

AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS, BINNING RANCH HOLDING COMPANY, AND
J. DAVID TAORMINO

Relating to the Development

of the Property Commonly Known as the West Davis Active Adult Community Project

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), Binning Ranch Holding Company LLC, a California Corporation (“Landowner”) and J. David Taormino, an individual (“Developer”). This Agreement is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. “Developer” shall include Landowner until Landowner is released from obligations as provided for herein. 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 for a development project, establishing certain development rights in the property which is the subject of the development project application.

B. The Landowner owns in fee certain real property(ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in unincorporated Yolo County but within the City of Davis’ Sphere of Influence (herein the "Property") which the Developer seeks to annex and develop as the Project (the “Project”). The Project, as proposed, includes development of: 150 affordable, age-restricted apartments; 32 attached, age-restricted cottages; 94 attached, age-restricted units; 129 single-family detached, age-restricted units; 77 single-family detached, non-age-restricted

units; an approximately three-acre continuing care retirement community, which would likely consist of 30 assisted living, age-restricted detached units; an approximately 4.3-acre mixed use area, which would likely consist of a health club, restaurant, clubhouse, and up to 48 attached, age-restricted units; dog exercise area and tot lot; associated greenways, drainage, agricultural buffers; and off-site stormwater detention facilities. Upon completion of the Project, the approximately 74-acre site would provide up to 560 dwelling units and 4.5 miles of off street biking and walking paths within the Project area. Developer has an equitable interest in the Property sufficient to be bound by this Development Agreement.

C. This Agreement is voluntarily entered into by Landowner and Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

D. City has granted the Developer the following land use entitlement approvals for the Project (hereinafter “Project Approvals”) which are incorporated and made a part of this Agreement:

- (1) General Plan Amendment #__
- (2) Rezoning and Preliminary Planned Development #__
- (3) Development Agreement #__ by and between the City of Davis and Developer.
- (4) Environmental Impact Report (SCH#_____), as certified and approved by Resolution No. _____ and the Mitigation Monitoring and Reporting Program adopted therewith.

E. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements and public services, establish the orderly and measured build-out of the Project consistent with the desires of the City to maintain the City's small city atmosphere and to have development occur at a pace that will assure integration of the new development into the existing community, and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

F. 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 the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by *Government Code* §65864.

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 property described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. Developer represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. 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. Developer's right to develop the Property in accordance with the Project Approvals and the terms of this Development Agreement including the obligations set forth herein shall not become effective unless and until Developer acquires the Property. Upon conveyance of

Landowner's entire fee interest in the Property to Developer, Landowner shall have no further ownership interest in the property, and shall be fully released from any further liability or obligation under this Development Agreement with respect to the Property.

B. [Sec. 101] Effective Date and Term. The effective date of this Agreement shall be the date the Ordinance adopting this Agreement is effective. The term of this Agreement (the "Term") shall commence upon the effective date and shall extend for a period of twenty (20) 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 407 hereof.

If this Agreement is terminated by the City Council prior to the end of the Term, the City shall cause a written notice of termination to be recorded with the County Recorder within ten (10) days of final action by the City Council.

This Agreement shall be deemed terminated and of no further effect upon entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the City Council's approval of this Agreement or any material part of the Project Approvals.

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* §§ 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section D, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section D. In any event, no owner or tenant of an

individual completed residential unit within Project shall have any rights under this Agreement.

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 shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld 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 Agreement affected by the assignment; and

(b) The proposed assignee has adequate experience with 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 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 fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If City receives a public records request for any information designated a "trade secret" City shall notify the assignee of such request prior to releasing the material in question to the requesting party. If the assignee directs the City not to release the material in question, the assignee shall indemnify the City for any costs incurred by City, including but not limited to staff time and attorney's fees, as a result of any action

brought by the requesting party to obtain release of the information and/or to defend any lawsuit brought to obtain such information. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) calendar days after receipt of written request for such approval, such assignment shall be deemed to be approved.

3. The Specific Development Obligations set forth in Article II, Section B [Sec. 201], are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

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 and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

5. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any further subdivision or parcelization of the Property, in addition to the Parcel Map identified in Recital D. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, the Project Approvals and this 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, such as (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

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 reasonably necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

F. [Sec. 105] Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the Parties, in accordance with the provisions of Government Code Sections 65867 and 65868.

G. [Sec. 106] [Intentionally Reserved]

H. [Sec. 107] Major Amendments and Minor Amendments.

1. Major Amendments. Any amendment to this Development Agreement which substantially 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 maximum gross square footage; 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 107(2) below. The City Manager or his or her delagee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 107(1) or a Minor Amendment subject to Section 107(2) below. The City Manager’s determination may be appealed to the City Council.

2. 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 are necessary or appropriate and do not constitute a Major Amendment under Section 107(1), 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 Agreement and the Project Approvals attached hereto as Exhibit C and incorporated herein by reference, and any amendments to the Project

Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

The Developer hereby agrees that development of the Project shall be in accordance with the Project Approvals, including the conditions of approval and the mitigation measures for the Project as adopted by the City, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Nothing in this section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 107, *supra*. Nothing in this Agreement shall require Developer or Landowner to construct the Project or to pay fees for any portion of the Project that Developer or Landowner does not construct.

B. [Sec. 201] Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals, the Developer and the City have agreed that the development of the Property by the Developer is subject to certain specific development obligations, described herein and/or described and attached hereto as Exhibits E through I and incorporated herein by reference. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement.

(1) Environmental Sustainability. The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. Developer shall comply with the Environmental Sustainability Commitments set forth in Exhibit E.

(2) Transportation and Circulation Improvements. The Developer shall comply with and implement the measures identified in Exhibit F including but not limited to roadway improvements located on, adjacent to, and off of the Project site.

(3) Health and Wellness Commitments. The Developer shall comply with and implement the measures identified in Exhibit G to provide for the health and wellbeing of the community.

(4) Affordable Housing. The Developer shall comply with the affordable housing requirements as set forth in Exhibit H.

(5) Architectural Diversity. The General Plan includes goals and policies that promote design standards for new single family residential development that create variability of lot sizes, floor area ratios, setbacks, building height floor plans, and architectural styles/treatments within each new development area. The Project would be consistent with these General Plan goals and policies. The Project shall include a diversity of housing types, densities, and diverse architectural treatments.

