

ORDINANCE NO. 2504

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING
THE FIRST SUPPLEMENT AND AMENDMENT TO THE DEVELOPMENT
AGREEMENT REGARDING THE CHILES RANCH SUBDIVISION 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 of the Property consistent with the General Plan, as amended, and the Development Agreement, as amended (the "Development Agreement"); 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, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on May 10, 2017, on Planning Application #15-24, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, the City Council held a duly noticed public hearing on May 23, 2017, on Planning Application #15-24, and the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

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 First Supplement and Amendment to Development Agreement, attached hereto, 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 Chiles Ranch Subdivision;
- (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 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) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to, Planning Application #15-24, including Tentative Map #2-15, Revised Affordable Housing Plan #1-15, Final Planned Development #8-15, Revised Final Planned Development #2-17, and the Development Agreement and other actions relating to the Property;
- (d) All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Mitigated Negative Declaration #1-08, the Development Agreement, and other actions relating to the Property; and
- (e) 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 First Supplement and Amendment to 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 to execution thereof, 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 and the voters.

SECTION 6. Upon the effective date of this Ordinance as provided in Section 9 hereof, 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.

INTRODUCED on the 23rd day of May, 2017, and was PASSED AND ADOPTED by the City Council of the City of Davis on this 6th day of June, 2017, by the following vote:

AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAILED TO:

City of Davis
Community Development & Sustainability
Department
23 Russell Boulevard
Davis, CA 95616

SPACE ABOVE THIS LINE FOR RECORDER'S

USE

**FIRST SUPPLEMENT AND
AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST SUPPLEMENT AND AMENDMENT to Development Agreement by and between the CITY OF DAVIS and New Urban Development - Davis, LLC, a California Limited Liability Company, (the "Amendment") is entered into as of _____ 2017, by and between the CITY OF DAVIS, a municipal corporation (hereinafter "City") and New Urban Development - Davis, a California Limited Liability Company (hereinafter "Developer), on the basis of the following facts, understandings and intentions of the parties:

RECITALS

A. The City and Developer entered into a Development Agreement dated as of June 30, 2009, enacted by ordinance No. 2342 (and recorded with the Yolo County Recorder's Office on August 6, 2009, Document Reference No. 2009-0025325-00) pursuant to the authority conferred upon the City by pertinent provisions of California law and City Resolution No. 5996, adopted June 29, 1988, establishing rules, regulations and procedures for the consideration of development agreements ("The Development Agreement.").

B. Pursuant to the Agreement, the Property has been subdivided for residential development ("Chiles Ranch Subdivision") by Developer and its successors and assigns. In implementing the development of the Property, the parties have determined that it is now appropriate and mutually beneficial to supplement and amend certain provisions of the Agreement as set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained in this Amendment, the parties agree as follows:

Section 1. The Development Agreement is hereby amended as follows:

[Sec. 101] Project Description

The project is amended from a 108-unit residential subdivision development, to a 96-unit residential subdivision, of which 87 lots exist under Tentative Map No. 4953 (“*Chiles Ranch Subdivision.*”), attached herein as Exhibit A. The single parcel created under Tentative Map No. 4953 for the development of 20 condominium units (Lot 41) will be subdivided under a new separate Tentative Map No. 5088 (“*Chiles Ranch West*”), attached herein as Exhibit B, to create 9 individual residential lots.

There is an affordable housing plan that applies to the project which requires 20 affordable housing units. The affordable housing obligation will be met by the Developer with the construction of twelve (12) 3-bedroom units within the development and the payment of in-lieu fees for eight (8) units. The in-lieu fee shall be \$75,000 per unit (\$600,000). The Developer shall pay to the City the sum of \$75,000 at issuance of Certificate of Occupancy of each sixth (6th) market rate unit to ensure that the affordable in-lieu fee requirement is met by the time the project is seventy-five (75%) percent complete, at the seventy-second (72nd) unit receiving Certificate of Occupancy. Certificates of Occupancy will not be provided on the last twenty market rate units in the project until all affordable housing units have been issued a Certificate of Occupancy.

[Sec. 101] Term and Effective Date

A. This agreement shall commence, and its effective date shall be, thirty days after approval by the City Council. The term of Agreement shall extend for a period of five (5) years from the effective date, unless said term is terminated, modified or extended by circumstances set forth in this Agreement by mutual consent of the parties hereto, subject to provision of Section 104 of the Development Agreement.

[Sec. 201] Specific Development Obligations

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

B. Greenhouse Gas Emissions Reduction and Renewable Energy Requirement. The 96-unit project shall meet the greenhouse gas emission reduction standards adopted by the City Council by Resolution #06,166, Series 2008, and Resolution #09-043, Series 2009 as shown in the Chiles Ranch Subdivision Greenhouse Gas Mitigation Plan provided as Exhibit D in the Development Agreement dated June 30, 2009, and; 4) shall comply with the renewable energy standards adopted by the City Council by Ordinance No. 2440, 2014; and 5) deleted.

D. Architectural Diversity

3) ~~Condominium units.~~ Deleted

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

A. Except as provided herein, Developer shall be obligated to pay only those fees, in the amounts and/or with increases as set forth, and make those dedications and improvements prescribed in the Project Approvals and this Supplemental Agreement.

3) The Developer shall pay Parkland In-Lieu Fees for each residential unit within the Chiles Ranch Subdivision at Certificate of Occupancy for each unit. The fee shall be at the rate in effect at the time of payment as established and amended in Section 36.08.040(d) of the City of Davis Municipal Code.

4) The Developer shall pay \$3,000 per unit for each and every market rate unit (84 units). The supplemental fee shall be paid at Certificate of Occupancy for each residential unit. The fee shall be the amount in place contribution will be utilized for the purposes of community enhancements, as determined by the City.

[Sec. 800] Notices

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

New Urban Development - Davis, LLC, a
California Limited Liability Company
c/o Don Fouts
1949 Fifth Street, Suite 107
Davis, CA 95616

Section 2. Other Terms Remain Unchanged

Except as expressly set forth herein above, all remaining terms and conditions of the Development Agreement shall remain unchanged and in full force and effect.

Section 3. Recordation

This Amendment, including all Exhibits attached hereto, shall be recorded within ten (10) days after the full execution of the Amendment and the Ordinance approving this Amendment becoming effective and the City hereby directs and designates the City Clerk to record this Amendment with the County Recorder of Yolo County within such time.

Dated: _____, 2017

CITY OF DAVIS,
A Municipal Corporation

By: _____
Robb Davis, Mayor

Dated: _____, 2017

DEVELOPER

New Urban Development - Davis, LLC, a
California Limited Liability Company

By: _____

Don Fouts, Developer

APPROVED AS TO FORM:

By: _____

HARRIET STEINER

City Attorney

ALL SIGNATURES ARE TO BE NOTARIZED

EXHIBIT A

TENTATIVE SUBDIVISION MAP NO. 4953
CHILES RANCH SUBDIVISION



EXHIBIT B
TENTATIVE SUBDIVISION MAP NO. 5088
CHILES RANCH WEST SUBDIVISION

