

ORDINANCE NO. 2259

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS (1) AMENDING THE GENERAL PLAN TO CREATE A NEW LAND USE DESIGNATION OF GENERAL RETAIL, RE-DESIGNATING APPROXIMATELY 19 ACRES ADJACENT TO SECOND STREET, AS SHOWN ON THE ATTACHED MAP TO GENERAL RETAIL AND MAKING CORRESPONDING CHANGES TO THE TEXT OF THE GENERAL PLAN FOR RETAIL SHOPPING CENTERS; (2) AMENDING THE EAST DAVIS SPECIFIC PLAN TO CREATE A NEW LAND USE DESIGNATION OF GENERAL RETAIL AND RE-DESIGNATING APPROXIMATELY 19 ACRES ADJACENT TO SECOND STREET AS SHOWN ON THE ATTACHED MAP TO GENERAL RETAIL CONSISTENT WITH THE GENERAL PLAN AMENDMENTS; (3) AMENDING SECTION 40.01.090 OF THE CITY'S ZONING ORDINANCE BY REZONING APPROXIMATELY 19 ACRES ADJACENT TO SECOND STREET TO PLANNED DEVELOPMENT (PD) #10-04 TO PERMIT CERTAIN USES INCLUDING GENERAL MERCHANDISE RETAIL AND AMENDING SECTION 40-01-010 TO ADD DEFINITIONS OF GENERAL MERCHANDISE AND DISCOUNT SUPERSTORE; AND (4) APPROVING A DEVELOPMENT AGREEMENT REGARDING THE SECOND STREET CROSSING PROJECT AND SUBMITTING THE ORDINANCE TO THE VOTERS OF THE CITY PURSUANT TO ELECTIONS CODE SECTION 9222

WHEREAS, the City Council has identified a goal to provide economic development to satisfy the needs of the community, including retail development and diverse job opportunities; and

WHEREAS, the project proposal facilitates convenience and availability of retail goods within the city while minimizing impacts upon the downtown, the neighborhood centers, and the environment.

WHEREAS; Environmental Impact Report (SCH #2005062142) adequately assesses the impacts of the proposed project; and

WHEREAS, the City Council has determined to submit this ordinance, and, therefore, the Second Street Crossing Project, to the voters of the City of Davis for their consideration pursuant to Elections Code section 9222;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES ORDAIN AS FOLLOWS:

Section 1. The General Plan of the City of Davis is hereby amended to create a new land use designation of general retail, re-designating approximately 19 acres adjacent to Second Street, as shown on the attached map to general retail and making corresponding changes to the text of the General Plan for retail shopping centers as set forth on Exhibit A, attached hereto and incorporated herein.

Section 2. The East Davis Specific Plan of the City of Davis is hereby amended to create a new land use designation of general retail and re-designating approximately 19 acres adjacent to Second Street as shown on the attached map to general retail consistent with the General Plan amendments as set forth on Exhibit B, attached hereto and incorporated herein.

Section 3. Section 40.01.090 of the City of Davis Zoning Ordinance is hereby amended to rezone approximately 19 acres adjacent to Second Street to Planned Development (PD) #10-04 to permit certain uses including general merchandise retail, as set forth in Exhibit C, attached hereto and incorporated herein and amending Section 40-01-010 of the City of Davis Zoning Ordinance to add definitions of general merchandise and discount superstore; as set forth in Exhibit C, attached hereto and incorporated herein.

Section 4. That Certain Development Agreement regarding the Second Street Crossing, attached hereto and incorporated herein as Exhibit D, is hereby approved.

Section 5. This Ordinance shall not be effective unless and until this Ordinance is ratified by an affirmative vote of the majority of the voters of the City voting on the Ordinance at an election called for that purpose on November 7, 2006.

PASSED AND ADOPTED this twenty-seventh day of June 2006 by the following vote:

AYES: Puntillo, Saylor, Souza, Asmundson

NOES: Greenwald

ABSENT: None

ATTEST: None

Ruth Uy Asmundson
Mayor

ATTEST:

Margaret Roberts, CMC
City Clerk

EXHIBIT A TO ORDINANCE 2259

AMENDING THE GENERAL PLAN TO CREATE A NEW LAND USE DESIGNATION OF GENERAL RETAIL, TO RE-DESIGNATE APPROXIMATELY 19 ACRES IN A LOCATION CONSISTENT WITH ATTACHMENT A TO THIS RESOLUTION TO GENERAL RETAIL, AND TO MAKE CORRESPONDING CHANGES TO THE TEXT OF THE GENERAL PLAN FOR RETAIL SHOPPING CENTERS

WHEREAS, the City Council has identified a goal to provide economic development to satisfy the needs of the community, including retail development and diverse job opportunities, and assist in the fiscal stability of the city with an objective to pursue high demand retail stores with specific reference to a Target Store while working to mitigate impacts on neighborhoods and existing downtown businesses.

WHEREAS; the Land Use and Growth Management chapter of the General Plan identifies that the retail strength and market niche of Davis' downtown consists of eating and drinking establishments, small specialty shops, theater, cinema and service establishments and that the downtown satisfies less than one-tenth of the community's need for apparel, accessories, general merchandise and department store space.

WHEREAS; the City Council hereby finds, through various surveys, economic studies, and public discussions, that several categories of retail goods, including but not limited to general merchandise, clothing, electronics, and soft goods, are underrepresented in the City of Davis resulting in the need for residents to travel outside of the city to purchase many basic goods. These trips and expenditures outside of the city have negative impacts on the local economy and on regional air quality. The project proposal will help provide for retail goods within the city and facilitates convenience and availability of retail goods while minimizing impacts upon the downtown, the neighborhood centers, and the environment.

WHEREAS; the City Council recognizes that the Land Use and Growth Management chapter of the General Plan recommends that large warehouse style retailers (in excess of 60,000 square feet) are inappropriate given the nature and scale of the Davis market, but that approval of this project is appropriate because, on balance, it helps fulfill a variety of other City Council and General Plan goals and policies to increase retail goods in the City, and does so in a manner that makes efficient use of land, efficient use of city services and infrastructure, is of a design that minimizes impacts, and provides goods in a manner that does not conflict with the downtown, while helping to ensure a project that will be sustainable in the long term.

WHEREAS; the City Council has identified a goal to ensure fiscal stability to meet the short and long-term needs of the community, without reliance on housing growth, and that this project helps fulfill a portion of that need through sales tax revenue and recapturing of retail sales leakage.

WHEREAS; the City Council recognizes that a significant portion of the local sales tax base is derived from the transportation sector (auto sales and service stations) and that further diversification of the local sales tax base, through retail development as identified by the City Council Goals and consistent with this project, is desirable for long term fiscal sustainability.