(6) Small Builder Lots. Small builder lots shall be required in the Project in the manner provided in this Agreement, to encourage the development of architecturally diverse neighborhoods, with a mix of housing types, densities, prices and designs. The Project shall provide a minimum of thirty (30) Small Builder Lots, to be identified by Developer prior to approval of the Project's first Tentative Map. No more than fifteen percent (15%) of small builder lots may be sold to a single small builder in a calendar year. The Small Builder Lots must be sold to qualifying small builders or owner/builders. Developers shall not be required to offer any Small Builder Lot at a discounted price or value to ensure a sale during any particular timeframe or phase of project development. Small Builder Lots are and shall remain subject to project development standards and design guidelines adopted as subsequent Project Approvals, including the Sustainability Plan, Development Fees and other obligations as set forth in this Agreement.

(7) Age Restriction Covenants, Senior Community. Developer has elected to restrict the Project as a senior housing development and, as such, to require all multi-family, all attached single-family units, and the majority of single-family detached dwelling units in the Project to be occupied or held available for occupancy by households that include one or more "elderly" or "senior" residents at least fifty-five years (55) of age, in accordance with applicable law. The age-restriction will be applied through a deed restriction or similar instrument to eighty percent (80%) of the Project's single family detached residential units. Developer hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the development and

operation of senior housing in compliance with the requirements set forth herein, and as further specified in the Project's conditions, covenants, and restrictions ("CC&Rs"). Developer represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Developer covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City. Prior to issuance of any building permit, Developer shall execute, acknowledge, and record against the entirety of the Property, other than the Activity and Wellness Center Parcel, CC&Rs in a form reasonably acceptable to City, which shall require, among other things, that (a) the Project comply with the senior age-based occupancy requirements set forth above, (b) Developer and its successors and assigns develop and implement appropriate age verification procedures to ensure compliance with such CC&Rs, and provide City with a copy of such verification procedures, and (c) Developer will indemnify, protect, and hold City harmless from any and all claims arising out of Developer's implementation of such age-based restrictions and any failure to comply with applicable legal requirements related to housing for seniors. The provisions of this Section __ shall survive the expiration or earlier termination of this Agreement.

(8) Davis-Based Buyers Program. Developer has elected to restrict ninety percent (90%) of the residential units within the Project to initial purchasers with a preexisting connection to the City of Davis, and desires to sell or hold said percentage of market-rate residential units available for sale to households that include a local resident, defined as a person residing within the City or the Davis Joint Unified School District boundary, family of a local resident, a Davis employee, a Davis grade-school student, or an individual that attended Davis schools. Prior to issuance of any building permit, Developer and its successors and assigns shall (a) develop and implement appropriate local-connection requirements and verification procedures for such a program that are consistent with all applicable Federal and State fair housing requirements, including but not limited to the Federal Fair Housing Act (42 U.S.C. §3604), the California Fair Employment and Housing Act (Gov't Code §12900 *et seq.*) and the California Unruh Act (Civil Code §51 *et seq.*) (the "Fair Housing Requirements"), and provide City with a copy of such verification procedures, and (b) indemnify, protect, and hold City harmless from

any and all claims arising out of Developer's failure to comply with applicable legal requirements as set forth in or related to the Fair Housing Requirements in accordance with the indemnity provisions set forth in Section ___ of this Agreement. The provisions of this Section ___ shall survive the expiration or earlier termination of this Agreement.

C. [Sec. 202] Subsequent Discretionary Approvals. The Developers' vested right to develop pursuant to this Agreement may be subject to subsequent discretionary approvals for portions of the Project. In reviewing and acting upon these subsequent discretionary approvals, and except as set forth in this Agreement, the City shall not impose any conditions that preclude the development of the Project for the uses or the density and intensity of use set forth in this Agreement. Any subsequent discretionary approvals, except conditional use permits, shall become part of the Project Approvals once approved and after all appeal periods have expired or, if an appeal is filed, if the appeal is decided in favor of the approval. The known subsequent approvals are set forth on Exhibit D, attached hereto and incorporated herein.

D. [Sec. 203] Development Timing. The Developer shall be obligated to comply with the terms and conditions of the Project Approvals and this Development Agreement at those times specified in either the 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 the Property would be 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 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* § 65864 *et seq.*), City Council Resolution 1986-77 and this Development Agreement. The Developer will use its best efforts, in accordance with their 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 Project Approvals.

Subject to applicable law relating to the vesting provisions of development agreements, Developer and City intend that except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances, growth control measures and initiatives or referenda, other than a referendum that specifically overturns City's approval of the Project Approvals, that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative or referendum shall not apply to the Project Approvals and the Project. Developer and City acknowledge, however, that the General Plan Amendment #___ will not take effect until such time as there is an affirmative vote of the electorate pursuant to Chapter 41 of the Davis Municipal Code, the Citizens' Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance. Notwithstanding any other provision of this Agreement, Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby.

E. [Sec. 204] [Intentionally Reserved]

F. [Sec. 205]. [Intentionally Reserved]

G. [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 the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of the ordinance enacted by the City Council approving this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement pursuant to Section 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 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 prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction

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 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 submittal 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 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; 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.

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.

H. [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 adjustments as set forth in Exhibit I and below, and make those dedications and improvements prescribed in the Project Approvals and this Agreement and any Subsequent Approvals. Unless otherwise specified herein, City-imposed development impact fees and sewer and water connection fees shall be due and payable by the Developer prior to the issuance of a certificate of occupancy for the building in question. Certain impact fees and credits applicable to development of the Project shall be as set forth in Exhibits H and I, and paid in the manner specified.

2. Except as otherwise provided by Exhibit I to this Agreement, the Developer shall pay the fee amount in effect at the time the payment is made. 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 the Developer shall thereafter pay the revised fee. The Developer 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 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.

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* § 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 exception:

(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, which amendment is either requested by the Developer or agreed to by the Developer; and

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

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

6. Wastewater Treatment Capacity. The City and the Developer agree that there is capacity in the wastewater treatment facility to serve (1) existing residents and businesses that are already hooked up to the facility, (2) anticipated residents and businesses through build-out of the City's existing General Plan, and (3) the Project. The City and the Developer acknowledge and agree that reserving this capacity for the Project, such that sewer hookups shall be available at such time as they are needed as the Project builds out, is a material element of the consideration provided by the City to the Developer in exchange for the benefits provided to the City under this Agreement. The Parties

recognize the availability of sufficient sewer capacity may be affected by regulatory or operational constraints that are not within the City's discretion. To the extent the availability of sewer capacity is within the City's discretion (e.g., whether to extend sewer service to areas *not* currently within the City's service area), the City shall not approve providing such capacity to areas currently outside the City's service area if this approval would prevent or delay the ability of the City to provide sewer hookups to the Project as the Project requires hook-ups or connections. This provision shall not affect the City's ability to provide sewer service within its service boundaries or within the existing City boundaries as they exist on the effective date of this Agreement, and as to such connections, the Parties requesting sewer service shall be connected on a first come first served basis. The Developer shall pay the applicable connection charge pursuant to that specified in Exhibit I of this Agreement at the time of building permit issuance. The Developer acknowledges that connection charge may increase substantially over time and that the cost to comply with the City's new NPDES permit, as they may be approved from time to time during the term of this Agreement, may be substantial.

