SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made effective by and between J. David Taormino, and Palomino Place, LLC, a California limited liability company (together referred to herein as "Developer"), and the City of Davis, a municipal corporation (referred to generally as the "City," or where additional specificity is desired, "City Council" or "City Staff"). Developer and the City are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

A. On October 4, 2021, Developer submitted a pre-application for Palomino Place, a residential subdivision located on a 25-acre infill site north of East Covell Boulevard within the City of Davis ("Project").

B. Developer commissioned several studies of the Project site, including a traffic study and a biological analysis.

C. On July 12, 2022, Developer submitted an application for the Project, which included a request for legislative entitlements, namely a zone change and general plan amendment, and paid all associated fees for the City to process said application.

D. On August 19, 2022 the Developer's application for site plan approval and associated legislative entitlements was deemed to be "complete" by the Community Development Director.

E. Although the City does not dispute that the Community Development Director informed the Developer that the July 12, 2022 application was "complete," City disputes that the Permit Streamlining Act applied to that application due to the legislative nature of the entitlements requested.

F. On March 30, 2023, Developer filed an SB 330 preliminary application for the Project, although City disputes whether that preliminary application met the requirements of California law.

G. On April 14, 2023, Developer modified the Project application to include a minimum of 41 deed-restricted affordable accessory dwelling units and invoked the protections of the Housing Accountability Act ("HAA"), Government Code Section 65589.5(d), colloquially referred to as the "Builder's Remedy."

H. On June 23, 2023, City found the Project to be ineligible for treatment under Government Code Section 65589.5(d) and inconsistent with the requirements of Chapter 18 (Affordable Housing) of the Davis Municipal Code based upon a conclusion that the Project failed to ensure that 20 percent of the total units would be sold or rented to lower income households as required by the HAA.

I. Developer disputes that the Project, as then proposed, failed to qualify for treatment under Government Code Section 65589.5(d) and failed to meet the requirements of the Chapter 18 of the Davis Municipal Code.

J. On August 9, 2023, Developer submitted a revised affordable housing plan that included a minimum of 33 deed-restricted multifamily housing units (20.2% of total units), and added a tentative subdivision map to the list of requested Project entitlements.

K. On August 15, 2023, Developer withdrew its requests for legislative entitlements associated with the Project, specifically removing the requests for a development agreement, General Plan amendment, and rezoning of the site, asserting that these changes are not required for the review and approval of a qualifying residential project under Government Code Section 65589.5(d).

L. City has neither affirmed nor rejected the validity of Developer's position with respect to whether an application for a General Plan land use amendment or rezoning is required in order for the City to act on the Project site plan review and tentative subdivision map application.

M. On August 29, 2023, Developer filed a petition for writ of mandate against the City in *Taormino v. City of Davis* (Yolo County Superior Court Case #CV2023-2059) ("Writ Petition"). The Writ Petition alleged violations of the Permit Streamlining Act (Government Code Section 65920, *et seq.*), the HAA, and CEQA. Developer asserts that the City has violated the aforementioned statutes by its refusal to process the Project application in accordance with statutorily specified timelines.

N. Developer has further threatened to bring a lawsuit against the City alleging a breach of implied contract, First Amendment retaliation, violation of substantive and procedural due process, and violation of equal protection.

O. City disputes all such claims and asserts that it has not violated any state or federal law or legal obligation pertaining to the Project.

P. The City approved a contract with an environmental consultant on January 9, 2024d but has not yet commenced analysis of the Project pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code Section 21000, *et seq.*).

Q. The Parties agree that the City is in significant need of more housing, particularly affordable housing, and desire to process the Project for City Council consideration.

R. The Parties desire to resolve the pending litigation through a structured settlement, as follows.

AGREEMENT

Now, therefore, in light of the above Recitals, which are incorporated herein, and in consideration of the mutual terms, promises, covenants, and conditions contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. City Obligations.
    a) The City agrees to treat the Project application as vested under the HAA and any applicable City ordinances, policies and standards as of March 30, 2023, except as otherwise agreed to in writing by City and Developer.
    b) Specifically, the City agrees to treat the Project application as appropriately processed under the HAA and agrees that processing and City Council consideration of the Project shall proceed in compliance with the provisions of California Government Code Section 65589.5(d).
    c) City Staff agrees to process the Project's Tentative Subdivision Map and Site Plan application consistent with the following timeline:
        i. City Staff shall release a Notice of Preparation for the EIR no later than February 29, 2024.
        ii. City Staff shall release a draft Subsequent EIR for public comment by June 18, 2024.
        iii. City Staff shall review the Tentative Map and shall provide Developer with draft Map conditions no later than September 1, 2024. Consistent with the Housing Accountability Act, City staff shall base conditions of approval on objective standards and will avoid recommending conditions that would render the housing development project infeasible (Cal. Gov. Code Section 65589.5(d)). Nothing herein shall prevent City from including conditions of approval that it feels would benefit the residents of Davis or from imposing conditions of approval that Developer agrees to in writing or consents to verbally at a duly noticed public meeting.
        iv. Assuming recirculation is not required, City Staff shall release a final Subsequent EIR for the Project no later than October 17, 2024.
        v. Assuming the Final Subsequent EIR has been prepared, City Staff shall bring the Project to the City of Davis Planning Commission for a duly-noticed public hearing in November, 2024.
        vi. If appealed, the City Council will consider the Project at a duly-noticed public hearing in December, 2024.
    d) The timeline is subject to the terms, cooperation and allowances provided for and described in Section 6 below. The City agrees that a 10% reduction from the 150-foot agriculture buffer standard is an appropriate concession pursuant to Government Code section 65915(k)(3) and the City will not assert that the