WHEREAS; the City has established goals of environmental sustainability and encourages energy efficient building design and that the project aligns with these goals in that the applicant has committed to providing a Target Store that will be designated by the United States Green Building Council as a LEED (Leadership in Energy and Environmental Design) certified store.

WHEREAS; the project is in a location that maximizes ease of access to the community and to Interstate 80 in that it is located at the junction of two major arterial streets and adjacent to the Mace Boulevard interchange thereby minimizing traffic impacts upon the local street network.

WHEREAS; the project incorporates sensitive design components to maximize compatibility with the neighborhood, including a north setback to the drainage channel of 110 feet and substantial landscape buffers.

WHEREAS; contributions to the City from the project, as outlined in the Development Agreement help to further the goals and objectives of the General Plan and the City Council.

WHEREAS; the Planning Commission held a public hearing on May 24, 2006 to receive comments and consider the proposed amendments; and

WHEREAS; the City Council held a public hearing on June 13, 2006 to receive comments and consider the proposed amendments and continued the discussion to a public meeting on June 20, 2006; and

WHEREAS; Environmental Impact Report SCH #2005062142 adequately assesses the impacts of this General Plan Amendment; and

WHEREAS; the City Council hereby determines that the project is in compliance with City standards.

Section 1 – Land Use Designation. The City of Davis General Plan Land Use Categories (including Figures 11a and 11b) are hereby amended to incorporate a new land use designation of “General Retail” with intent and regulatory language shown in Attachment B to this resolution.

Section 2 – Land Use Map. The City of Davis General Plan Land Use Map (Figures 11a and 11b) are hereby amended to re-designate approximately 19 acres in a location consistent with attachment A of this resolution from the existing designations of General Commercial, Business Park, and Public/Semi-Public to General Retail.

Section 3 – General Plan Text. The City of Davis text is hereby amended as follows:

Text	Change
<p><i>Principles Used in Creating Land Use Map.</i> “it is the intent of this General Plan to prevent major concentrations of retail uses that would compete with the downtown and neighborhood centers. To implement this intent, prohibit new designations or rezonings for retail shopping centers outside of the downtown and neighborhood centers (a pattern commonly found in other suburban and urban edge cities) because such planning is considered inconsistent with desired goals related to community character, downtown primacy, alternate transportation (including pedestrian, bicycle and public transit) and the stability of existing and planned retail areas.</p>	<p>...it is the intent of this General Plan to prevent major concentrations of retail uses that would compete with the downtown and neighborhood centers as this conflicts with desired goals related to community character, downtown primacy, alternate transportation (including pedestrian, bicycle, and public transit) and the stability of existing and planned retail areas. To implement this intent, strictly limit new designations or rezonings for retail shopping centers outside of the downtown and neighborhood centers. Specifically, the General Retail land use designation shall be limited to no more than one site not to exceed a total of twenty acres located approximately on the north side of Second Street at the existing eastern intersection of Faraday Avenue and Second Street, at a project site commonly known as Second Street Crossing. Community and Neighborhood Retail designations shall not be located adjacent to General Retail designations.</p>

ATTACHMENT B

(Addition to Land Use Designations, Chapter 1)

- **General Retail**

Intent: The intent of the General Retail designation is to provide opportunities for retail stores and centers favoring retail uses that are not currently adequately available in Davis, and not likely to be able to locate in the downtown area, and that are consistent with the overall City goal of maintaining the economic vitality of the downtown and neighborhood centers. To implement this intent the General Retail land use designation shall be limited to no more than one site not to exceed a total of twenty acres located approximately on the north side of Second Street at the existing eastern intersection of Faraday Avenue and Second Street, at a project site commonly known as Second Street Crossing. Community and Neighborhood Retail designations shall not be located adjacent to General Retail designations.

Allowable Uses: Retail shopping centers and freestanding buildings, including but not limited to, department stores, general merchandise stores, specialty food stores with a conditional use permit, appliance stores, electronics stores, furniture stores, clothing stores, soft goods stores, and other similar types of products, with ancillary retail, neighborhood serving, and restaurant uses. Residential uses are conditionally allowable.

Prohibited Uses: Discount superstores (e.g. general merchandise stores with more than 20% of the gross floor area dedicated to non-taxable / grocery sales), as such stores are considered inconsistent with desired goals related to community character, downtown retail primacy, preservation of neighborhood shopping centers, traffic impacts, and air pollution.

Maximum Floor Area Ratio: 50 percent, with an additional 10 percent allowed for development of shared parking facilities with neighboring uses. An additional 15 percent allowed for the housing component of a mixed-use project.

Specific Considerations for Designation: Designation of General Retail sites shall occur only with the concurrent adoption of a site-specific Planned Development (PD) zoning district, consistent with the City's desire to ensure consideration of site planning and development standards in relation to the project context. Such designations shall be made with consideration of General Plan policies to prevent over-concentrations of retail uses as such concentrations are inconsistent with desired goals related to community character, downtown primacy, preservation of neighborhood shopping centers, traffic impacts, and air pollution.

EXHIBIT B TO ORDINANCE 2259

AMENDING THE EAST DAVIS SPECIFIC PLAN TO CREATE A NEW LAND USE DESIGNATION OF GENERAL RETAIL AND TO RE-DESIGNATE APPROXIMATELY 19 ACRES IN A LOCATION CONSISTENT WITH ATTACHMENT A TO THIS RESOLUTION TO GENERAL RETAIL CONSISTENT WITH CONCURRENT GENERAL PLAN AMENDMENTS.

WHEREAS, the City Council has identified a goal to provide economic development to satisfy the needs of the community, including retail development and diverse job opportunities, and assist in the fiscal stability of the city with an objective to pursue high demand retail stores with specific reference to a Target Store while working to mitigate impacts on neighborhoods and existing downtown businesses.

WHEREAS; the Land Use and Growth Management chapter of the General Plan identifies that the retail strength and market niche of Davis' downtown consists of eating and drinking establishments, small specialty shops, theater, cinema and service establishments and that the downtown satisfies less than one-tenth of the community's need for apparel, accessories, general merchandise and department store space.

WHEREAS; the City Council hereby finds, through various surveys, economic studies, and public discussions, that several categories of retail goods, including but not limited to general merchandise, clothing, electronics, and soft goods, are underrepresented in the City of Davis resulting in the need for residents to travel outside of the city to purchase many basic goods. These trips and expenditures outside of the city have negative impacts on the local economy and on regional air quality. The project proposal will help provide for retail goods within the city and facilitates convenience and availability of retail goods while minimizing impacts upon the downtown, the neighborhood centers, and the environment.