I. [Sec. 208] Completion of Improvements. City generally requires that all improvements necessary to service new development be completed prior to issuance of building permits (except model home permits as may be provided by the Municipal Code). However, the parties hereto acknowledge that some of the backbone or in-tract improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all backbone or in-tract infrastructure improvements required to service such portion of the Property in accordance with the Project Approvals (e.g., pursuant to specific tentative map conditions or other land use approvals) shall be completed prior to issuance of any building permits within such portion of the Property. Provided, however, the Public Works Director may approve the issuance of building permits prior to completion of all such backbone or in-tract improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the Public Works Director, or in certain cases at the discretion of the City, adequate security has been provided to assure the completion of the improvements in question.

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 Project Approvals and the subsequent discretionary approvals referred to in Section 202, if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Article 4 hereof.

B. [Sec. 301] Developer's Obligations. Except as otherwise provided herein, the Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement and the Project Approvals.

C. [Sec. 302] City's Good Faith in Processing. Subject to the reserved discretionary approvals set forth in Section 201 and 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, tentative maps, subdivision maps or other entitlements for use of the Property in accordance with the General Plan and this 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.

ARTICLE 4. Default, Remedies, Termination.

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

provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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;

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] Developer's Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated.

C. [Sec. 402] 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 that 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.

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.

D. [Sec. 403] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, 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.

In the event litigation is initiated by any party other than Developer that challenges any of the approvals for the Project or the environmental document for those approvals and an injunction or temporary restraining order is not issued, Developer may elect to have the

term of this Agreement tolled, i.e., suspended, during the pendency of said litigation, upon written notice to City from Developer. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate upon the earliest date on which either a final order is issued upholding the challenged approvals or said litigation is dismissed with prejudice by all plaintiffs. In the event a court enjoins either the City or the Developer from taking actions with regard to the Project as a result of such litigation that would preclude any of them from enjoying the benefits bestowed by this Agreement, then the term of this Agreement shall be automatically tolled during the period of time such injunction or restraining order is in effect

E. [Sec. 404] 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.

F. [Sec. 405] 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.

G. [Sec. 406] 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.

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 407 hereof.

H. [Sec. 407] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect the Developer's obligations to comply with the General Plan and the terms and conditions of any and all Project Approvals and land use entitlements approved with respect to the Property, 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 Landowner and 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 any claim, action, or proceeding is instituted against the City, and/or its officers, agents and employees, by any third party on account of the processing, approval, or implementation of the Project Approvals and/or this Agreement, Developer shall defend, indemnify and hold harmless the City, and/or its officers, agents and employees. This obligation includes, but is not limited to, the payment of all costs of defense, any amounts awarded by the Court by way of damages or otherwise, including

any attorney fees and court costs. City may elect to participate in such litigation at its sole discretion and at its sole expense. As an alternative to defending any such action, Developer may request that the City rescind any approved land use entitlement. The City will promptly notify Developer of any claim, action, or proceeding, and will cooperate fully in the defense thereof.

B. Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California *Labor Code* §1720, *et seq.*, and 1770 *et seq.*, as well as California *Code of Regulations*, Title 8, Section 1600 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects, as defined. If work on off-site improvements pursuant to this Agreement is being performed by Developer as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in question is \$1,000 or more, Developer agrees to fully comply with such Prevailing Wage Laws. Developer understands and agrees that it is Developer’s obligation to determine if Prevailing Wages apply to work done on the Project or any portion of the Project. Upon Developer’s request, the City shall provide a copy of the then current prevailing rates of per diem wages. Developer shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work subject to Prevailing Wage Laws, and shall post copies at the Developer’s principal place of business and at the Project site. Developer shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Developer to comply with the Prevailing Wage Laws associated with any “public works” or “maintenance” projects associated with Project development.

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 approved as part of the Project Approvals.

ARTICLE 8. Notices.

A. [Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the Parties as set forth below.

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

City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616

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

Taormino & Associates, Inc.
260 Russell Blvd., Ste. C
Davis, Ca 95616
Attn: J. David Taormino

With a copy to:

Taylor & Wiley
500 Capitol Mall, Suite 1150
Sacramento, California 95814
Attn: Matthew S. Keasling

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

Binning Ranch Holding Company, LLC
P.O. Box 293890
Sacramento, California 95829
Attn: Majid Rahimian

Any 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 Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

ARTICLE 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 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.

B. ARTICLE 11. Provisions Relating to Lenders

A. [Sec. 1201] Lender Rights and Obligations.

1. Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement prior to the time the Lender obtains possession of all or any portion of the Property to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors-in-interest, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which Lender holds an interest. Nothing in this Section shall be construed to grant to a Lender rights beyond those of the Developer hereunder or to limit any remedy City has hereunder in the event of a breach by Developer, including termination or refusal to grant subsequent additional land use Approvals with respect to the Property.

2. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive Approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the Developer hereunder or entitled to enforce the provisions of this Agreement against City unless and until such Lender or successor in interest qualifies as a recognized assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

3. Notice of Developer's Breach Hereunder. If City receives notice from a Lender requesting a copy of any notice of breach given to Developer hereunder and specifying the address for notice thereof, then City shall deliver to such Lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer have committed a breach, and if City makes a determination of non-compliance, City shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on Developer.

4. Lender's Right to Cure. Each Lender shall have the right, but not the obligation, for the same period of time given to Developer to cure or remedy, on behalf of Developer, the breach claimed or the areas of non-compliance set forth in City's notice. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of Developer hereunder.

5. Other Notices by City. A copy of all other notices given by City to Developer pursuant to the terms of this Agreement shall also be sent to any Lender who has requested such notices at the address provided to City pursuant to Section 1201(4) above.

B. [Sec. 1202] Right to Encumber. City agrees and acknowledges that this Agreement shall not prevent or limit the owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device. City acknowledges that any Lender may require certain interpretations of the agreement and City agrees, upon request, to meet with the owner(s) of the property and representatives of any Lender to negotiate in good faith any such request for interpretation. City further agrees that it shall not unreasonably withhold its consent to any interpretation to the extent such interpretation is consistent with the intent and purpose of this Agreement

ARTICLE 13. Entire Agreement.

