

**Attachment #3**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS  
APPROVING A DEVELOPMENT AGREEMENT WITH THE DAVIS JOINT  
UNIFIED SCHOOL DISTRICT (DJUSD) REGARDING THE PROJECT  
COMMONLY KNOWN AS GRANDE SCHOOL SITE**

**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 Planning Commission considered Mitigated Negative Declaration #7-07 and based on oral testimony and documentary evidence submitted during the public hearings determined that it adequately addresses the potential environmental impacts of the project as in the Mitigated Negative Declaration, and the project will not result in any significant adverse impacts to the environment after implementation of the required mitigation measures and recommended certification of the Mitigated Negative Declaration and approval of the General Plan Amendment to the City Council; and

**WHEREAS**, the Davis Joint Unified School District (the "Developer") desires to carry out the development of the property owned by the Developer and commonly known as the Grande School Site (the "Property") consistent with the General Plan, and the Development Agreement; and

**WHEREAS**, the "Planning Application #77-07" is used to refer to General Plan Amendment #7-07, Development Agreement #4-07; Rezoning and Preliminary Planned Development #7-07, Vesting Tentative Map #2-07, Final Planned Development #11-07, & Mitigated Negative Declaration #08-07.

**WHEREAS**, the Development Agreement will assure both the City and 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 November 12, 2008, on the Planning Application #77-07, and the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, public agencies and members of the general public; and

**WHEREAS**, following the public hearing, the Planning Commission, by a vote of \_\_\_\_ to \_\_\_\_, made a recommendation to the City Council to approve the entitlements requested in Planning Application #77-07, including the Development Agreement.

**THE CITY COUNCIL OF THE CITY OF 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 the City's 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 Project and helps to provide needed affordable housing to the local workforce of the Davis Joint Unified School District;
- (b) The Development Agreement is compatible with the uses authorized in, 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;
- (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 #77-07, 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 Planning Application #77-07, 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 Development Agreement, attached hereto as Exhibit A, subject to the provisions of Section 6 hereof, and 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 prior 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 approved by the City Council.

**SECTION 6.** Upon the effective date of this Ordinance as provided in Section 10 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; provided, however, that if all of the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

\* \* \* \* \*

**THE FOREGOING ORDINANCE** was first read at a regular meeting of the Davis City Council on the 16 day of December, 2008, and was passed and adopted at a regular meeting of the Davis City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

Ruth Uy Asmundson, Mayor of the City of Davis

Attest:

Zoe Mirabile, Deputy City Clerk of the City of Davis

# **Exhibit A**

## **AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF DAVIS AND**

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**Relating to the Development**

**of the Property Commonly Known as Grande School Site**

THIS AGREEMENT is entered into this 16th day of December, 2008, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and Davis Joint Unified School District of Yolo and Solano Counties, State of California, a joint unified school district (herein the "Developer"), owner of the undivided 8.83 acres parcel, commonly identified by the Yolo County Assessor's Office as Assessor's Parcel Number 035-970-12 1, generally located at South of Grande Avenue and North of Covell Park (Broadly Situated Between "F" Street & Catalina Drive) and more specifically described in Exhibit A, attached hereto and incorporated herein by reference (the "Property").

### **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 of the development project application.

B. The Developer owns in fee or has a legal or equitable interest in the Property, which the Developer seeks to develop consistent with the General Plan of the City (herein the "General Plan"), and the Project Approvals for the Property, as described in this Agreement. Development of the Property will include construction of new affordable housing and market rate housing uses.

C. This Agreement is voluntarily entered into by the 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 Property. 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.

D. Land use entitlements have been approved by the City for the Property. The Land Use entitlements are set forth on Exhibit B attached hereto and incorporated herein (hereinafter the "Project Approvals"). The Project Approvals contain conditions and mitigations that assure compliance with the General Plan and zoning regulations and cannot be changed without further entitlement processes (the "Conditions of Approval"). The Conditions of Approval are included and specifically incorporated within in the Project Approvals.

E. Developer seeks to comply with the Conditions of Approval and develop the Property in accordance with the General Plan and the Project Approvals for the Property. Development of the Property pursuant to the Project Approvals is hereinafter called the "Project."

F. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Developer to make significant investments in public infrastructure and other improvements, assure compliance with the conditions of approval, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the desires of the City to maintain the City's small city atmosphere and to have development occur at a pace that will assure integration of the new development into the existing community, provide for affordable housing and work force housing 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, Developer desires to receive the assurance 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 65865.3.

### **AGREEMENTS**

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

**Article I. General Provisions.**

[Sec. 100] Property Description and Binding Covenants. The Property is generally located South of Grande Avenue and north of Covell Park (broadly situated between “F” Street and Catalina Drive) and is more particularly described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. The 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. It is intended and determined 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.

[Sec. 101] Project Description. The applicant requests approval of the Project Approvals, which consist of 1) General Plan Amendment, 2) Rezoning and Preliminary Planned Development, 3) Development Agreement, 4) Vesting Tentative Subdivision Map, 5) Final Planned Development, and 6) Mitigated Negative Declaration for the development of 41 single-family residential homes. The Project consists of the development of the Property consistent with the Project Approvals, as described more specifically in Exhibit B.

[Sec. 102] 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 ten (10) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto, subject to the provisions of Section 104 hereof.

B. Notwithstanding subdivision A of this Section, this Agreement shall be terminated automatically, without any further action by any party or need to record any additional document, with respect to any single family residential lot within the Property, upon completion of first resale for a dwelling unit upon such residential lot and conveyance of such improved residential lot by the Developer to a bona-fide good-faith purchaser in accordance with the terms of this Agreement.

C. 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.

D. 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.

E. 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;

[Sec. 103] 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 104(D), 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 104(D). In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.

[Sec. 104] Right to Assign; Non-Severable Obligations.

A. Upon the express written assignment by the Developer and assumption by the assignee of such assignment and the conveyance of the Developer's interest in the Property related thereto, the Developer shall be released from any further liability or obligation under this Agreement related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property.

B. 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.

C. No assignment shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1. The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

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

E. The City, upon receipt of a written request therefore from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of the Developer under this Agreement, provided that all defaults by the Developer under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to the Developer and specifying the address for such notice, the City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to the Developer, all notices given to the Developer describing all claims by the City that the Developer has defaulted hereunder. If the City determines the Developer is not in compliance with this Agreement, the City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on the developer. Each Mortgagee shall have the right during the same period available to the Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in the City's notice.

F. The Specific Development Obligations set forth in Article II, Section B [Sec. 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, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

G. Notwithstanding subsection B above, mortgages, deeds of trust, sales and leases-back 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 the acquisition of the Property, 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.

H. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the Subdivision Vesting Tentative Map identified in Exhibit A, it being recognized that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, and this Agreement.

[Sec. 105] 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 8 hereof. 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 amount 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 reasonable necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

[Sec. 106] Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the parties, in accordance with the provisions of Government Code Sections 65867 and 65868.

[Sec. 107] Operating Memoranda. 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, they shall effectuate such clarifications, minor changes or minor adjustments through operating memoranda approved in writing by the parties. "Minor" as used above shall not include any changes to the Development that is not substantially in conformance with the project approvals given for the project presented to the City Council and do not include any change to the number and/or price and resale restrictions for the affordable and work force housing set forth herein. Unless required by law, no such operating memorandum shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

## **Article II. Development of the Property.**

[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 the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement, 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. Developer understands that, no changes or amendments can be made that are inconsistent with the Project Approvals without the approval of such changes or amendments by the City Council.

Developer hereby agrees to develop the Project in accordance with the Project Approvals, including the conditions of approval and the mitigation measures for the Project, and the Development Standards and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Without limiting the foregoing, Developer understands and agreement that substantial construction must be commenced within eighteen months of approval of this Agreement, unless an extension is granted by the City, as set forth below. As used herein, the term "Project Approvals" includes the conditions of approval contained in the Findings and Conditions of Approval for Planning Application #77-07 and the

mitigation measures contained in and adopted pursuant to the mitigated negative declaration for the Project. Nothing in this section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 106, supra.

[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 the "Specific Development Obligations," described herein. 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.