Project is inconsistent with Section 40A.01.050 of the Davis Municipal Code with respect to this standard.

e) The City's Community Development Director will work with the City Attorney and City Manager's Office to supervise the review of the Project in a manner compliant with the terms of subsection (c) above.

f) The City recognizes that Chapter 41 of the Davis Municipal Code pertains only to requests to modify the City's General Plan Land Use map. City agrees to allow the Project to proceed without a General Plan amendment, at Developer's request, which would mean that if the Project is subsequently approved by City Council, it would not be subject to voter approval under Chapter 41 of the Davis Municipal Code. City takes no position on whether Developer must request a General Plan amendment under state law despite Developer's arguments that the "Builder's Remedy" negates the requirement for such a legislative change but agrees to allow Developer to proceed at its own risk in this regard.

2. Developer Obligations.

a) Developer agrees that no less than twenty percent (20%) of the residential units provided by the Project shall be made affordable to lower income households. Specifically, Developer shall provide parcel(s) to accommodate the development of no less than 33 rental units that shall be made affordable to low-income households. Developer may propose the inclusion of affordable units in excess of this commitment and may include units at increased levels of affordability.

b) Developer agrees to bring its Project into conformance with all of the City's objective standards, including but not limited to those pertaining to street design, building and fire codes (including the City's reach code), emergency services access, utilities, trees, affordable housing, and stormwater management and discharge control, except as specifically agreed to in writing by City and Developer.

c) Developer agrees to timely provide all information reasonably requested by City and to work collaboratively with City to ensure expeditious processing of the Project application.

d) Developer agrees to work in good faith with the City to develop acceptable conditions of approval to address any community concerns and to assure the environmental sustainability and climate change components of the Project. Developer further agrees to collaborate with City on sustainability features, including but not limited to battery storage, for the multifamily component of the Project and accept conditions of approval to include such features if determined to be reasonable and feasible by Parties after consultation with experts in the fields of clean energy and affordable housing.

e) Developer agrees not to object to the imposition of the City's standard conditions of approval as well as any reasonable and feasible conditions of approval or mitigation measures that are consistent with state law. Developer agrees to timely contest any conditions of approval and that failure to contest a condition of approval will constitute a waiver of arguments with respect to whether the

condition meets state law requirements.

f) Developer shall preserve an agricultural buffer on the eastern side of the Project of no less than 135 feet as noted in Section 1(d), and Developer agrees that only one additional request for an incentive or concession under State Density Bonus Law may be requested. Said remaining request for incentive or concession shall be made known by Developer to City no more than 30 days from Developer's receipt of draft Map conditions. Developer agrees not to pursue the use of waivers under State Density Bonus Law, except as mutually agreed upon by Developer and City Staff.

g) Developer agrees to create a homeowner's association to provide for, but not be limited to, the maintenance of common open space and private rights-of-way.

h) Developer agrees to assign a project manager who shall be approved by the City Manager to work with City Staff on the Project. The project manager shall oversee all issues related to the Project for its duration. Any change to the project manager shall be subject to approval by the City Manager, which shall not be unreasonably withheld.

i) Developer supports the City analyzing a "more dense" project alternative in the Subsequent EIR which would analyze up to 195 units – a 32-unit increase – consistent with Government Code section 65589.5(o)(2)(E). Developer further agrees that, if City Council approves a more dense Project alternative which adds no more than twelve (12) units to the multifamily component of the Project, Developer will not object to said Project modification. If, after consultation with affordable housing developers and a full analysis of economic feasibility of providing additional units to the multifamily component of the Project, it is determined that the Project could support additional units as part of the multifamily component, Developer may at its discretion agree to support a higher number of units prior to City Council action.

