.

3. Parking

    - Cost to Park Management Programs will be implemented to discourage vehicle use.

    - All parking for the residential units shall be charged separately from base rent charges.

- Dedicated surface level parking stalls for ride/car share program will be provided.

4. Bicycle Parking

- A minimum of six hundred and eighty three (683) long-term and three hundred thirty five (335) short-term bicycle parking spaces shall be provided on-site, subject to recalculation based on the approved Final Planned Development.

- The long-term secured bicycle parking shall be designed to allow adequate maneuvering and access to the satisfaction of the City's bike/ped coordinator.

- Five (5) spaces shall be provided within the long-term secured bicycle parking area to accommodate, longer, non-traditional bicycles.

5. Water

- Efficient irrigation through the use of drip irrigation and moisture sensors;

- Drought tolerant plantings;

- Low-water use compliant;

- Solar hot-water preheat and central boiler system.

6. Electric Cooking Appliances for Residential Units

All residential units shall have electrical cooking appliances. No natural gas cooktops shall be allowed for residential units.

7. Utility Metering

    a. Each residential and retail suite will contain a water sub-meter to measure actual use.

    b. Each residential and retail suite will contain an electrical meter to measure actual use.

8. Water Usage Fee for Residential Units

Developer shall charge a water usage fee on units with "excessive" monthly usage above a baseline amount, which shall be established as an appropriate average amount for units of similar size and occupancy. The baseline water amount and fee shall be reviewed annually in consultation with the City to determine whether any adjustments are needed.

Adjustments are subject to review and approval by the Director of Community Development and Sustainability.

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

9. During construction developer will divert solid waste from landfill to a minimum of 65%

10. Common Area Lighting a. Parking and common area lighting will equipped with solar powered LED lights.

11. Commitment to collaborate with tenants to jointly reduce environmental footprint through provision of newsletter and/or other equivalent educational materials focused on sustainability.

12. Prior to issuance of building permits, the Developer shall record a covenant on the property, making the parking requirements described in this exhibit binding upon all successors and assigns during the life of the project, even after the expiration of this Agreement.

EXHIBIT G

Residential Occupancy Management Plan

University Commons will implement and maintain the residential occupancy management plan set forth in this Exhibit G.

1. The maximum number of residents permitted within the Project is 894.

2. As part of determining the maximum project residential occupancy, Developer/Operating Manager shall determine the number of residents allowed within each floor plan within the Project (Allowed Occupancy).

3. The Allowed Occupancy will be strictly limited to one resident per bedroom unless otherwise designated to accommodate double occupancy for specific unit types. An additional minor child being thirty six (36) months of age or less who occupies the same bedroom with the child's parent or legal guardian, will be permitted in addition to the Allowed Occupancy.

4. Developer/Operating Manager will use leasing software to monitor the Allowed Occupancy and compliance through leasing agreements with residents.

5. Developer/Operating Manager shall perform quarterly unit inspections for purposes of monitoring compliance with lease terms and the applicable Allowed Occupancy for each unit.

6. Developer/Operating Manager shall limit the issuance of unit keys to residents legally occupying units within the Project under the then current lease.

7. Entrances to residential buildings within the Project will be secure, with an electronic "key" required for entry.

8. A fee will be charged for replacement of lost keys to prevent duplication. Developer/Operating Manager will inventory the controlled access system, to ensure that missing or lost keys are deleted from the access system.

9. Developer/Operating Manager shall enforce lease terms regarding maximum unit occupancy, including initiating eviction proceedings for residents sharing their units with non-permitted occupants following receipt of a notice to comply by Developer.

10. Developer/Operating Manager shall issue temporary parking passes for guest parking spaces in the Project, which will be clearly marked with the time period for which the guest pass is valid. Cars with missing or expired guest passes will be towed.

11. Developer/Operating Manager shall regularly monitor guest parking within the Project to ensure that guest parking spaces are not regularly used by non-residents.

12. Prior to issuance of building permits, the Developer shall record a covenant on the property, making the requirements described in this exhibit binding upon all successors and assigns during the life of the project and surviving the termination or expiration of this Agreement.

EXHIBIT H

Parking Management Plan

Parking Requirements. The Project will include 693 parking spaces, 429 spaces for retail customers and 264 for residents, subject to recalculation based upon the approved Final Planned Development.

Parking Management. Parking for the structured and surface level parking will be actively supervised by on-site property management and regulated by access control technology. The 429 retail parking spaces will include 249 parking spaces on the first and second floors of the parking structure and 200 surface level parking spaces, subject to recalculation based upon the approved Final Planned Development.

Parking Enforcement. On-site property management will enforce all retail and residential parking rules and regulations. For the retail spaces, non-customer cars parked on-site for over one hour will be towed. Signs informing the public of this policy will be posted throughout the retail parking areas and a guard will be on duty from 8 am to 4 pm seven (7) days a week to tag vehicles and cause them to be towed when the policy is violated.

Employee Parking. Developer will include language in all retail leases designating locations for employee parking, enforcement of employee parking requirements, including legal enforcement of such requirements, and the obligation of tenants to encourage carpooling and ride-sharing among its employees.

Controlled Access – Structured Parking. The entrance to the structured parking will be controlled to restrict retail parking to floors one (1) and two (2), and residential parking to floor

three (3). There will be no cost to retail customers for parking either surface or structure parking. Residential parking spaces will be billed to residential tenants on a monthly basis in addition to their monthly rent. A time-limited visitors parking area will be provided for guests visiting residents. Limited overnight resident guest parking will be allowed by permit only. Parking permits for guest parking will be monitored and enforced by on-site management.