A. [Sec. 1300] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This 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 Agreement. Said exhibits are identified as follows:

- Exhibit A: Description of the Property
- Exhibit B: General Plan Amendment Resolution
- Exhibit C: Project Approvals
- Exhibit D: Subsequent Project Approvals
- Exhibit E: Environmental Sustainability Commitments
- Exhibit F: Transportation and Circulation Commitments
- Exhibit G: Health and Wellness Commitments
- Exhibit H: Affordable Housing Plan
- Exhibit I: Impact Fees and Credits

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

“CITY”

CITY OF DAVIS

By: _____

Robb Davis
Mayor

Attest: _____

Zoe Mirabile
City Clerk

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

“DEVELOPER”

J. DAVID TAORMINO, an individual

By: _____

Name: _____

Title: _____

“LANDOWNER”

BINNING RANCH HOLDING COMPANY
LLC, a California limited liability company

By: _____

Name: _____

Title: _____

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EXHIBIT A LEGAL DESCRIPTION AND PROJECT SITE MAP

A.P.N.: 036-060-005-000

Real property in the City of Davis, County of Yolo, State of California, described as follows:

**THE WEST 75 ACRES OF THE SOUTHEAST QUARTER OF SECTION 5,
TOWNSHIP 8 NORTH, RANGE 2 EAST, M.D.B. & M.**

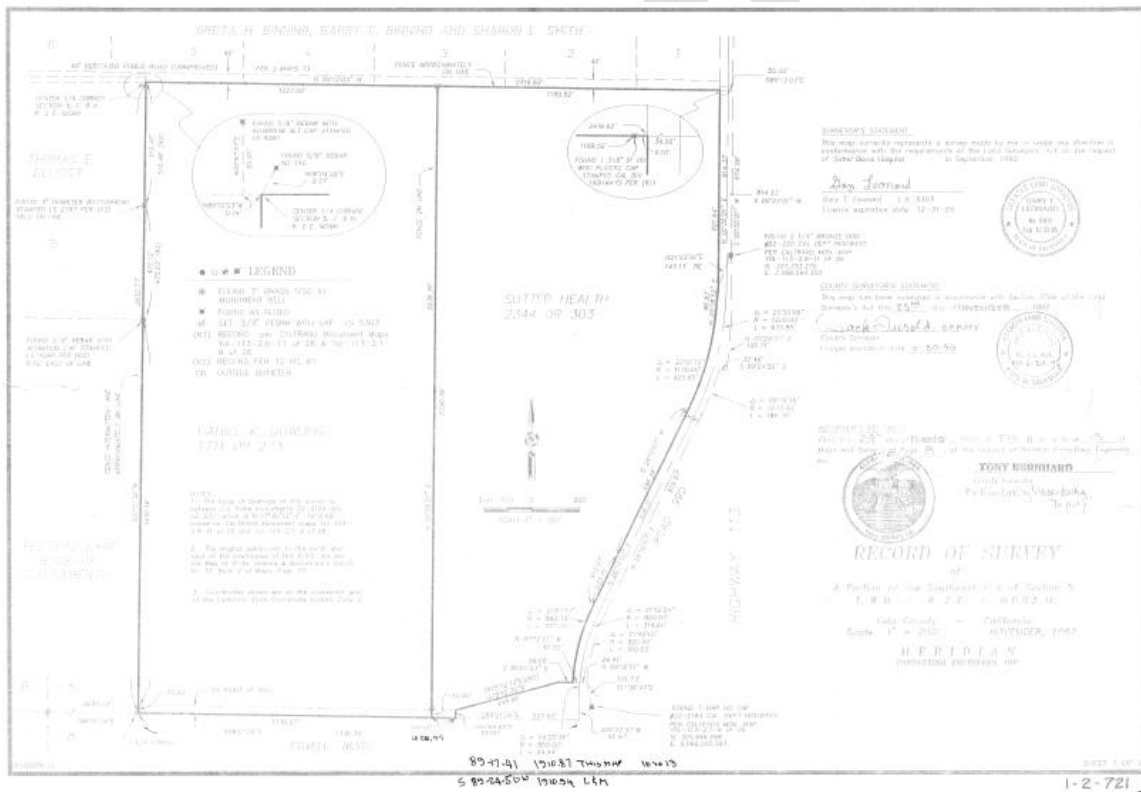


EXHIBIT B
GENERAL PLAN AMENDMENT RESOLUTION

Resolution to be inserted.

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EXHIBIT C
PROJECT APPROVALS

- (1) General Plan Amendment #
- (2) Rezoning and Preliminary Planned Development #
- (3) Development Agreement #__ by and between the City of Davis and Developer.
- (4) Environmental Impact Report (SCH#2016022005), as certified and approved by Resolution No. _____ and the Mitigation Monitoring and Reporting Program adopted therewith.

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EXHIBIT D
SUBSEQUENT PROJECT APPROVALS

(1) Final Planned Development #__

(2) Tentative Parcel Map #__

(3) Design Review #__

(4) Annexation #__

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EXHIBIT E
ENVIRONMENTAL SUSTAINABILITY COMMITMENTS

Agricultural Protection. Developer will protect agricultural lands through the purchase of agricultural easements to mitigate for the permanent loss of agriculture on the Project site and through the design and construction of a one hundred fifty-foot agricultural buffer area bordering the Project site so as to avoid land use conflicts between urban and agricultural uses.

Agricultural mitigation shall be provided in accordance with City of Davis Municipal Code requirements. The provision of mitigation lands shall occur in a manner consistent with Mitigation Measure 3.2-1 with mitigation lands to be identified prior to commencement of grading on the Project site. Location of mitigation lands is subject to review and approval by the City Council and will not include any City-owned land.

Additionally, Developer will provide for a one hundred fifty-foot agricultural buffer between the Project and adjacent agricultural lands consistent with City requirements. The agricultural buffer area shall be identified on the General Plan and zoning maps and be designed in accordance with City of Davis Municipal Code requirements. The buffer area shall be constructed, landscaped and maintained by Developer and its successors and assigns, including but not limited to a future the home owners' association. Developer shall grant an access and maintenance easement to the City for the one hundred-foot portion abutting adjacent agricultural lands. Said easement is for the purposes of ensuring compliance with Project conditions and maintaining functionality of the drainage corridor; public access will be discouraged in this portion. Developer will grant City fee title to the internal fifty-foot portion of the agricultural buffer; however, maintenance of this portion will be provided by the Developer and its successors and assigns.

