

Recording Requested by  
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City of Davis  
Community Development and  
Sustainability Department  
23 Russell Boulevard, Suite 2  
Davis, CA 95616

CERTIFIED TO BE A TRUE COPY  
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BY

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FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF DAVIS AND  
LEELAND CANNERY MARKETPLACE, LLC

Relating to the Development of the Property Commonly Known as The Cannery Marketplace

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT ("Fourth Amendment") is entered into this 15<sup>th</sup> day of December, 2020 by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and LEELAND CANNERY MARKETPLACE, a California Limited Liability company ("Developer"). This Fourth Amendment is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This Fourth Amendment refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

**RECITALS**

- A. Developer owns in fee certain real property(ies) described in Exhibit A to this Fourth Amendment attached hereto and located in the incorporated area of the City of Davis (herein the "Property"), which is the site of the project known as The Cannery Village Marketplace (the "Project") and also comprises the Neighborhood Mixed-Use Commercial District of The Cannery Project;
- B. On December 10, 2013 the City adopted Ordinance 2429, approving a Development Agreement between the City, TNHC-HW CANNERY LLC, a Delaware limited liability company ("New Home") and CONAGRA FOODS PACKAGED FOODS LLC ("Conagra") for the Cannery Project. The Development Agreement was recorded in the Official Records of Yolo County on April 11, 2014, as Instrument No. 2014-0007671. The Development Agreement was subsequently amended pursuant to: (1) the First

Amendment to the Development Agreement, dated May 26, 2015, adopted by Ordinance No. 2450, and recorded on July 28, 2015 in the Official Records of Yolo County as Instrument No. 2015-0021019; (2) the Second Amendment to the Development Agreement, dated August 5, 2016, adopted by Ordinance 2483, and recorded on August 5, 2016 in the Official Records of Yolo County as Instrument No. 2016-0021525; and (3) the Third Amendment to the Development Agreement, dated November 27, 2018, adopted by Ordinance 2542, and recorded on December 21, 2018 as Instrument No. 2018-0029753. The December 10, 2013 development agreement as amended shall be referred to collectively in this Ordinance as the "Development Agreement."

- C. By grant deed recorded in the Official Records of Yolo County on April 15, 2014 as Instrument No. 2014-0007904, New Home acquired from Conagra all of the real property in the City which is the subject of the Development Agreement. Subsequently, by the Assignment of Development Agreement (Cannery Commercial Site) recorded in the Official Records of Yolo County on February 20, 2018 as Instrument No. 2018-0003738, New Home assigned to Developer and Developer assumed all of New Home's obligations and rights under the Development Agreement to the extent they apply to the Property, except to the extent such obligations are not severable under Section 103 of the Development Agreement;
- D. The Developer has informed the City that recent economic trends related to the COVID-19 crisis have made it necessary to make adjustments to the construction timeline for the Project.
- E. The City and the Developer have determined that revisions to the Development Agreement are necessary and beneficial to both parties to: (1) provide for the construction of the planned residential building prior to the construction of commercial buildings; and (2) provide for certain temporary outdoor amenities.
- F. The Environmental Impacts of the Project were previously assessed with Environmental Impact Report (EIR) for The Cannery Project (SCH #2012032022). The EIR analyzed an upper limit of 610 residential units and 236,000 square feet of mixed-use commercial, office and high density residential uses within the Cannery. The Cannery Project was approved in 2013 with a total of 547 residential dwelling units plus an additional 40 accessory dwelling units and 171,270 square feet of Neighborhood Mixed Uses, less than

the total residential units and non-residential square footage analyzed in the EIR. Revisions in 2016 which allowed an additional 36 units within The Cannery Project were determined to be consistent with the analysis of the Project impacts analyzed in the previously certified EIR.