WHEREAS; the City Council recognizes that the Land Use and Growth Management chapter of the General Plan recommends that large warehouse style retailers (in excess of 60,000 square feet) are inappropriate given the nature and scale of the Davis market, but that approval of this project is appropriate because, on balance, it helps fulfill a variety of other City Council and General Plan goals and policies to increase retail goods in the City, and does so in a manner that makes efficient use of land, efficient use of city services and infrastructure, is of a design that minimizes impacts, and provides goods in a manner that does not conflict with the downtown, while helping to ensure a project that will be sustainable in the long term.

WHEREAS; the City Council has identified a goal to ensure fiscal stability to meet the short and long-term needs of the community, without reliance on housing growth, and that this project helps fulfill a portion of that need through sales tax revenue and recapturing of retail sales leakage.

WHEREAS; the City Council recognizes that a significant portion of the local sales tax base is derived from the transportation sector (auto sales and service stations) and that further diversification of the local sales tax base, through retail development as identified by the City Council Goals and consistent with this project, is desirable for long term fiscal sustainability.

WHEREAS; the City has established goals of environmental sustainability and encourages energy efficient building design and that the project aligns with these goals in that the applicant has committed to providing a Target Store that will be designated by the United States Green Building Council as a LEED (Leadership in Energy and Environmental Design) certified store.

WHEREAS; the project is in a location that maximizes ease of access to the community and to Interstate 80 in that it is located at the junction of two major arterial streets and adjacent to the Mace Boulevard interchange thereby minimizing traffic impacts upon the local street network.

WHEREAS; the project incorporates sensitive design components to maximize compatibility with the neighborhood, including a north setback to the drainage channel of 110 feet and substantial landscape buffers.

WHEREAS; contributions to the City from the project, as outlined in the Development Agreement help to further the goals and objectives of the General Plan and the City Council.

WHEREAS; the Planning Commission held a public hearing on May 24, 2006 to receive comments and consider the proposed amendments; and

WHEREAS; the City Council held a public hearing on June 13, 2006 and continued discussion to a meeting on June 20, 2006 to receive comments and consider the proposed amendments; and

WHEREAS; Environmental Impact Report SCH #2005062142 adequately assesses the impacts of this General Plan Amendment; and

WHEREAS; the East Davis Specific Plan must not be in conflict with the City General Plan;

WHEREAS; the City Council hereby determines that the project is in compliance with City standards.

Section 1 – Land Use Map. The City of Davis East Davis Specific Plan Land Use Map is hereby amended to re-designate approximately 19 acres in a location consistent with attachment A of this resolution from the existing designations of Light Industrial/Business Park, Service Commercial, and Public/Semi-Public to General Retail.

Section 2 – Land Use Designation. The City of Davis East Davis Specific Plan Land Use Categories are hereby amended to incorporate a new land use designation of “General Retail” consistent with the concurrent amendments of the General Plan with intent and regulatory language shown in Attachment B to this resolution.

ATTACHMENT B

(Addition to Land Use Designations)

- **General Retail**

Intent: The intent of the General Retail designation is to provide opportunities for retail stores and centers favoring retail uses that are not currently adequately available in Davis, and not likely to be able to locate in the downtown area, and that are consistent with the overall City goal of maintaining the economic vitality of the downtown and neighborhood centers. To implement this intent the General Retail land use designation shall be limited to no more than one site not to exceed a total of twenty acres located approximately on the north side of Second Street at the existing eastern intersection of Faraday Avenue and Second Street, at a project site commonly known as Second Street Crossing. Community and Neighborhood Retail designations shall not be located adjacent to General Retail designations.

Allowable Uses: Retail shopping centers and freestanding buildings, including but not limited to, department stores, general merchandise stores, specialty food stores with a conditional use permit, appliance stores, electronics stores, furniture stores, clothing stores, soft goods stores, and other similar types of products, with ancillary retail, neighborhood serving, and restaurant uses. Residential uses are conditionally allowable.

Prohibited Uses: Discount superstores (e.g. general merchandise stores with more than 20% of the gross floor area dedicated to non-taxable / grocery sales), as such stores are considered inconsistent with desired goals related to community character, downtown retail primacy, preservation of neighborhood shopping centers, traffic impacts, and air pollution.

Maximum Floor Area Ratio: 50 percent, with an additional 10 percent allowed for development of shared parking facilities with neighboring uses. An additional 15 percent allowed for the housing component of a mixed-use project.

Specific Considerations for Designation: Designation of General Retail sites shall occur only with the concurrent adoption of a site-specific Planned Development (PD) zoning district, consistent with the City's desire to ensure consideration of site planning and development standards in relation to the project context. Such designations shall be made with consideration of General Plan policies to prevent over-concentrations of retail uses as such concentrations are inconsistent with desired goals related to community character, downtown primacy, preservation of neighborhood shopping centers, traffic impacts, and air pollution.

EXHIBIT C TO ORDINANCE 2259

AMENDING SECTION 40.01.090 OF THE CITY ZONING ORDINANCE BY REZONING APPROXIMATELY 19 ACRES LOCATED IN PLANNED DEVELOPMENT (PD) #4-88 IN A LOCATION CONSISTENT WITH ATTACHED EXHIBIT A TO PLANNED DEVELOPMENT (PD) #10-04 AND AMENDING SECTION 40.01.010 TO ADD DEFINITIONS OF GENERAL MERCHANDISE STORE AND DISCOUNT SUPERSTORE.

THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 (Definitions Added)

Article 40.01.010 (Definitions) of Chapter 40 of the Davis Municipal Code is hereby amended to add the following:

“General Merchandise Store” Store that offers centralized cashiering, and a wide range of products, normally including clothing, small appliances, electronics, home furnishings, linens, housewares, toys, sporting equipment, garden supplies and the like, where less than 20% of the gross floor area is dedicated to non-taxable and/or grocery sales.

“Discount Superstore” means a general merchandise store with more than 20% of the gross floor area dedicated to non-taxable and/or grocery sales.

SECTION 2 (Zoning Designation Change)

Article 40.01.090 (Zoning Map) of Chapter 40 of the Davis Municipal Code is hereby amended by changing the land use designation of the parcels shown on Exhibit A, attached hereto and incorporated herein by reference, to Planned Development #10-04.

SECTION 3 (Purpose)

The purpose of Planned Development #10-04 is to provide an environment conducive to the development of medium and large scale discount stores, and ancillary service, retail, office, and restaurant uses consistent with the provisions set forth in the “General Retail” General Plan land use designation.

SECTION 4 (Development Standards)

The development standards shall be as contained in this Planned Development and as adopted in the Final Planned Development. For areas not covered by this ordinance the provisions of Chapter 40 of the Davis Municipal Code as amended shall apply. If there is a conflict between provisions of Chapter 40 and this ordinance, the provisions of this ordinance shall apply.