Sustainability Standards. The primary energy efficiency standards of the State of California, through Cal Green shall be the basis for compliance of the Project. The base CALGreen requirements meet all of the LEED prerequisites and also earn points towards certification. The city is currently requiring CALGreen Tier 1 compliance. Staff is studying LEED and CALGreen voluntary measures (Tiers) in order to determine LEED Gold equivalency using CALGreen as the metric for compliance. Project name will be required to meet CALGreen and Energy Code compliance that will be equivalent to LEED Gold. Project compliance with this commitment shall be satisfactorily demonstrated to the Director of Community Development and Sustainability. Formal certification of the Project by the U.S. Green Building Council is not required. The Project is also subject to sustainability commitments in the Baseline Project Features, which will assist in achieving sustainability obligations.

Energy Efficiency. Developer commits that all single-family residential structures in the Property shall meet or exceed 2020 Cal Green energy efficiency standards and will be zero net electric. Developer shall mandate the installation of solar on every for-sale residential unit achieving a minimum of 1KW per 1,000 square feet of home. The parking area at the

activity and wellness center shall include a solar arrays sufficient to provide a majority of the electricity for the operation of all structures within the activity and wellness center.

Energy Retrofit Grant Program. In addition to onsite efficiencies, Developer is implementing an energy retrofit program for persons moving into the Project from existing housing stock within the City of Davis. To encourage energy upgrades to existing older Davis homes, which is a critical component to achieving greenhouse gas reduction targets, Developer shall establish a program to financially assist owners of homes in Davis that also purchase a home in the Project. In such cases, Developer shall provide \$2,500 in the sales escrow of a Davis resale home. Furthermore, in the event the Buyer and/or Seller (individually or together) of the resale home matches Developer's initial contribution, Developer shall contribute an additional \$1,000 for a total Developer contribution of \$3,500. Prior to the approval of the Project's tentative map, Developer shall establish a comprehensive program in collaboration with the City staff to support the energy retrofit grant program including a menu of the most energy effective uses of the grant dollars and local contractors to assist with such upgrades.

Biological Habitat and Species Protection. Developer will protect against direct and indirect impacts to certain identified plant and animal species through the implementation of those mitigation measures identified and memorialized in Chapter 3.4 of the Project's environmental impact report. If the Yolo HCP/NCCP is adopted prior to initiation of any ground disturbing activities for any phase of development associated with the Project, the Developer shall comply with the requirements of the Yolo HCP/NCCP as applicable, which will replace other project mitigation measures for species covered in the Yolo HCP/NCCP. This will include the payment of fees, and the integration of applicable avoidance and mitigation measures for covered species.

Habitat Creation. Developer commits to design and construct the Covell Boulevard drainage connections as "wildlife connectivity culverts" sufficient in design capacity to convey drainage and allow for the below-grade passage of species.

Developer will utilize plant species included on the UC Davis "All-star Plant List" to comprise at least fifty percent of the species within the Project's greenways and mini-parks.

Developer will include within the agricultural buffer area at least five nodes of assorted flowering plant species deemed beneficial to native pollinators. Developer will design and construct the off-site detention basin to include a habitat area.

The habitat features identified herein shall be included in, and acted upon, in the course of the Project's subsequent design review approval.

Water Conservation. Developer shall utilize a majority of drought tolerant and/or native species within the agricultural buffer area to minimize landscape water usage and greatly reduce runoff.

Urban Forest/Oak Grove. Developer commits to plant at least one native oak tree for each for-sale residential unit, which is anticipated to result in an oak grove of at least 350 trees within the Project, primarily within the agricultural buffer area. This Project amenity will reduce the heat island effect resulting in energy conservation, improve air quality and create new habitat for numerous local species.

Use of Recycled and Sustainable Materials. Developer commits to utilize rubberized asphalt concrete for all roadways within the Project pursuant to City adoption of standards consistent with the manufacturers specifications and pursuant to authorization from the Director of Public Works.

To the extent feasible and consistent with City policies, Developer will use permeable materials in public spaces to minimize runoff and maximize groundwater recharge.

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EXHIBIT F
TRANSPORTATION AND CIRCULATION COMMITMENTS

Major Transportation Commitments with Triggers. Developer agrees to construct, and complete the construction of the following improvements, prior to issuance of the first certificate of occupancy. Improvements shown are conceptual; final design details may include engineering revisions to meet City standards, subject to the satisfaction of Public Works

1. Construct and complete roadway improvements at the intersection of West Covell Boulevard and Risling Court/ Shasta Drive, including the widening and striping of turn lanes on southbound Risling Ct. and the removal of all free right turns, generally consistent with the preliminary design depicted on the figure below.
2. Complete bicycle and pedestrian safety improvements at the intersections of West Covell Boulevard and John Jones Way and at West Covell Boulevard and Risling Court.

Developer agrees to construct, complete, or otherwise facilitate the construction of the following improvements prior to the issuance of building permits for the one-hundred and first single-family home:

1. Relocate the existing transit stop and provide a new bus shelter, to the City's approval, on the north side of West Covell Boulevard, adjacent to the parcel(s) dedicated for senior affordable multi-family housing.

Developer agrees to commence construction of the following improvements prior to the issuance of building permits for the three-hundred and first single-family home:

1. Design and commence construction of a transit hub located at or near, and to be completed coterminous with, the activity and wellness center which should include a designated pick-up and drop-off zone, an area for rideshare services, lit weather protected seating, access for shuttles and/or buses, and dedicated parking spaces for shared vehicle programs.

Off-site Roadway Enhancements. Developer shall pay a fair share of the cost of widening the southbound California State Highway 113 off-ramp at Covell Boulevard as calculated in the Final EIR, in the amount not to exceed \$_____. Said contribution shall be assessed on a per single family residential unit basis, then aggregated and paid at the time of issuance of final map for each residential unit included therein, or some other formula for payment agreed to by the Parties.

Developer commits to enhancing landscaping, medians and street frontage improvements on Covell Boulevard between Risling Court and State Highway 113 at such time as the improvements at West Covell Blvd. and John Jones Way are under construction.

Peripheral Trail. Developer shall dedicate and area located north of the Property and adjacent to State Highway 113 to accommodate future bicycle and pedestrian off-grade crossing of the freeway to assist in the City's effort to complete a peripheral trail in a manner substantially consistent with that identified in the figure below. Said dedication shall occur concurrent with the dedication or grant of easement for the agricultural buffer area. Developer commits to act in good faith to assist the City in its pursuit of funding for the crossing. City and Developer may collaborate to seek grants or other financing for grade-separated connection. City and Developer shall attempt to leverage local funds with SACOG for other potential funding.