3. Legal Challenge to City Action on the Project.

a) Developer hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed representatives, officers, attorneys, agents and employees from any liability for any claims, suits, actions, causes of action, loss, expense, damage, lawsuit, proceeding, judgment, costs, and expenses (including, without limitation, attorneys' fees or court costs) or injury of any kind, in law or equity, arising out of any approval of the Project or activities conducted pursuant to this Agreement in furtherance of the Project. Developer shall pay and satisfy any judgment, award or decree that may be rendered against the City in any such suit, action, or other legal proceeding. Specifically, the obligation to indemnify shall include any claim, action, or challenge arising from either the failure of Developer to request legislative entitlements as part of the Project, or the City's approval of the Project without such legislative entitlements or voter approval.

b) Neither the City nor City Council members shall bring a legal challenge to approval of the Project.

c) City agrees that the obligation to indemnify would not apply in the event that the City Council disapproves the Project. Notwithstanding and in addition to the above discussion of Developer's indemnification obligation, City and Developer agree that the City may at any time, at its sole discretion, defend the City's processes and Code requirements at its own expense and using its own legal counsel.

4. Dismissal of Writ Petition and Agreement Not to Sue.

   a) Developer agrees to dismiss the Writ Petition without prejudice, subject to the execution of a tolling agreement by the Parties if desired by Developer, no later than one week from the date of execution of this Agreement.

   b) Developer agrees not to file any lawsuit as specified in Recital N, except in the event of an uncured event of default by the City, as that is described in Section 6 below. Specifically, Developer shall not pursue any claim of procedural due process bias related to the Project based upon statements made prior to the execution of this Agreement. This subsection does not pertain prospectively to civil rights violations which may not yet have occurred or of which Developer is unaware as of the effective date.

   c) The Parties will bear their own costs and attorneys' fees related to the Writ Petition and incurred prior to the execution of this Agreement; Developer will thereinafter be responsible for the legal expenses that the City incurs in furtherance of processing the Project application.

5. Implementation and Cooperation. City and Developer agree to cooperate in the implementation of this Agreement and the processing of the Project application. Where a dispute arises as to the interpretation of this Agreement, the validity of a mitigation measure or proposed condition of approval, or other issue related to the processing of the Project, such concern shall first be put in writing to the other Party. The Parties' project managers shall then meet and confer in good faith to resolve the dispute, involving legal counsel for the resolution of disputes related to the language of this Agreement or state law, including but not limited to questions about the applicability of CEQA, the Subdivision Map Act, Permit Streamlining Act, Density Bonus Law or the Housing Accountability Act. The Parties agree to attempt to make a good faith effort to resolve all disputes prior to elevating such concern to the local press or elected officials.

6. Defaults and Remedies.

   a) Event of Default. Each of the following events, if uncured after an attempt to resolve the issue pursuant to Section 5, and the expiration of the applicable notice and cure period (discussed below in subsection (b)), shall constitute an "Event of Default":

      i. City failure to meet one of the deadlines described in Section 1(c) of this Agreement, except where either (1) Developer and City agreed in writing to a different date; (2) where failure to meet the deadline is due to Developer's delays, actions, or inaction, or due to forces outside the City's

control, as defined as a "Force Majeure" event, below; or (3) where failure to meet the deadline is due to a need to comply with the requirements of state or federal law, including but not limited to notice, public transparency, and hearing requirements of the Planning and Zoning Law, Subdivision Map Act, Brown Act, CEQA and Municipal Code..

ii. Developer failure to timely submit information or studies requested by City Staff and necessary to process the Project application except where failure to timely submit is due to City's lack of specificity in its request, rejection of materials, or due to forces outside the Developer's control, as defined as a "Force Majeure" event, below.

iii. A Party's failure or refusal follow the process described in Section 5, Cooperation and Implementation, to collaboratively address concerns.

iv. City or Developer breach of any other specific term of this Agreement.

b) Notice and Opportunity to Cure. Upon the happening of an event described in subsection (a) above, the affected Party shall first notify the other Party's primary point of contact (for Developer, this shall be the project manager appointed pursuant to Section 2G; for City, notice shall be directed to the Community Development Director with a copy to the City Manager) in writing of its purported Event of Default, with a copy to the Party's legal counsel. The other Party shall have two weeks (14 days) from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such period and the breaching Party has commenced the cure within such two week (14 day) period and thereafter is diligently working in good faith to complete such cure, the breaching Party shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within thirty (30) days. Except as required by state law, under no circumstance shall any opportunity to cure result in a delay to the final action in December 2024 without the written consent of both parties. No Party shall be deemed to be in default under this Agreement unless and until the Party has received notice of default as provided and the applicable cure period has expired without a cure being effected.

c) Force Majeure. Delayed performance by either Party shall not be deemed to be an Event of Default, and the timelines in Section 1(b) shall be extended where delays are due to forces outside of either Party's control, including but not limited the failure of a City contractor or consultant to meet their contractually obligated timelines due to forces not within their control, the discovery of heretofore unknown Project site conditions or environmental impacts associated with the Project, the need to recirculate the Environmental Impact Report as determined by the City, or actions or inaction by another public or governmental agency (other than the acts or failures to act of City which shall not excuse performance by City). The Parties agree that the commencement of any litigation concerning this Agreement shall constitute cause for an extension to the timelines in Section 1(b).