SECTION 5 (Permitted Uses)

The principal permitted uses in PD #10-04 for Pad Buildings A, B, C and D as defined in the Final Planned Development are as follows:

- (a) Community and regional retail stores, such as appliances, department stores, general merchandise, housewares, home furnishings, home decorating, linen, fabrics, craft, hobby, office furniture and supplies, electronics, telecommunications retail, sporting goods, optical retail, party supply, no less than 10,000 and up to a maximum of 30,000 square feet per individual use.
- (b) Apparel stores between 8,000 and 30,000 square feet per individual use.
- (c) Shoes stores between 3,000 and 30,000 square feet per individual use.
- (d) Motorcycle and recreational vehicle sales conducted within an enclosed building.
- (e) Shipping/packaging stores.

- (f) Neighborhood retail and personal services, such as beauty salon and supply, video rental, and dry cleaning up to an aggregate maximum of ten percent of the square footage of the pad buildings combined.
- (g) Financial institutions, professional and administrative offices, medical offices, real estate offices, banks, credit unions, physical therapy, physical fitness, animal clinics, children's indoor play places, up to an aggregate maximum of ten percent of the square footage of the pad buildings combined.
- (h) One (1) sit down restaurant (maximum of 6,000 square feet).
- (i) Up to two (2) quick-serve restaurants not to exceed 4,000 square feet in aggregate.
- (j) Coffee, ice cream, and juice/smoothie shops.

SECTION 6 (Accessory Uses).

The following accessory uses shall be permitted in PD #10-04:

- (a) Signs, subject to the provisions of a project specific sign program.
- (b) Other accessory uses and buildings customarily appurtenant to a permitted use, subject to the provisions of section 40.26.010.

SECTION 7 (Conditional Uses).

The following conditional uses may be permitted in PD #10-04 subject to the requirements set forth in Article 40.30:

- (a) Uses listed in Section 5 (a) through (d) in excess of 30,000 square feet, up to a maximum of 50,000 square feet.
- (b) Up to one general merchandise store in the primary anchor tenant building, with a maximum of 140,000 gross square feet, consistent with the provisions of the General Plan.
- (c) Specialty food stores up to a maximum of 10,000 square feet may be conditionally permitted. Such applications shall be considered only if the general merchandise store on the site carries no more than five percent of its floor area in food products.
- (d) Public and semi-public uses of a recreational, educational, religious, cultural, or public service type, but not including corporation yards, storage or repair yards, warehouses, or similar uses and appropriate to the district.
- (e) One freestanding monument sign exceeding eight feet in height and up to 25 feet in height, subject to the provisions of 40.26.020

SECTION 8 (Prohibited Uses).

The following uses are prohibited in PD #10-04:

- (a) Discount superstores
- (b) Entertainment uses
- (c) Book stores, toy stores, music stores, art galleries, hardware/building supply stores, paint stores, pool supply stores
- (d) Adult book and novelty stores
- (e) Arcades
- (f) Convenience markets and mini-marts
- (g) Weapon and/or ammunition sales
- (h) Liquor stores
- (i) Bicycle stores

SECTION 9 (Height Regulations).

Height regulations shall be established in the Final Planned Development.

SECTION 10 (Lot Area and Minimum Building Setbacks).

Lot area and minimum setback requirements shall be established in the Final Planned Development, except that for lot A the minimum building setback shall be 110 feet to the northern property line (adjacent to the drainage channel). Minimum setbacks from buildings to the property lines separating parcels A, B, and C shall be established in the Final Planned Development.

SECTION 11 (Floor Area Ratio).

Maximum floor area ratio shall be fifty (50) percent. An additional ten (10) percent shall be allowed for development of shared parking facilities with neighboring uses. An additional fifteen (15) percent shall allowed for the housing component of a mixed-use project.

SECTION 12 (Parking).

Minimum on-site parking shall be provided at a ratio of one space per 300 square feet of gross building area. Reciprocal parking and access agreements may help satisfy this requirement. Bicycle parking, including the number, location, and type, shall be established via administrative review prior to issuance of building permits.

SECTION 13 (Special Conditions)

- (a) Site plan and architectural approval shall be required for all uses, in accordance with Section 40.31.
- (b) Landscaping, irrigation, and screening shall be in accordance with Section 40.26.190 and 40.26.250.

SECTION 14 (Design Principles)

The following design principles shall be incorporated into any project within PD #10-04.

- (a) Buildings shall be oriented to buffer the adjacent neighborhood and park from noise and light impacts of the parking lot. Building(s) may also be located, and are encouraged, along Second Street.
- (b) Bicycle parking shall be provided near building entrances, with convenient and logical access to bikeways and streets.
- (c) Pedestrian connections shall be provided from adjacent pathways and streets and linking buildings within the site.
- (d) Buildings shall incorporate energy-efficient and environmental concepts, utilizing to the extent feasible, measures such as: high energy efficiency heating and cooling systems, recycled building materials, waste recycling programs, site runoff control via vegetative swales, and high efficiency lighting. LEED (Leadership in Energy and Environmental Design) certification by the U.S. Green Building Council is required for all buildings in excess of 30,000 square feet.
- (e) Building designs shall incorporate a variety of rich building materials, such as, but not limited to, stone, brick, timber, steel, and stamped and/or colored concrete.
- (f) Walkways, driveway aprons, and site interior pedestrian crossings and pathways shall incorporate prominent use of enriched paving treatments such as, but not limited to, textured and colored concrete, interlocking pavers, tile, and compacted decomposed granite. Use of plain concrete with white curing compound is inappropriate.
- (g) Buildings shall be designed to provide visual interest and depth by utilizing such techniques as: varied rooflines, parapets, cornices, changes in materials and colors, wall articulations, overhangs, towers, and landscape planters between

walkways and buildings. Colors and materials shall be complementary, but not necessarily identical, throughout the project.

- (h) Buildings shall fully conceal roof-mounted mechanical equipment as viewed from ground level.
- (i) The site plan shall incorporate outdoor seating and break areas for customers and employees.
- (j) Participation in the pilot Art in Private Development Program and integration of art into the site is strongly encouraged.

SECTION 15 (Findings).

The City Council hereby finds that all of the following are true and correct:

1. That the proposed amendment is in general conformance with the City General Plan and East Davis Specific Plan, which, as amended, will re-designate this site for General Retail use.

2. That the Planning Commission held a public hearing on May 24, 2006 to consider this proposed ordinance.

3. That the adoption of a project specific planned development district has been analyzed in an Environmental Impact Report (SCH #2005062142) certified by the City Council on June 20, 2006 prepared in accordance with the California Environmental Quality Act (CEQA).

4. That the public necessity, convenience and general welfare require the adoption of this amendment, in order to provide shopping opportunities to meet the needs of Davis residents.

