

**ORDINANCE NO. 2628**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING  
THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT  
REGARDING THE CHILES RANCH SUBDIVISION PROJECT  
(PA-22-26; EXTENSION 1-22; MISC. 1-22)**

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 and amendments in accordance with the Development Agreement Statute; and

WHEREAS, the City Council of the City of Davis approved the Chiles Ranch Subdivision and adopted the Development Agreement for the Chiles Ranch Project (Ordinance 2342) on June 30, 2009; and

WHEREAS, the City Council of the City of Davis adopted the First Amendment to the Development Agreement for The Chiles Ranch Project (Ordinance No. 2504) on June 7, 2017; and

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly noticed public hearing on June 8, 2022, 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 June 28, 2022, on Planning Application #15-24, and the Second Amendment to the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public; 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 by the Second Amendment; 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.

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 Second Amendment to Development Agreement with attached changes, attached hereto, which extends the Development Agreement for twenty-four (24) months from July 6, 2022.

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 Second 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.

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 Second Amendment to 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 28th day of June, 2022, and was PASSED AND ADOPTED by the City Council of the City of Davis on this 19th day of July, 2022, by the following vote:


AYES: Arnold, Carson, Chapman, Partida, Frerichs

NOES: None



Lucas Frerichs  
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

## **SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT to Development Agreement by and between the CITY OF DAVIS and New Urban Development - Davis, LLC, a California Limited Liability Company, (the "Second Amendment") is entered into as of \_\_\_\_\_ 2022, 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. The City and Developer entered into a First Supplement and Amendment to Development Agreement dated as of June 6, 2017, enacted by Ordinance No. 2504 (and recorded with the Yolo County Recorder's Office on July 7, 2022, Document Reference No. 2022-0016033) 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.

C. Pursuant to the Development 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 further amend certain provisions of the Development Agreement as set forth in this Second Amendment.

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

**Section 1.** Section 101 of the Development Agreement is hereby amended to read as follows:

**[Sec. 101] Project Description**

The project is a 96-unit residential subdivision, of which 87 lots are approved under Tentative Map No. 4953 (“*Chiles Ranch Subdivision.*”), attached herein as Exhibit A, and 9 are approved under Tentative Map No. 5088 (“*Chiles Ranch West*”), attached herein as Exhibit B.

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 (6<sup>th</sup>) 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 (72<sup>nd</sup>) 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.

The Federal Housing and Urban Development definition of “First Time Homebuyer” as it currently exists and as amended from time to time, shall be used in the enforcement of the affordable housing plan.

**Section 2.** Section 102 of the Development Agreement is hereby amended to read as follows:

**[Sec. 102] Term and Effective Date**

A. This Agreement became effective thirty days after the original approval on July 7, 2009, pursuant to Ordinance No. 2342. The original term of this Agreement was ten (10) years from its effective date,

The City Council approved a First Supplement and Amendment to the Agreement on June 6, 2017, pursuant to Ordinance No. 2504. The First Supplement and Amendment extended the term of the agreement an additional five (5) years from the date that Ordinance No. 2504 became effective, which was July 6, 2017.

This Second Amendment hereby extends the Agreement for an additional twenty-four (24) months from July 6, 2022 to July 6, 2024.

B. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 408 hereof.

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

D. This Agreement shall be deemed terminated and of no further effect upon entry after all appeals have been exhausted of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the city council's approval of this Agreement or the tentative subdivision map;

**Section 3.** Section 201(B) of the Development Agreement is hereby amended to read as follows:

**B. Greenhouse Gas Emissions Reduction Requirement.**

The project shall meet the greenhouse gas emission reduction standards adopted by the City Council by not providing natural gas to the Chiles Ranch Subdivision and only providing electric power to the subdivision and each residential unit within the Project shall be designed with and the Developer shall install roof mounted Photovoltaic systems, to the satisfaction and approval of the Building Official.

**Section 4.** Section 201(E) of the Development Agreement is hereby amended to read as follows:

**E. Roadway Improvements.**

The Developer shall provide the following roadway improvements.

3) Upon completion of all cuts and alterations made to 8<sup>th</sup> Street in order to accommodate the construction of the utilities for the subdivision, the Developer shall reconstruct the sidewalk, curb and gutter along the 8<sup>th</sup> Street project frontage and shall place a slurry seal cover over the 8<sup>th</sup> Street pavement from the western edge of the property frontage to the gutter crossing 8<sup>th</sup> Street at Mesquite Drive. The Developer shall be reimbursed by the city of Davis for the cost of the slurry seal from the project's eastern edge to the place where the road must be re-sealed after reconstruction of the gutter required in Section 201.E.1) of this agreement.

**Section 5.** Section 201(H) of the Development Agreement is hereby amended to read as follows:

H. Street Trees on Single Family Lots

The developer shall install all front yard landscaping to the satisfaction of the City of Davis, prior to approval of a final inspection. Installation of the street tree in each front yard shall include an appropriate root barrier using best management practices to protect the street hardscape from damage caused by street tree roots. Each barrier shall be designed and installed to the satisfaction of the Urban Forestry Manager and Community Development Director.

**Section 6.** Conditions 22, 23 and 24 of Exhibit C of Section 1000 of Ordinance 2342 are hereby stricken as they are contradictory to California Law, Government Code Section 65852.2 and the City of Davis Municipal Code Section 40.26 relative to Accessory Dwelling Units.

**Section 7. 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 8. 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: \_\_\_\_\_, 2022

**CITY OF DAVIS,**  
A Municipal Corporation

By: \_\_\_\_\_

Lucas Frerichs, Mayor

Dated: \_\_\_\_\_, 2022

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

By: \_\_\_\_\_

Don Fouts, Developer

APPROVED AS TO FORM:

By: \_\_\_\_\_

INDER KHALSA \_\_\_\_\_

City Attorney

**ALL SIGNATURES ARE TO BE NOTARIZED**