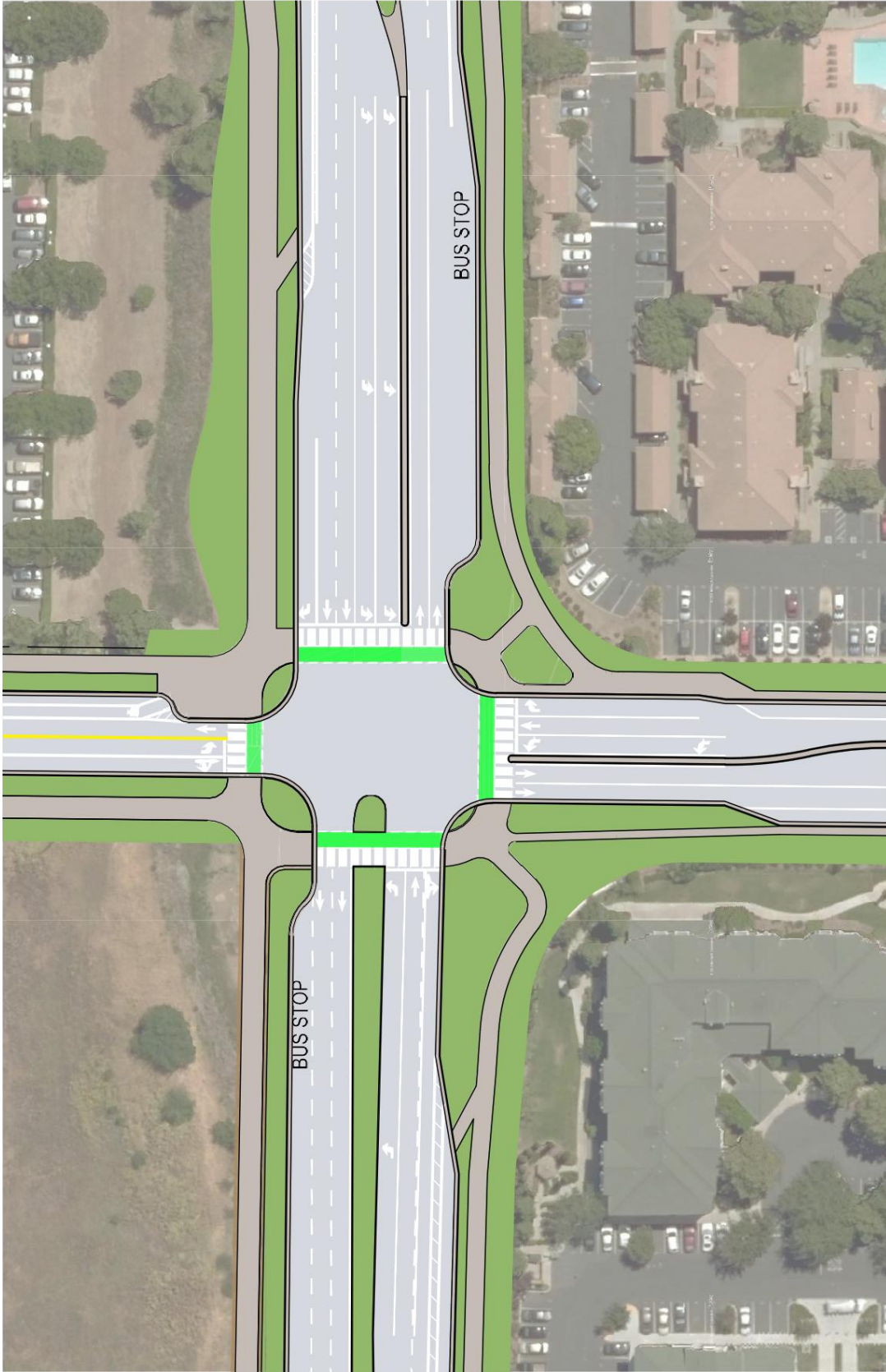
Features to Reduce Vehicular Trips. Developer shall provide a transit hub located at or near the activity and wellness center, which should include a designated pick-up and drop-off zone, an area for rideshare services, and dedicated spaces for shared vehicle programs.

Project Circulation. Internal roadway and pedestrian circulation improvements shall be constructed concurrently with the development of Project components on an as needed basis in accordance with Section 208, *supra*, and to be determined by the Public Works Director in collaboration with the Developer.

Construction of transportation improvements pursuant to Baseline Project Features and Exhibit H are required.