EXHIBIT D TO ORDINANCE NO. 2259

**APPROVING A DEVELOPMENT AGREEMENT REGARDING THE SECOND STREET CROSSING
(TARGET STORE) 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, on June 20, 2006, the City certified the EIR (SCH #2005062142) for the Second Street Crossing project; 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; and

WHEREAS, the Development Agreement will assure both the City and Developer of 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 24, 2006, on Planning Application #94-04, and the Development Agreement, 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 13, 2006, on Planning Application #94-04, and continued the discussion to a public meeting on June 20, 2006, on 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 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 "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, as amended, in that it establishes certain development rights, obligations and conditions for the implementation of the Second Street Crossing (Target) project;

(b) The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the General Plan designations, as amended, 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 the EIR, Planning Application #94-04, including General Plan Amendment Application #7-04, 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 EIR, 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.

Exhibit A: Development Agreement

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Davis
City Clerk's Office
23 Russell Blvd
Davis, CA 95616

Record for the Benefit of
the City of Davis
Pursuant to Government
Code Section 6301

(Space Above This Line for Recorder's Use Only)
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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS AND THE TARGET CORPORATION
Relating to the Development
of the Second Street Crossing Retail Project

THIS DEVELOPMENT AGREEMENT is entered into this ____ day of _____, 2006, by and between the CITY OF DAVIS, a municipal corporation ("City"), and TARGET CORPORATION, a Minnesota corporation, ("Developer") pursuant to the authority of Sections 65913.4 and 65864 et seq. of the Government Code of the State of California. This agreement refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

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 having a legal or equitable interest in such property in order to establish certain development rights in the property which is the subject of the development project application.

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B. The Developer owns in fee or has a legal or equitable interest in certain real property totaling approximately 19 acres described in Exhibit A attached hereto and incorporated herein by this reference and located on the north side of Second Street at Faraday Avenue in the City of Davis, Yolo County, California ("Property").

C. Developer is a corporation organized and existing under the laws of the State of Minnesota, in good standing thereunder, and qualified to conduct business in California. The Developer has submitted applications to the City to authorize the construction of a 126,842 square foot retail Target Store with a 10,000 square foot garden center, for a total of 136,842 square feet and ancillary surface parking, landscaping and utilities ("Target Store Project"). In addition, the project includes the construction of up to four accessory building pads for future retail development totaling no more than 46,000 square feet, referred to separately as "Retail Pad Building A," "Retail Pad Building B," "Retail Pad Building C" and "Retail Pad Building D" and collectively referred to as the "Retail Buildings A-D Project." The Target Store Project and the Retail Buildings A-D Project, constructed in accordance with the Existing Project Approvals and Future Project Approvals defined in Recitals D and E, below, and as further described and conditioned in this Development Agreement, are collectively referred to as the "Project." It is anticipated by the Parties that the Developer will construct the Target Store Project and sell the Retail Buildings A-D Project (wholly or in parts) to third party developers.

D. The following development approvals, entitlements, policies and findings have been adopted by City after duly noticed public hearings and other applicable procedures and applied to the Project:

- (1) On June 20, 2006, the City certified a Final Environmental Impact Report for the Project pursuant to application #6-04 and by Resolution No. _____) (the "Target EIR");
- (2) On _____, 2006, the City approved a General Plan Amendment pursuant to application #7-04 by Ordinance No. _____. ("General Plan Amendment");
- (3) On _____, 2006, the City approved an amendment to the East Davis Specific Plan pursuant to application #7-04 by Ordinance No. _____ and "Specific Plan Amendment");

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- (4) On _____, 2006, the City adopted Ordinance No. _____ amending the City of Davis General Plan, East Davis Specific Plan, Zoning Ordinance and establishing a Preliminary Planned Development pursuant to application #10-04 to establish the zoning for the Property ("PD Rezoning");
- (5) On _____, 2006, the City approved Final Planned Development for the Project pursuant to application #17-04.
- (6) On _____, 2006, the City approved a Tentative Map merging and resubdividing the Property pursuant to application #10-04.
- (7) On _____, 2006, the City approved Design Review for the Project pursuant to application #47-04.
- (8) On _____, 2006, the City approved a Conditional Use Permit for the Project pursuant to application #16-04.

The approvals and development policies described in subparagraphs (1) through (8), inclusive, above (including but not limited to all conditions of approval and the Target EIR mitigation and monitoring program) are collectively referred to herein as the "Existing Project Approvals." All the Existing Project Approvals are incorporated herein by reference, and full copies of the approving resolutions and ordinance are provided as Exhibit B. References herein to Existing Project Approvals shall also include Final City Future Approvals (defined in Recital E, below) unless otherwise noted.

E. Future approvals required from City include, without limitation, administrative design review of the sign program, final map, grading permits, building permits, and certificates of occupancy. The future approvals from the City are referred to collectively as the "City Future Approvals." The future approvals from other agencies are referred to collectively as "Other Agency Future Approvals." The term "Future Approvals" refers to both the City Future Approvals and the Other Agency Future Approvals. Future Approvals shall also include any subsequent or supplemental environmental impact report required by Public Resources Code Section 21166 or other environmental review required under any applicable provision of the California Environmental Quality Act, including all mitigation measures, monitoring programs and conditions adopted as a result of any such environmental review. References herein to a "Final City Future

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Approval” means a City Future Approval, which has received final approval and is fully effective according to its terms and conditions.

F. This Development Agreement is voluntarily entered into by the Developer in order to implement the General Plan, as amended, 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, as amended, and in consideration of the agreements and undertakings of the Developer hereunder.

G. This Development 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, and provide significant public benefits to the City that the City would not be entitled to receive without this Development Agreement.

H In exchange for the benefits to the City, the Developer desires to receive the assurance that it may proceed with the Project in accordance with Existing Project Approvals and other existing land use ordinances, subject to the terms and conditions contained in this Development Agreement and to secure the benefits afforded the Developer by Government Code section 65865.3.

I On _____, 2006, after duly noticed public hearings, the City Council of the City of Davis adopted Ordinance No. _____ approving this Development Agreement. The Ordinance took effect on _____, 2006. Ordinance No. _____ is incorporated herein by reference and a copy is provided at Exhibit B.

AGREEMENT

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

ARTICLE 1. General Provisions.

A. [Sec. 100] Property Description and Binding Covenants. The Property is that real property described in Recital B and legally described on Exhibit A. The Developer represents that as of the Effective Date of this Development Agreement it is

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the legal fee owner of the Property. The Parties intend and determine 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.

B. [Sec. 101] Effective Date and Term. The Effective Date of this Agreement shall be the later of (1) thirty (30) days after approval of this Agreement by the City Council or (2) the date that all Project Approvals are approved and have become final, non-appealable and not subject to referenda. The term of this Agreement shall commence upon the Effective Date and shall extend for a period of fifteen (15) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties, subject to the provisions of Section 105 hereof. 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.

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.