A. Environment, Technology, and Energy Efficiency. The City and the Developer have agreed that environmental concerns, technology and energy efficiency are critical issues for new developments. Therefore, the Developers and the City have agreed to that the Developer shall perform the following:

Developer shall dedicate [TBD] of the proceeds from sale of the property to energy-efficiency upgrades to existing Davis Joint Unified School District properties, such as Controls to turn off lighting & HVAC systems when they are not needed (occupancy sensors, twist-timers, photocells, time switches, programmable thermostats); Lighting retrofits from older T12 lamps and magnetic ballasts to newer T8 and T5 lamps with electronic ballasts; and Planting trees to shade south and west facing windows. Prior to the issuance of building permits for the Project, Developer shall provide City a statement showing the improvements that have been or will be made, and the estimated energy savings and greenhouse gas reductions that are anticipated to result from the improvements.

B. Affordable Housing. The developer will develop affordable housing on the designated affordable housing sites in accordance with the timing schedule described in the Project Approvals. The City and Developer acknowledge and agree that they both have a significant interest in providing affordable housing for the teachers and school district staff within the community. In order to help satisfy this need the City and Developer agree that DJUSD employees will be granted a preference in purchasing the affordable and middle income units to be developed in the Project. Prior to completion of the affordable and middle income units, the Developer may, subject to the conditions set forth in this Section, conduct an initial lottery for the sale of the units in accordance with the City's Buyer/Tenant Selection and Screening Guidelines, as they may be amended from time to time, except that the initial lottery shall be held only for school district employees, and each eligible applicant shall have a single

ticket in the lottery. In the event that the Developer does not conduct the initial lottery to school district employees, or offers the affordable and middle income homes to all eligible school district applicants, as applicable, and still has remaining unsold affordable or middle income units, the Developer shall conduct a second lottery in accordance with the City's Buyer/Selection Guidelines for all eligible households. Developer shall only be permitted to conduct the initial lottery exclusively for school district employees if the Developer has provided evidence satisfactory to the City in its sole discretion that the preference in the sale of middle income and affordable units proposed to be given to school district employees will not have disparate impact on a protected class of citizens. The City must give written notice to the Developer that the evidence provided by Developer is satisfactory prior to the conduct of the initial lottery.

[Sec. 202] Rules, Regulations and Official Policies.

A. 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, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of this Agreement, including the Project Approvals and all conditions contained therein. 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 Section 104 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 consistent 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.

B. 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 or action by any governmental jurisdiction other than the City 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 as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

C. 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).

D. 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.

E. All Project construction and the improvement plans and final maps for the Project shall comply with the rules, regulations and design guidelines in effect at the time the construction, improvements plan or final map is 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.

F. This Project shall be constructed in accordance with the prohibitions and requirements of 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 approval 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.

G. 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:

H. Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the Project Approvals for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

G. 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 Project Approvals for the Property obtained while this Agreement is in effect; and

1. 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.

2. 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.

H. Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, the Developer and the City intend that, except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals. The 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 on a uniformly applied, City-wide or area-wide basis and directly concerns a public health or safety issue, in which case the City shall treat the Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because the City had inadequate sewage treatment capacity to meet the demand therefore (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the property, so long as the City was also denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity, however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

I. City Cooperation. The City agrees to cooperate with the Developer in securing all permits which may be required by the City. In the event state or federal laws or regulations enacted after this Agreement has been executed, or actions of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

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

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

1. Developer shall pay all City Development Impact Fees applicable to the Project in the amounts in effect at the time of the issuance of the building permit. Developer shall pay all impact fees imposed by or on behalf of other public agencies, such as the school district or the County of Yolo, in the amounts applicable to the Project on the date the fees are paid.

2. City may charge and 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 citywide basic at the time the application is submitted for those permits, as permitted pursuant to California Government Code section 54990 or its successor sections(s)

3. Except as specifically permitted by this Agreement or mandated by state or federal law, 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 City's approval of an amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and (b) the City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the subsequently adopted development exaction does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

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

### **Article III. Obligations of the Developer.**

[Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement as described in the Project Approvals and the subsequent discretionary approvals referred to in Section 201, if any, 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 term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary 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 Section 400 hereof.

[Sec. 301] Developer Obligations. 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.

[Sec. 302] City's Good Faith in Processing.