- G. An Addendum to The Cannery EIR was also prepared evaluating and adequately analyzed the approved revisions in 2018 for additional building square footage and the 48 additional residential apartment units and determined that the revisions would not result in any new significant environmental impacts and would not require any new mitigation measures beyond the level analyzed for the Project in the previously certified EIR. The revisions did not result in a substantial change to the approved Project that would require major revisions to the previously certified EIR and therefore did not require preparation of a Subsequent EIR under the provisions of the California Environmental Quality Act.
- H. Public notice of the City Council's public hearing was published in the Davis Enterprise on November 6, 2020, and the City Council held a duly noticed public hearing to consider this Fourth Amendment on November 17, 2020;
- I. This Fourth Amendment is entered into pursuant to Government Code §§ 65868 and 65867.5, which requires that this Fourth Amendment be approved by City Ordinance;

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

#### **FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT**

**Section 1.** The City Council finds that the recitals contained in this Ordinance are true and correct and that all legal prerequisites to the adoption of this Ordinance have been satisfied.

**Section 2.** **CEQA.** In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has independently reviewed and determined that the revisions of the previously approved Project specified by this Fourth Amendment does not raise any new impacts or exceed the level of impacts identified in the EIR or significantly alter its analysis and all applicable mitigation measures continue to apply. There is no new information showing significant changes to the Project or changes in circumstances that would require additional environmental analysis under the provisions of CEQA.

**Section 3. General Plan Consistency.** This Fourth Amendment is consistent with the General Plan, does not affect the density or intensity of the development, and has conducted all necessary proceedings in accordance with state law and the Municipal Code. The Project will continue to provide for orderly growth and development consistent with the General Plan.

**Section 4. Effective Date of Amendment.** This Fourth Amendment shall become effective upon the date that the ordinance approving this Fourth Amendment becomes effective (the "Effective Date of this Fourth Amendment").

**Section 5. Term of Amendment.** The "Term" of this Fourth Amendment shall be the same as the Development Agreement.

**Section 6. Recordation of Amendment.** The City Clerk shall cause a copy of this Fourth Amendment to be recorded against title to the Property within ten (10) days of the Effective Date of this Fourth Amendment.

**Section 7. Meaning of Terms.** All terms set forth in this Fourth Amendment with an initial capitalized letter which are not otherwise defined herein shall have the meaning ascribed to them in the Development Agreement.

**Section 8. Amendments to Agreement Provisions.** The Development Agreement is amended as follows.

(A) Article 8 [Sec. 801], *Notices*, is amended as follows:

Notices.

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

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

City Manager  
City of Davis

23 Russell Boulevard  
Davis, CA 95616

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

Leeland Cannery Marketplace, LLC  
5122 Ellington Court  
Granite Bay, CA 95746

With a copy to:

Phillips Land Law, Inc  
5301 Montserrat Lane  
Loomis, California 95650  
Attn: George E. Phillips

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.

**Section 9. Amendment to DA Exhibit N.** Exhibit N (Mixed-Use Commercial District Commitments) of the Development Agreement is hereby amended in its entirety by eliminating certain existing construction obligations and adding commitments for temporary outdoor amenities, to read as shown in Exhibit B to this Fourth Amendment.

**Section 10. Agreement in Full Force.** Except as specifically modified herein, the Development Agreement remains in full force and effect as written. From and after the execution and delivery of this Fourth Amendment by the City and Developer, all references in the Fourth Amendment to the Development Agreement shall be and be deemed to constitute references to the Development Agreement as amended herein.


**Section 11. Counterparts.** This Fourth Amendment may be executed simultaneously and in several counterparts, each which shall be deemed an original, but which together shall constitute one and the same instrument.


**Section 12. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid by a decision of a court of competent

jurisdiction, such decision shall not affect the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses or portions thereof be declared invalid.

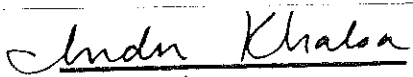
IN WITNESS WHEREOF, the City and the Developer have executed this Fourth Amendment as of the date set forth above.