This Agreement shall be deemed terminated and of no further effect upon:

1. 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 any of the Project Approvals; or
2. Two years from the Effective date of this Agreement if the Developer have not obtained legal title to the Property, unless such date is extended by the City Council; or
3. The date the Developer notifies that City, in writing, that it has determined that it no longer intends to acquire the Property and has notified the property owner that it has released its rights under any agreements related to the acquisition of to exercise its option to acquire the Property.

C. [Sec. 102] 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

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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, except to the extent such benefits and burdens have been apportioned in a valid Assignment Agreement pursuant to Section 103; 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 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 a writing ("Assignment Agreement") pursuant to Section D.

D. [Sec. 103] Right to Assign; Non-Severable Obligations.

1 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.

2. No assignment that includes the Target Store Project shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld or delayed provided:

(a) 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 Development Agreement affected by the assignment; and

(b) The proposed assignee has adequate experience with non-residential developments of comparable scope and complexity to the portion of the project that is the subject of the assignment.

Any request for City approval of an assignment that includes the Target Store Project shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identify, 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 ten (10) 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

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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 ten (10) business days after receipt of written request for such approval, such approval shall be deemed to be approved.

3. The Specific Development Obligations set forth in Article II, Section B [Sec. 201], are intended to and shall run with the Target Store Project, and not apply to the Retail Buildings A-D Project. The Specific Development Obligations are not severable from the Target Store Project and shall not be assigned with the transfer of the Retail Buildings A-D Project. 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 from the Target Store Project shall constitute a default under this Agreement and shall entitle the City to seek all remedies pursuant to Section 400 of this Development Agreement.

4. Notwithstanding subsection 2 above, mortgages, deeds of trust, sales and lease-backs 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, construction and operation 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.

6. 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 Tentative Map identified in Recital D and Exhibit B. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations and be consistent with the Existing Project Approvals and this Development Agreement. Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer's business structure.

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E. [Sec. 104] 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 Section 103 of this Agreement.

F. [Sec. 105] Amendment of Agreement. This Agreement may be amended from time to time by mutual written consent of the Parties, in accordance with the provisions of Government Code Sections 65867 and 65868 and Section 106. Any amendment shall be recorded with Yolo County. Notwithstanding any other provisions in this Development Agreement to the contrary, Developer may seek and City may review and grant in its sole discretion, in accordance with then applicable State and local laws, ordinances, regulations, rules and procedures, amendments or modifications to the Existing Project Approvals without seeking an amendment of this Development Agreement, unless such amendments are deemed to require a Major Amendment to this Development pursuant to Section 106(A).

G. [Sec. 106] Major Amendments and Minor Amendments.

A. Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Amendment subject to Section 106(B) below. The

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City Manager or his or her designee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 106(A) or a Minor Amendment subject to Section 106(B) below. The City Manager's determination may be appealed to the City Council.

B. Minor Amendments. 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, including specific time extensions (not including extensions to the term) for compliance with the terms and conditions set forth herein, are necessary or appropriate and do not constitute a Major Amendment under Section 106(A), they shall effectuate such clarifications, minor changes or minor adjustments through a written Minor Amendment approved in writing by the Developer and City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

ARTICLE 2. Development of the Property.

A. [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 Development Agreement, the Existing Approvals and, as set forth in Section 206, the applicable rules and regulations in effect at the time this Agreement was approved, and any amendments to the Existing Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

The Developer hereby agrees to develop the Project in accordance with this Development Agreement, the Existing Project Approvals and the Development Standards defined in Section , as well as any amendments to the Existing Project Approvals or this Development Agreement as may, from time to time, be approved pursuant to this Development Agreement. Nothing in this section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 106, *supra*.

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B. [Sec. 201] Specific Development Obligations. In addition to the terms and conditions set forth in the Existing Project Approvals, the Developer and the City have agreed that the development of the Target Store Project on the Property by the Developer is subject to those certain "Specific Development Obligations," described in this Section 201. These Specific Development Obligations, together with the other terms and conditions of this Development Agreement, provide the incentive and consideration for the City entering into this Development Agreement.

1. Parks. In addition to the required Development Impact Fees set forth in Section 201(4), below, the Developer shall contribute a sum of \$200,000 to the City, prior to issuance of the first building permit for the Target Store Project, to be utilized in the design and construction of the Mace Ranch Neighborhood Park located immediately adjacent to the project site to the north. The City and Developer agree that for any application for building permit for the Target Store Project filed within a period of two (2) years from the Effective Date of this Agreement ("Fee Cap Period"), the Developer shall pay \$200,000. For any building permit application for the Target Store Project filed after the Fee Cap Period, the amount due under this Section shall be adjusted to reflect any increase in the Consumer Price Index applicable to the Property ("CPI").

2. Community Enhancement. In addition to the required Development Impact Fees set forth in Section 201(4), below, the Developer shall contribute to the City a sum of \$100,000, prior to the issuance of the first building permit, to be utilized at the discretion of the City for public safety, or parking or streetscape enhancements, or downtown and/or other community enhancement projects. The City and Developer agree that for any application for building permit for the Target Store Project filed during the Fee Cap Period, the Developer shall pay \$100,000. For any building permit application for the Target Store Project filed after the Fee Cap Period, the amount due under this Section shall be adjusted to reflect any increase in the CPI.

3. Traffic Mitigation and Funding. In addition to the Development Impact Fees as set forth in Section 201(4) below, and any other the traffic mitigation funding requirements set forth in the Existing Project Approvals, the Developer shall pay for the full costs of designing and constructing complete full width roadway, infrastructure and utility improvements from Second Street to the north edge of the truck access driveway to the project site as depicted in exhibit C. The Developer shall also reimburse the City for all costs, including but not limited to legal and attorney fees, and staff time to secure development rights for said improvements. The City shall in good faith make every

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reasonable effort to acquire roadway development rights for this portion of roadway via condemnation or other appropriate mechanism and shall, upon request, provide the Developer with a progress update, anticipated schedule, costs expended to date and proposed budget for securing the development rights for said improvements.

4. City Development Impact Fees. Parties agree that a project specific evaluation of the City of Davis Development Impact fees has not been completed because the project is a retail development that requires an amendment to the General Plan, and may result in City Development Impact fees that differ from those depicted in the fee estimate attached as Exhibit D. The City and Developer agree that for any application for building permit filed within a period of two (2) years from the Effective Date of this Agreement, the Developer shall pay, prior to the issuance of the first building permit for the Project, \$2.235 million as a Development Impact Fee for the Target Store Project, regardless of the actual City of Davis Development Impact Fees determined by the City to be due and payable related to the Target Store Project. For any application for building permit related to the Target Store Project filed after two (2) years from the Effective Date, the Developer shall pay either the greater of (i) \$2.235 million or (ii) the amount determined due and payable by the City to the Target Store Project. Developer acknowledges that this Section (a) does not include water or sewer connection fees and (b) does not include impact fees related to the Retail Pad Buildings A-D which shall be the actual City of Davis Development Impact Fees determined by the City to be due and payable prior to issuance of building permit.