A. Developer and City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act, for the processing of parcel and final maps.

B. With City approval, Developer may utilize an expedited plan check process for the review of improvements plans and building plans for the Project. Within two (2) weeks of a written request by Developer, City shall determine whether expedited plan check is feasible for the requested work. If City determines that expedited plan check is feasible, City shall retain an outside consultant for review of Developer improvement plans and building plans. Such outside consultant shall be at the sole selection of the City and shall be paid for at the sole cost and expense of Developer. Upon written request, Developer shall advance a deposit sufficient to cover the City's estimated costs of retaining the outside consultant. Such deposit shall be replenished as necessary, from time to time, to assure that the City shall not bear any of the cost of the outside consultant.

#### **Article IV. Default, Remedies, Termination.**

[Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any 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.

A. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured 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;

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

[Sec. 401] Enforcement of Special Conditions. Before any subdivision, parcelization, lot line adjustment or building permit is issued for any residential uses on the Property; the Developer shall establish and implement a legal mechanism approved by the City to assure enforcement of this Agreement and the Specific Development Obligations, as applicable to such residential property.

[Sec. 402] Developer 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. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

[Sec. 403] 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 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.

A. The City Manager shall provide thirty (30) days prior written notice of such periodic review to Developer. Such notice shall require 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 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. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by Developer.

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

C. 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 Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

[Sec. 404] 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 war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar Bases for excused performance. If written notice of such delay is given to the City within thirty (30) days 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.

[Sec. 405] 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 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.

[Sec. 406] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that 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.

[Sec. 407] Invalidity of Agreement.

A. 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.

B. 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 410 hereof.

[Sec. 408] Effect of Termination on Developer Obligations.

A. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Property, nor shall it affect any other covenants of Developer specified in this Agreement to continue after the termination of this Agreement.

B. If this Agreement is terminated following any event of default by the Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent the Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

**Article V. Hold Harmless and Indemnification.**

[Sec. 500] Hold Harmless Agreement. Developer hereby agrees to and shall hold 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.

[Sec. 501] Defense of Legal Actions. Except as provided in Section 502, below, in the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action; provided, however, that the City and Developer shall each bear their own respective costs, if any, arising from such defense. Such agreement by Developer does not include any agreement to indemnify the City and its elective and appointive boards, commissions, officers, agents and employees from any such legal actions.

[Sec. 502] Indemnification. Developer agrees to defend, indemnify, protect and hold harmless the City and its officers, employees, and agents from, regarding and against any all liabilities, obligations, orders, claims, damages, fines, penalties and expenses of any kind whatsoever, together with fees (including, without limitation, reasonable attorneys' fees), whenever arising resulting from or in connection with any claim, judicial action or administrative action that may incur as a direct or indirect consequence of the adoption or implementation of the preference for school district employees in the sale of affordable and middle income units as more specifically described in this Agreement and the conditions of approval for the Project.

[Sec. 500] No Personal Liability. The City acknowledges that the foregoing liability of the Developer shall be limited to the Developer's interest in the Property and that neither the Developer nor any of its members, partners, officers, shareholders, employees or agents shall have any personal liability.

#### **Article VI. Project as a Private Undertaking.**

[Sec. 600] 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 Developer and the City is formed by this Agreement. The only relationship between the City and

Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

**Article VII. Consistency With General Plan.**

[Sec. 700] 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.

**Article VIII. Notices.**

[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 Developer shall be addressed as follows:

Davis Joint Unified School District  
c/o Bruce Colby  
526 B Street  
Davis, CA 95616

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 IX. Recordation.**

[Sec. 900] 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 X. Entire Agreement.**

[Sec. 1000] 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 four (4) 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: Description of the Property

Exhibit B: Project Approvals and Development Standards

**Article XI. Estoppel Certificate.**

[Sec. 1000] Estoppel Certificate. 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, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt. The City acknowledges that the certificate may be relied upon by transferees and mortgagees of the Developer.

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

CITY OF DAVIS

By \_\_\_\_\_  
Ruth Uy Asmundson  
Mayor

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

"CITY"

APPROVED AS TO FORM:

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Harriet Steiner  
City Attorney

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By \_\_\_\_\_

\_\_\_\_\_

"DEVELOPER"