RISLING CT

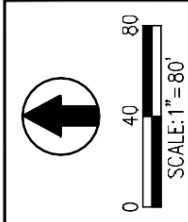
COVELL BLVD



COVELL BLVD

SHASTA DRIVE

DRAWN: KD
 CHECKED: BF
 DATE: 03/28/18
 JOB No: 1594.00



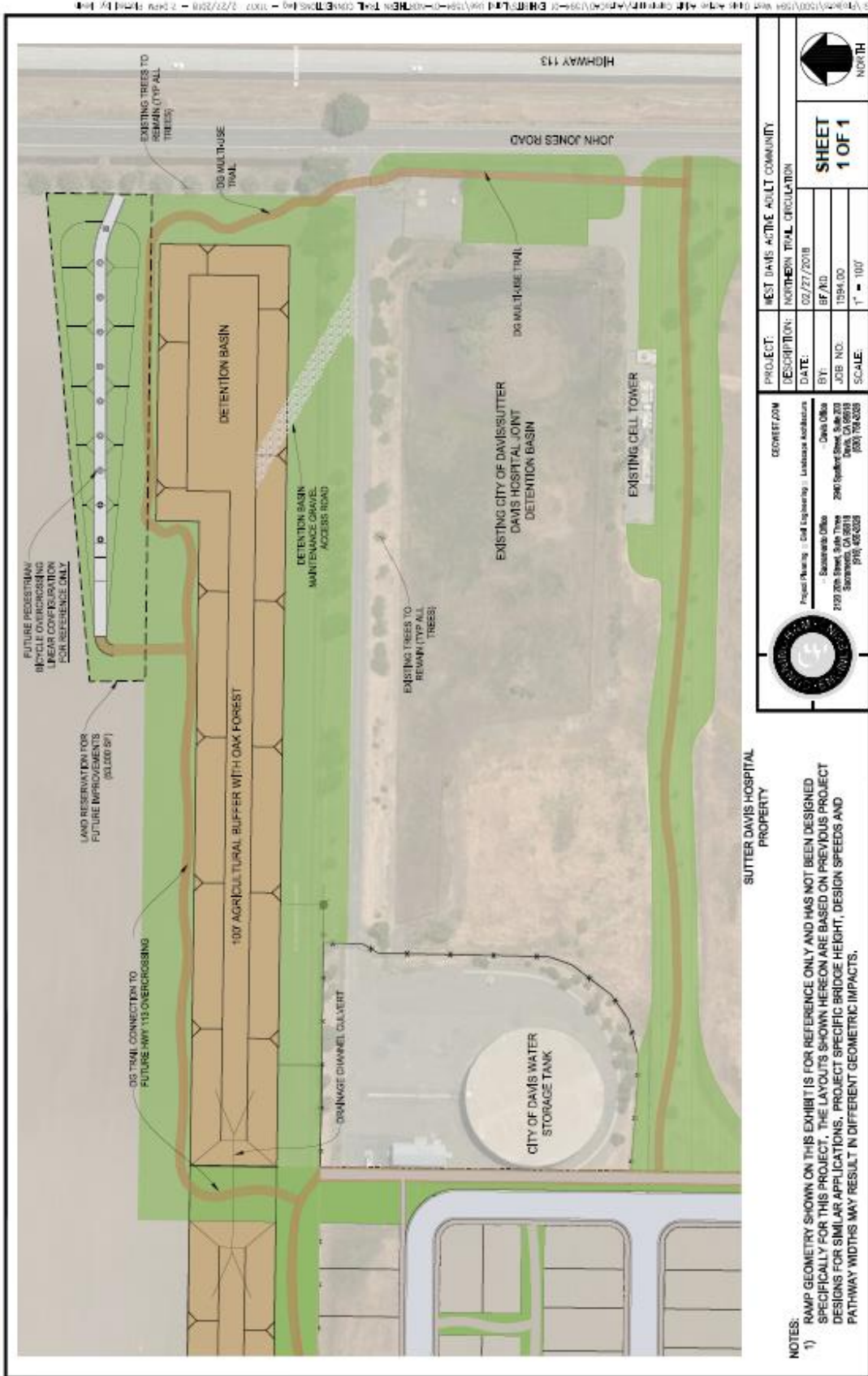
CALIFORNIA

CEWEST.COM
 2120 20th Street, Suite 200
 Sacramento, CA 95816
 (916) 466-2006

CEWEST ENGINEERS
 2540 Stanford Drive, Suite 200
 Davis, CA 95618
 (530) 752-2006

SCALE: 1" = 80'
 SHEET 1 OF 1

DAVIS



SUTTER DAVIS HOSPITAL
PROPERTY

NOTES:
1) RAMP GEOMETRY SHOWN ON THIS EXHIBIT IS FOR REFERENCE ONLY AND HAS NOT BEEN DESIGNED SPECIFICALLY FOR THIS PROJECT. THE LAYOUTS SHOWN HEREON ARE BASED ON PREVIOUS PROJECT DESIGNS FOR SIMILAR APPLICATIONS. PROJECT SPECIFIC BRIDGE HEIGHT, DESIGN SPEEDS AND PATHWAY WIDTHS MAY RESULT IN DIFFERENT GEOMETRIC IMPACTS.

		PROJECT: WEST DAVIS ACTIVE ADULT COMMUNITY	
Project Planning, Civil Engineering, Landscape Architecture Sacramento Office 2120 20th Street, Suite 200 Sacramento, CA 95818 (916) 456-0208		DESCRIPTION: NORTHERN TRAIL CIRCULATION	
GEOMETRAN		DATE: 02/27/2018	
BY: BF/AD		SHEET 1 OF 1	
JOB NO.: 1594.00		SCALE: 1" = 100'	
NORTH			

EXHIBIT G
HEALTH AND WELLNESS COMMITMENTS

Developer is committed to providing an environment in which Davis residents can “age in place” while maintaining a healthy lifestyle. Vital to meeting this objective is designing a community with both indoor and outdoor activities that promote a lifestyle that is good for both the body and mind. In furtherance of this goal, the Developer commits to the following health and wellness Project features:

Activity and Wellness Center. Developer shall construct an activity and wellness center for the use and enjoyment of the residents of the Project, much of which will also be made available to the community at large. Construction of the activity and wellness center, as the anchor of a mixed-use center that will also include limited retail uses, shall commence prior to the City’s issuance of the three-hundred and first building permit for a Project residential unit. The activity and wellness center shall include: limited office and retail space, including a privately owned and operated health club with shared access to the community owned swimming pool. Additionally, the center will contain community meeting space for various activities including classes and seminars. The facility will further include a clubhouse for the use and enjoyment of the neighborhood association.

Parks, Greenways and Groves. The Project is designed to facilitate community interactions and physical activity along a series of greenways and paths that permeate the Project. To encourage and maximize outdoor activities, the Project shall include the following features:

1. Internal Greenways. The Project shall include a series of greenways which shall include a pedestrian path that serves as a place of interaction for the residents and which provides non-vehicular connection between the homes and the various components of the Project. The greenways will be owned, managed and maintained by Developer and its successors and assigns. Developer will grant to the City and record a public access easement for pedestrian use and enjoyment of the greenway trail system.
2. Agricultural Buffer. The Project shall include approximately 7.2 acres of agricultural buffer area that will be managed and maintained by Developer and its successors and assigns. This buffer shall be comprised of an external 100-foot-wide section with features that generally exclude human activity, and an internal 50-foot-wide section that is designed to be interactive. The 100-foot external section will include a drainage corridor and predominantly use a native and drought tolerant plant palette. The 50-foot segment located proximate to the residences will include a trail, habitat nodes and other pedestrian-oriented amenities. If and where feasible, the 50-foot segment may also include community gardens and orchards to foster mental health and a healthy diet. Developer will grant fee title to the City for the interior 50-foot segment for the benefit of the entire community. The entire agricultural buffer shall also include an oak grove to provide shade and comfort to those using the trail in an ecological setting native to northern California.

3. Programmed Park Space. Developer shall construct and maintain an approximately 0.7-acre dog park where residents may interact with their pets and each other in a leash-free environment. Developer shall construct and maintain an approximately 0.5-acre programmed park area primarily featuring a tot lot and a sycamore grove. Developer shall construct and maintain three pocket parks totaling 0.3 acres which will include passive recreational uses geared toward seniors. The park space will be owned, managed and maintained by Developer and its successors and assigns. Developer will grant to the City and record a public recreation easement for pedestrian use and enjoyment of the parks located within the Project.

Accessible Design. To allow residents to age in place, universal design features will be utilized in all age-restricted units. Said features will be consistent with adopted City standards for first-floor accessibility pursuant to Resolution No. 07-138. Use of said universal design features will apply to all standard floor plans in age-restricted residential units and to all age-restricted custom homes, but may be omitted from any unit that is not age restricted and from any second floor living space. However, to assure a community without barriers, all single family detached residential units will incorporate visitability requirements as identified in Resolution No. 07-138. Accessibility features will be strongly encouraged and incorporated to the extent feasible in attached residential units.