5. LEED Certification. The City hereby recognizes the substantial efforts made by the Developer to construct a project that integrates superior environmental and energy efficient design. The Developer hereby commits to securing U.S. Green Building Council LEED (Leadership in Energy Efficient Design) certification for the site and the Target Store and City recognizes that this requires the Developer to commit substantial funds to go above and beyond those measures which would otherwise be required under State Title 24 energy efficiency standards. The City shall not require Developer to install a photovoltaic system as part of the Project, although nothing in the Section shall prohibit the Developer from voluntarily installing such system with appropriate screening.

6. Landscape Buffer. The City hereby recognizes the substantial efforts of the Developer to provide the maximum amount of separation from the residential properties to the north and that said efforts require the design, installation, and

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maintenance of approximately three acres of the project site at the northwest quadrant at a land acquisition cost of approximately \$1.5 million.

7. Vacancy Mitigation. In the event that the Target Store Project closes, becomes vacant, or otherwise ceases operations as traditionally associated with a Target retail store during the term of this Development Agreement, and such vacancy is not a temporary closure for remodeling or repair purposes or otherwise due to an enforced delay pursuant to Section 404, below, the Developer shall within thirty (30) days of receipt of a demand from the City referencing this Section, either (1) cure such vacancy within thirty (30) days or (2) pay to the City the equivalent of three years worth of sales tax revenues that would otherwise have been paid to the City, to be used at the discretion of the City ("Vacancy Payment"). The amount of the Vacancy Payment shall be calculated by multiplying the average annual sales tax revenues the Target Store Project that would have otherwise been due and payable to the City based on an average of the previous three consecutive years by three (3). In addition, in the event that the Target Store Project, during the three (3) years following the Vacancy Payment generates sales tax revenue payable to the City, the amount of such sales tax revenues shall be a credit against the Vacancy Payment obligation set forth herein and a refund of such portion of the Vacancy Payment as is represented by such sales tax paid to the City shall be promptly refunded to Developer.

8. Funding for EIR Mitigation Measure 4.3-8. Developer shall pay its fair share of those potential future signals along Second Street identified in the Target EIR Mitigation Measure 4.3-8, if such signals are determined by the City Engineer to be warranted during the term of this Agreement. City shall monitor the intersections and shall, if such monitoring demonstrates a signal is warranted, provide notice to Developer of the location of the signal, the basis for the warrant and the proposed fair share cost attributable to Developer. The fair share cost for each signal shall be based on the relative share of trips generated by the properties along Second Street. Upon receipt of notice, Developer may request a hearing before the City Council regarding whether the fair share has been properly calculated. Developer shall pay to the City its fair share within sixty days of notice that the payment is due. If Developer fails to pay the City, such failure shall be deemed a breach of the Development Agreement, the City will have all remedies provided in the Development Agreement for breach and for collection of the fair share payment. In the event the City has collected a fair share payment and either (1) the City later determines the signal is not warranted or (2) the City has not constructed the signal

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within five (5) years of collection of such fair share payment, any such payment shall be refunded in full to the Developer. The City's repayment obligation under this Section shall survive the termination of the Development Agreement.

9. Implementation of Mitigation Measure 4.7-2 (Loss of Suitable Swainson's Hawk Foraging Habitat). In order to mitigate this impact Developer shall comply with "option 2" as outlined in the EIR mitigations as follows:

Prior to obtaining clearance to grade the site or conducting any earthmoving activity for the proposed project, the Developer shall place and record one or more conservation easements that meet the acreage requirements of CDFG's Swainson's Hawk foraging habitat mitigation guidelines. The conservation easement(s) shall be executed by the Developer and a conservation operator. The City may, at its discretion, also be a party to the conservation easement(s). The conservation easement(s) shall be reviewed and approved in writing by CDFG prior to the recordation for the purpose of confirming consistency. The purpose of the conservation easement(s) shall be to preserve the value of the land as foraging habitat for the Swainson's hawk.

C. [Sec. 202] Tentative Map; Design Review and Conditional Use Permit Extension.

Pursuant to California Government Code section 66452.6(a) the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement. The term of the CUP and Design Review Approval, or any future conditional use permit or design review approval, shall be established and/or extended under the terms set forth in the City's Zoning Regulations or the conditions of approval of the CUP, Design Review Approval, or any future conditional use permit or design review approval, but shall not be extended by reason of this Agreement and will terminate if not used.

D. [Sec. 203] Development Timing. The Developer shall be obligated to comply with the terms and conditions of the Existing Project Approvals and this Development Agreement at those times specified in either the Existing Project Approvals or this Development Agreement. The parties acknowledge that the Developer cannot at this time predict with certainty when or the rate at which phases of the Property would be

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developed. Such decisions depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and the Developer to hereby acknowledge and provide for the right of the Developer to develop the Project in such order and at such rate and times as the Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Existing Project Approvals and this Development Agreement. City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, the Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, (California Government Code Section 65864 *et seq.*), City Council Resolution 1986-77 and this Development Agreement. The Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing the Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Existing Project Approvals.

Developer, or its successors in interest for the Retail Building A and Retail Pad Building B shall make good faith efforts to initiate construction of the building shell of the Retail Building A and Retail Building B concurrent with the construction of the Target Store. The Developer, or its successors in interest for the Retail Building A and Retail Building B shall submit full and complete building permit applications for the building shell (interior tenant improvements shall not required as part of this application) for the Retail Building A and Retail Building B no later than two years after the Effective Date of this Development Agreement,.

E. [Sec. 206] Rules, Regulations and Official Policies.

1. 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, but not limited to, the size of proposed buildings,

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shall be those rules, regulations and official policies in force on the effective date of the project approvals. 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 Development Agreement, including the Existing Approvals, shall prevail, unless the Parties mutually agree to amend or modify this Agreement pursuant to Section 105 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 not inconsistent with the terms and conditions of this Development 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.

(a) 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 Development Agreement or require changes in plans, maps or permits approved by the City, this Development 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.

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).

(b) 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

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protecting persons or property from conditions which create a health, safety or physical risk.

2. All Project construction, 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.

3. Uniform Codes Applicable. This Project shall be constructed in accordance with the prohibitions 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.

4. 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:

(a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use

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entitlements for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

(b) 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 land use entitlements for the Property obtained while this Agreement is in effect in the absence of a request for amendment to this Development Agreement pursuant to Section 105; and

(c) 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 in the absence of a request for amendment to this Development Agreement pursuant to Section 105.

5. 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.