Neighborhood Permit Parking. Residential neighborhoods surrounding the Project are located in preferential parking permit required areas H, P, Q, S & U. These required parking permit areas restrict on-street parking to residents holding a valid city permit. Vehicles parked without a permit are subject to being fined by the City of Davis Parking Patrol. The Project will inform tenants of these permit enforcement programs through tenant education materials and on-site signage detailing the adjacent neighborhood parking restrictions.

Residential Structured Parking Fee. Vehicle parking fees for residents choosing to have vehicles will be an additional charge to base rental rates. The additional cost is intended to discourage vehicle possession by project residents.

Bicycle Parking. Bicycle parking areas are provided on the first level of the residential building and each floor of the structured parking. 894 residential bicycle parking spaces are planned (one per residential bed), with an additional 124 bicycle parking spaces planned to serve the retail uses, subject to recalculation based upon the approved Final Planned Development.

Ride Share/Shared Parking. Final project plans will include designated areas for ride share pick-up and drop-off for users such as Uber, Lyft and GrubHub. The Developer will provide at least one parking space to be used by shared vehicles such as ZipCar as an additional public amenity to further assist in the reduced need for individual vehicle use.

Parking Monitoring. Developer shall monitor on-site parking conditions and shall include in its response to the City's annual review of the Development Agreement a report on the performance of the Parking Management Plan. In the event a problem arises with on-site parking conditions, City and Developer shall meet and confer to discuss, identify and agree upon feasible measures to address the parking problem identified.

Prior to issuance of building permits, the Developer shall record a covenant on the property, making the parking requirements described in this exhibit binding upon all successors and assigns during the life of the project, surviving the termination or expiration of this Agreement.

EXHIBIT I

Construction of or Fair Share Contributions to Off-Site Road, Bike and Pedestrian Improvements

Transportation and Circulation Improvements

The following transportation and circulation improvements for the Project shall be built by the developer and completed prior to issuance of temporary or final certificate of occupancy for the retail or residential portions of the project, whichever comes first.

1) Bicycle impact
    a. Mitigation measure 4.6-2(a): Russell Boulevard/Sycamore Lane intersection: Highlight existing mixing zone with green pavement markings and warning signage.

    b. 4.6-2(b) Russell Boulevard/Anderson Road intersection: Highlight existing mixing zone with green pavement markings and warning signage.

    c. 4.6-(c.) Russell Boulevard between Sycamore Lane and Anderson Road: Construct shared use path on north side of Russell Boulevard between Sycamore Lane and Anderson Road.

2) Transit Impact
    a. 4.6-4 Southbound Anderson Road bus stop on project site frontage: Enhance bus stop amenities and waiting area capacity.

3) Vehicle queue storage
    a. 4.6-8(a) Russell Boulevard/Sycamore Lane intersection: Extend eastbound left-turn pocket storage.

4) Vehicle LOS impact
    a. 4.6-9 Russell Boulevard/Sycamore Lane intersection: Construct pedestrian "bulbouts" to reduce crossing distance and reallocate green time to major street vehicular movements. - NORTH SIDE ONLY.

The following future transportation and circulation improvements for the Project shall be contributed to as a proportionate share of total project cost by the developer in the amount of Two Hundred and Seventy Thousand Four Hundred Dollars ($270,400). The amount is to be paid in full prior to issuance of temporary or final certificate of occupancy for the retail or residential portions of the project, whichever comes first. The final payment amount shall be adjusted for inflation based on the CPI Index at the time of payment.

1) Bicycle impact, pedestrian impact
    a. Mitigation measure 4.6-2(d): Russell Boulevard/Anderson Road intersection: Reconfigure intersection to protected intersection for bike and ped movements; Proportionate share $173,900.

    b. Mitigation measure 4.6-2(f): South of Russell Blvd between Anderson Road & Segundo bike roundabout: Increase shared use path capacity and reduce the potential for bicycle-pedestrian conflicts: Proportionate share $14,800.

2) Vehicle LOS impact
    a. Mitigation measure 4.6-9: Russell Boulevard/Orchard Park Drive intersection: Reduce worst-case movement delay to LOS E or better: Prohibit northbound left-turn movements OR Prohibit northbound and westbound left-turn movements (right-in/right-out only). Proportionate share $10,450.

    b. Mitigation measure 4.6-9: Russell Boulevard/Anderson Road intersection: Reduce overall intersection delay by 15 seconds or more during the PM peak hour. Install a five-section traffic signal for northbound right-turn lane or reconfigure intersection to protected intersection for bike and ped movements. Proportionate share $57,750.

    c. Mitigation measure 4.6-9: Russell Boulevard/College Park/Howard Way: Convert northbound and southbound approaches to split phase. Proportionate share $13,500.

EXHIBIT J

Landscaping and Water Conservation Measures

To reduce Project demand on groundwater and potable water the Developer commits to the following measures:

1. Native and drought tolerant plants shall predominate the plant palette. A diversity of native habitats shall be disbursed and managed throughout the site

2. Turf / Grass will not be used.

Tree Commitments:

1. Developer will submit formal landscape plans for City review and approval as part of its application for the project's Final PD.

2. Landscaping shall provide shading of parking areas.

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

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

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

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

7. Any removal of an established tree will be authorized in accordance with the then current Tree Planting, Preservation and Protection Ordinance. Existing trees that are removed shall be mitigated consistent with the mitigation requirements specified in the project mitigation monitoring program. For newly planted trees that are planted as part of the project that are proposed for tree removal wherein the desired removal is to accommodate the installation

of photovoltaic solar array or other comparable renewable energy technology shall not be subject to a tree mitigation fee or other payment to the tree preservation fund.