CITY OF DAVIS

By   
Gloria Partida  
Mayor

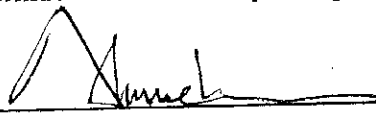
Attest   
Zoe Mirabile  
City Clerk

APPROVED AS TO FORM:

  
Inder Khalsa  
City Attorney


DEVELOPER

LEELAND CANNERY MARKETPLACE, LLC, a  
California Limited Liability Company

By   
Authorized Signatory

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

CITY OF DAVIS

By   
Gloria Partida  
Mayor


Attest \_\_\_\_\_  
Zoe Mirabile  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Inder Khalsa  
City Attorney

DEVELOPER

LEELAND CANNERY MARKETPLACE, LLC, a  
California Limited Liability Company

By   
Authorized Signatory  
DANIEL LEE



# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Placer

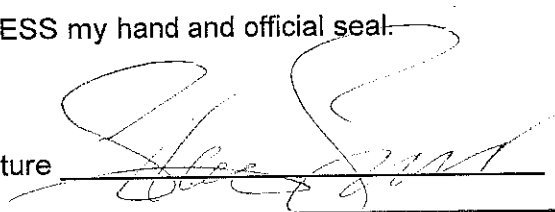
On 02/09/2021 before me, SHOAB SARWAR Notary Public  
(insert name and title of the officer)

personally appeared Daniel Lee,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

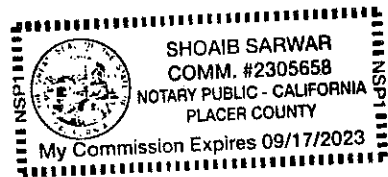
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

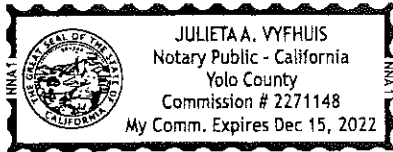
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Yolo }  
On March 3, 2021 before me, Julietta A. Vyfhuis  
Date Here Insert Name and Title of the Officer  
personally appeared Glenda Partida  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Julietta A. Vyfhuis  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

#### **DESCRIPTION OF PROPERTY**

Parcels V and W, as shown on Subdivision Map 5026, The Cannery – Large Lot Final Map, recorded on November 21, 2014 in Book 2014 at Pages 70 to 85, inclusive, of Maps in the Office of the Yolo County Recorder.

**Exhibit B**  
**Amendment to EXHIBIT N**  
**(Mixed-Use Commercial District Commitments)**  
**of the Cannery Development Agreement**

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## **Exhibit N**

### **Mixed-Use Commercial District Commitments**

In addition to other commitments and obligations in the Cannery Development Agreement applicable to this site, the owner of the Cannery Mixed-Use Commercial District also agrees to the following:

1. Record a covenant on the property for a permanent obligation by 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 apartment site is acquired or master leased by an entity exempt from payment of property taxes. The covenant shall be subject to review and approval of the Community Development and Sustainability Director and shall be recorded prior to issuance of building permits on the property.
2. Provide an additional \$25,000 contribution to the City to be used for the study and implementation of safety improvements and/or traffic calming at the southwestern corner of Cannery Loop and along the east-west Cannery Loop straight-away. Payment shall be made prior to issuance of building permits on the property.
3. Provide certain temporary outdoor amenities on the East Parcel for community enjoyment and to complement the food truck event. The community amenity shall be installed the earlier of 4 months after the effective date of the Fourth Amendment to the Development Agreement or prior to the first inspection of the multifamily housing units, and shall remain until development of commercial businesses in one of the mixed-use parcels. The specific amenity design and details shall be subject to review and approval of the Director of Community Development and Sustainability. The developer shall maintain the community amenity in a safe and clean manner, but may change it as needed to address any access or safety issues in consultation with the City.