C. [Sec. 207]. Fees, Exactions, Conditions and Dedications.

1. Except as provided herein, the 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 Existing Project Approvals and this Development Agreement.

2. As to the fees required to be paid, for a period of (2) years after the Effective Date of this Agreement, Developer shall pay the fee in effect as of the Effective Date of this Development Agreement ("Fee Cap Period"); thereafter, the Developer shall pay the amount in effect at the time the payment is due. After the Fee Cap Period, the City retains discretion to revise such fees as the City deems appropriate, in accordance with applicable law. If the City revises such fees on a City-wide basis (as opposed to revising such fees on an *ad hoc* basis that applies solely to the Project), then after the end of the Fee Cap Period, the Developer shall thereafter pay the revised fee. The Developer

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may, at its sole discretion, participate in any hearings or proceedings regarding the adjustment of such fees. Nothing in this Agreement shall constitute a waiver by the Developer of its right to challenge such changes in fees in accordance with applicable law provided that, after the end of the Fee Cap Period, the Developer hereby waives its right to challenge the increased fees solely on the basis of any vested rights that are granted under this Agreement and any tentative maps approved pursuant to this Agreement.

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

4. Except as specifically permitted by this Agreement or mandated by state or federal law, the 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 exceptions:

(a) The City may impose reasonable additional fees, charges, dedication requirements or improvement requirements as conditions of the City's approval of an amendment to the Project Approvals or this Agreement, if an amendment is either requested by the Developer or agreed to by the Developer pursuant to Section 105; and

(b) At the end of the Fee Cap Period, 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 and other properties in the area of 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.

5. Compliance with Government Code section 66006. As required by Government Code section 65865(e) for development agreements adopted after January 1,

Exhibit A: Development Agreement

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 3. Obligations of the Developer.

A. [Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement, the Existing Project Approvals and any amendments to the Existing Project Approvals or this Development 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 Development Agreement, the Existing Project Approvals or any amendments to the Existing Project Approvals or this Development Agreement as may have been approved pursuant to Section 105 of this Development 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 Article 4 hereof.

B. [Sec. 301] Developer Obligations. The Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Development Agreement (including, but not limited to, Section 201) and the Existing Project Approvals.

C. [Sec. 302] City's Good Faith in Processing. Subject to the provisions of Section 207(3) hereof, the City agrees that it will accept, in good faith, for processing, review and action, all complete applications for zoning, special permits, development permits, additional subdivision maps, building permits, demolition permits, sign programs, certificates of occupancy or other entitlements for use of the Property in accordance with the General Plan, the Existing Project Approvals and this Development Agreement.

The City shall inform the Developer, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall review said application and schedule the application for review by the appropriate authority.

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The Developer and the 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 any future parcel and tentative subdivision maps and final maps.

With City approval, the 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 the Developer, the City shall determine whether expedited plan check is feasible for the requested work. If the City determines that expedited plan check is feasible, the City shall retain an outside consultant for review of the 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 the Developer. Upon written request, the 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 4. Default, Remedies, Termination.

A. [Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing under Section 404, 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.

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;

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

B. [Sec. 401] Intentionally deleted.

C. [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 Development Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Development 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 Development Agreement and to recover attorneys' fees and costs for such enforcement.

D. [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 the 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.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the 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 or her 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 the Developer.

If, following such review, the City Manager is not satisfied the 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.

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

E. [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, terrorism, 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, moratoria 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.

F. [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 the 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.

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

H. [Sec. 407] Invalidity of Agreement.

1. 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.

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2. 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 408 hereof.

I. [Sec. 408] Effect of Termination on Developer Obligations.
Notwithstanding any other provision hereof to the contrary, termination of this Development Agreement or termination of the rights of Developer hereunder as to the Property, or any part thereof, shall not affect any requirement to comply with the Existing Project Approvals and the terms and conditions of the applicable zoning or other land use entitlements, or any payments then due and owing to City, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

ARTICLE 5. Hold Harmless Agreement.

A. [Sec. 500] Hold Harmless Agreement. The 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.

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 the Developer), the Developer agrees to and shall cooperate fully and join in the defense by the City of such action; provided, however, that the City and the Developer shall each bear their own respective costs, if any, arising from such defense. Such agreement by the Developer does not

Exhibit A: Development Agreement

include any agreement to indemnify the City and its elective and appointive boards, commissions, officers, agents and employees from any such legal actions.

ARTICLE 6. Project as a Private Undertaking.

A. [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 the Developer and the City is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 7. Consistency With General Plan.

A. [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, as amended by the General Plan Amendment.

ARTICLE 8. Notices.

A. [Sec. 800] Notices. All notices required by this Development 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:

Target Corporation
Attn: Brian Treber, Regional Real Estate Manager
1000 Nicollet Mall, TPN 12G
Minneapolis, MN 55403

Exhibit A: Development Agreement

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 9. Recordation.

A. [Sec. 900] When fully executed, this Development Agreement will be recorded in the official records of Yolo County, California. Any amendments to Section 105 of this Agreement shall also be recorded in the official records of Yolo County.

ARTICLE 10. Estoppel Certificates.

A. [Sec. 1000] 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, (a) this Development Agreement is in full force and effect and a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting Party may designate a reasonable form of certificate (including a lender's form) and the Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, and other mortgages. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Developer to execute an estoppel certificate shall not be deemed a default, provided that in the event Developer does not respond within the required thirty (30) day period, City may send a second and final request to Developer and failure of Developer to respond within fifteen (15) days from receipt thereof (but only if City's request contains a clear statement that failure of Developer to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by Developer of the estoppel certificate and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond

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holders. Failure of City to execute an estoppel certificate shall not be deemed a default, provided that in the event City fails to respond within the required thirty (30) day period, Developer may send a second and final request to City, with a copy to the City Manager and City Attorney, and failure of City to respond within fifteen (15) days from receipt thereof (but only if Developer's request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by City of the estoppel certificate and may be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees.

ARTICLE 11. Entire Agreement.

A. [Sec. 1100] Entire Agreement. This Development Agreement is executed in ____ duplicate originals, each of which is deemed to be an original. This Development Agreement consists of __ pages and _____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 Development Agreement. Said exhibits are identified as follows:

- Exhibit A: Legal Description of the Property
- Exhibit B: Existing Project Approvals
- Exhibit C: Faraday Avenue Roadway Exhibit
- Exhibit D: Development Impact Fee Estimate

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

Signatures to follow on next page

Exhibit A: Development Agreement

CITY OF DAVIS

By _____

Ruth Uy Asmundson
Mayor

Attest _____

Margaret Roberts
City Clerk

"CITY"

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

Exhibit A: Development Agreement

Target Corporation

By _____

Name:

Title: _____

"DEVELOPER"

Approved as to form:

Tamsen Plume, Holland & Knight LLP
Attorneys for the Developer

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