Public Arts Program. Developer shall designate a minimum of six locations within the Project for the installation of public art and will contribute the initial two works which will be installed coterminous with the initial one-hundred units. Developer shall establish a fund for the further acquisition and installation of art in the remainder of the designated publicly enjoyable sites, and will formalize a community-based process for the selection of pieces. Contributions to this fund will be allocated per parcel, on a basis such as parcel size, parcel use, and/or square footage basis, to be assessed at the time of approval of the first Final Map for the Project.

EXHIBIT H AFFORDABLE HOUSING PLAN

In recognition of the income limitations and expensive health-related ailments facing many seniors, Developer shall dedicate a parcel of no less than 4-acres in size located in the southwest corner of Property for the development of senior affordable housing. Pursuant to the City's inclusionary housing ordinance, Developer is required to provide land sufficient for the construction of sixty (60) affordable units or pay in-lieu fees. However, in recognition of the unique opportunity provided by the Property's proximity to healthcare services and the senior nature of the Project, Developer is committing an area of land sufficient to accommodate considerably more units than are required pursuant to City code.

In furtherance of this commitment, Developer shall obtain the necessary planning entitlements, excluding final planned development and design review, and complete the infrastructure improvements, including delivering a rough graded site, to allow for the construction of an anticipated one-hundred fifty (150) age-restricted affordable units. The City shall not issue a building permit for the one-hundred and first market-rate unit until a final map, that includes the dedicated affordable site, is approved and recorded and until infrastructure improvements to serve the affordable site, including roadways and stubs for sewer, water and electrical, are installed.

Developer shall work in good faith to identify an appropriate affordable housing developer which will demonstrate, to the satisfaction of the Director of Community Development and Sustainability, its ability to develop and manage senior affordable housing of a quality expected by the City of Davis. Developer shall work in good faith with the affordable housing developer to provide for the construction of the 150 senior affordable units during a period of five years from the issuance of the first Project building permit. Developer commits to work with the City and affordable housing developer to seek state and federal grant funding and other available project financing.

All rental units developed on the senior affordable multifamily site shall remain affordable in perpetuity. This requirement shall be established in a Deed Restriction or covenant ("Deed") recorded on the parcel and subject to review and approval by the City Manager's Office prior to issuance of building permits on the affordable site. Additionally, the senior affordable project shall accommodate residents at varying income levels offering low, very low and extremely low income (ELI) units to fulfill a diversity of affordability needs.

In recognition of the community benefit of adding affordable rental housing units to the existing affordable housing inventory in the near-term, including units at affordability levels designed to accommodate those individuals hardest to serve, City will allow Developer and its successors and assigns to utilize any affordable units, in excess of the required 60 units, that are built and deed restricted, to fulfill the Affordable Housing Program obligations of future development projects within the City of Davis. Developer does not obtain said credit until the excess unit(s) is physically constructed.

**EXHIBIT I
IMPACT FEES AND CREDITS**

Notwithstanding the general provisions of Section 207 of this Agreement and the Municipal Code, the specific impact fees, connection fees and community benefit contributions set forth in this Exhibit _ shall be paid by the Project as modified herein. All other fees, connection fees, and payments shall be subject to the general provisions of Section 207 and the Municipal Code.

A foundational element utilized by the City in determining development impact fee rates is an assumed level of occupancy. Based upon substantial evidence presented to the Director of Community Development and Sustainability and to the Director of Finance, as summarized in more detail in the Project’s environmental impact report and financial analysis, the City has determined that age-restricted residential units, on average, have fewer occupants residing within the unit and, therefore, lower usage of many utilities and services for which fees are assessed. Based upon this determination, the Project shall pay development impact fees in the following manner:

Land Use	Roadway	Water	Storm Sewer	Sewer	Parks	Open Space	Public Safety	General Facilities
Single Family Detached	\$8,093	\$10,362	\$305	\$6,150	\$5,014	\$863	\$992	\$2,389
Senior Detached	\$2,902	\$10,362	\$194	\$6,150	\$3,189	\$549	\$631	\$1,520
Senior Attached	\$2,170	\$10,362	\$187	\$6,150	\$3,065	\$528	\$607	\$1,461
Senior Multi-Family	\$2,170		\$119		\$1,949	\$336	\$386	\$929
Senior Assisted Living	\$2,170	\$10,362	\$113	\$6,150	\$1,861	\$320	\$368	\$887

Additionally, Developer is entitled to certain fee credits for work completed as follows:

1. Traffic/Roadway Capital Improvement Program Fees.

Based upon the current adopted Capital Improvement Program, the Project is estimated to generate \$1,765,618 in roadway impact fees.

The Project shall be entitled to fee credits for construction of traffic/roadway improvements as follows:

- the West Covell Boulevard and John Jones Way, and West Covell Boulevard and Risling Court Intersection improvements (\$255,800 and \$1,429,450, respectively);
- Street Frontage and Median landscaping improvements on West Covell Boulevard between Risling Court and State Highway 113 (\$830,700); and
- widening the southbound California State Highway 113 off-ramp at Covell Boulevard based upon pro-rata fair share contribution to impacts (___%) as calculated by the traffic analysis contained in the Final EIR, in the amount not to exceed \$_____.

2. Stormwater.

Developers' mitigation of project-related and upstream stormwater impacts through the construction of a new drainage channel (\$____) and detention facility (\$90,000) satisfies Developers' stormwater impact fee obligations (estimated at \$102,129) in its entirety. No additional stormwater impact fees shall be required for the Project.

3. Quimby Act Fees and Park Impact Fee.

Developers' Quimby Act and park impact fee obligations shall be deemed satisfied through the combination of the Project's required land dedication (agricultural buffer: 7.19 acres), turn-key parks (dog park: 0.83 acres, three parklets: 0.33, and Sycamore Grove/tot lot: 0.34 acres), and extensive greenway system (5.39 acres) for a total of 14.91 acres of land designed to meet passive recreational needs of the community.

4. Other Fees.

The Project shall be required to pay school impact fees on a per unit basis at issuance of building permit. School fees shall be assessed on those units that are non-age restriction at the standard rate; however, age restricted units shall be assessed, pursuant to California Govt. Code § 65995.1(a), at the commercial rate.

The Project shall pay all other fees required from this Project as required by City ordinance or resolution of the Project mitigation measures or approvals, as set forth in Section 207 of this Agreement.