d) Remedies. Because the amount of damages in the event of a breach of this Agreement may be difficult or impossible to determine, the obligations of the Parties shall be enforceable by specific performance or other equitable relief.

e) Costs and Fees. If a court of competent jurisdiction determines that either Party has breached this Agreement, the remedy for which is described in Paragraph 6.d., the nonbreaching Party may recover the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

7. Release and Discharge. The Parties agree that by performing the mutual obligations provided herein, the Parties fully satisfy any and all obligations they may owe to each other related to issues arising from and concerning the Action. In consideration of these mutually dependent promises and representations, and except for the obligations created by this Agreement, the Parties hereby fully release and forever discharge each other and each other's respective successors, assigns, employees, agents, representatives, and attorneys from and against any and all claims, demands, actions, causes of action, proceedings, obligations, liabilities, damages, losses, costs, and expenses of any nature whatsoever, in law or in equity, known or unknown, foreseen or unforeseen, contingent or non-contingent, that the Parties now have based upon or in any way arising out of or in connection with the matters set forth in the Action.

8. Civil Code § 1542. The Parties also agree and acknowledge that each Party may hereafter discover facts different from or in addition to those it now knows or believes to be true with respect to the matters released herein, and each Party agrees that all of the terms of this Agreement shall and will remain effective in all respects, regardless of such different or additional facts which may be learned. The Parties recognize that the release set forth in Section 11, above, shall extend to claims whether known or unknown to them and that the release is made with the understanding that it shall include unknown claims contemplated by Civil Code § 1542, which provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

9. No Admission, Denial of Wrongdoing and Liability. Nothing in this Agreement shall be deemed an admission of any issue of fact or law, except for the limited purpose of enforcing this Agreement. Neither the negotiation of this Agreement, nor any action taken to carry out this Agreement, is, or may be, construed or used as an admission or concession by, or against, any Party of any fault, wrongdoing or liability whatsoever.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective employees, agents, attorneys, successors, devises, executors, administrators, assigns, and insurance carriers.

11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties hereto and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed and authorized by each of the Parties.

13. Waiver. No provision of this Agreement may be waived unless in a writing signed by each Party. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

14. California Law and Venue. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. The Parties further agree that the venue for all legal proceedings concerning this Agreement shall be in the Superior Court of California of the County of Yolo.

15. Agreement Entered Into Voluntarily. The Parties acknowledge and agrees that they have read this Agreement, that they fully understand their rights, privileges and duties under this Agreement and that they entered into this Agreement voluntarily, on the basis of their own judgement and without coercion, and not in reliance on any promises, representations, or statement made by the other Party other than those contained in this Agreement.

16. Legal Representation and Construction. Each Party acknowledges that it has been represented by counsel, or has had counsel available to it, throughout the pendency of the negotiations of this Agreement. The Parties agree that this Agreement is the product of arms-length negotiations between them, and that this Agreement is executed voluntarily by each of them without being subjected to any duress or undue influence. The Parties further agree that they are to be considered mutual authors of this Agreement.

17. Authority to Execute. Each individual executing this Agreement represents and warrants that it is duly authorized to execute this Agreement and that it is binding in accordance with its terms. Each Party warrants that it is the true holder of all rights and remedies which it purports to release, and that it has not assigned or transferred any of those rights or remedies to any other individuals or entities. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

18. Good Faith and Further Assurances. The Parties agree that they will act in good faith in abiding by the terms of this Agreement, and in carrying out the obligations of each Party set forth herein and shall not do anything to interfere with or inhibit the ability of the other Party to comply with their respective obligations under the terms of this Agreement. So long as authorized by applicable laws to do so, each of the Parties to this Agreement will do such further acts and execute, acknowledge, and deliver all further documents as may be necessary

to fully effectuate the provisions of this Agreement.

19. Time is of the Essence. Time is of the essence for this Agreement and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

20. Severability. If a court of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be effected.

21. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Furthermore, electronic facsimile or e-mailed .pdf signatures to this Agreement shall be binding upon the Parties.

22. Effectiveness of Agreement. This Agreement shall be effective upon the execution of this Agreement by all Parties.

[Signatures to follow on next page]

PALOMINO PLACE, LLC

By: _____

Date: 2/14/24

CITY OF DAVIS

By: _____

Michael Webb, City Manager

Date: 2/14/24

J. DAVID TAORMINO (individual)

By: _____

Date: 2/14/24

ATTEST

By: _____

Zoe Mirabile, City Clerk

APPROVED AS TO FORM

By: _____

Inder Khalsa, City Attorney