



YOLO Recorder's Office  
 Jesse Salinas, County Recorder  
**DOC- 2018-0029753-00**

REQD BY TERENCE LEE  
 Friday, DEC 21, 2018 13:02:00  
 Ttl Pd \$56.00 Rcpt # 0001329832  
 FRT/R9/1-15

Recording Requested by }  
 And when Recorded Mail to: }

City of Davis }  
 City Clerk's Office }  
 23 Russell Boulevard, Ste. 1 }  
 Davis, CA 95616 }

Space above this line for Recorder's Use

SB 2 - Govt Exempt

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT  
 BY AND BETWEEN THE CITY OF DAVIS AND  
 LEELAND CANNERY MARKETPLACE, LLC**

Relating to the Development of the Property Commonly Known as The Cannery Marketplace

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("Third Amendment") is entered into this 27<sup>th</sup> day of November, 2018, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and LEELAND CANNERY MARKETPLACE, a California Limited Liability company ("Developer"). This Third Amendment is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This Third Amendment refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

**RECITALS**

- A. Developer owns in fee certain real property(ies) described in Exhibit A to this Third Amendment attached hereto and located in the incorporated area of the City of Davis (herein the "Property"), which is the site of the project known as The Cannery Village Marketplace (the "Project") and also comprises the Neighborhood Mixed-Use Commercial District of The Cannery Project;
- B. On December 10, 2013 the City adopted Ordinance 2429, approving a Development Agreement (the "Development Agreement") between the City, TNHC-HW CANNERY LLC, a Delaware limited liability company ("New Home") and CONAGRA FOODS PACKAGED FOODS LLC ("Conagra") for the Cannery Project. The Development Agreement was recorded in the Official Records of Yolo County on April 11, 2014, as Instrument No. 2014-0007671;

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- C. By grant deed recorded in the Official Records of Yolo County on April 15, 2014 as Instrument No. 2014-0007904, New Home acquired from Conagra all of the real property in the City which is the subject of the Development Agreement;
- D. On May 26, 2015 the City adopted Ordinance 2450, approving the First Amendment to the Development Agreement (the "First Amendment"). The First Amendment was recorded in the Official Records of Yolo County on July 28, 2015, as Instrument No. 2015-0021019;
- E. On July 12, 2016, the City adopted Ordinance No. 2483, approving the Second Amendment to the Development Agreement (the "Second Amendment"). The Second Amendment was recorded in the Official Records of Yolo County on August 5, 2016, as Instrument No. 2016-0021525;
- F. By the Assignment of Development Agreement (Cannery Commercial Site) recorded in the Official Records of Yolo County on February 20, 2018 as Instrument No. 2018-0003738, New Home assigned to Developer and Developer assigned all of New Home's obligations and rights under the Development Agreement to the extent they apply to the Property, except to the extent such obligations are not severable under Section 103 of the Development Agreement;
- G. Under the approved Planned Development (PD) and Final Planned Development (FPD) for The Cannery, up to 36 residential units are allowed within the Neighborhood Mixed Use site. Further, the Cannery Neighborhood Design Guidelines provide that no structure shall exceed two stories or 45 feet in height on the west side. Furthermore, under the approved Affordable Housing Plan (AHP), The Cannery is required to provide a minimum of 64 affordable units, but will be providing 82 affordable units in accordance with the AHP.
- H. In order to respond to market conditions, Developer has requested to revise the approved Design Guidelines to increase maximum allowed height of buildings on the west side of the Neighborhood Mixed Use site from two stories or 45 feet to three stories or 48 feet which would accommodate the proposed three-story apartment buildings. Developer has further requested to revise the PD, FPD and AHP to increase the allowed residential units from a total of 36 units to 84 units on the Neighborhood Mixed Use site, which represents a net increase of 48 units compared to the Project as approved. It increases the total

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building square footage on the Neighborhood Mixed Use site to approximately 182,350 square feet.

- I. Section 107 (H)(1) of the Development Agreement states that “Any amendment to this Development Agreement which affects or relates to... (c) the density or intensity of use of the Property or the maximum height or gross square footage of the proposed non-residential buildings... shall be deemed a “Major Amendment” and shall require giving of notice and a public hearing before the Planning Commission and City Council.”
- J. The Environmental Impacts of the Project were adequately assessed with Environmental Impact Report (EIR) for The Cannery Project (SCH #2012032022). The EIR analyzed an upper limit of 610 residential units and 236,000 square feet of mixed-use commercial, office and high density residential uses within the Cannery. The Cannery Project was approved in 2013 with a total of 547 residential dwelling units plus an additional 40 accessory dwelling units and 171,270 square feet of Neighborhood Mixed Uses, less than the total residential units and non-residential square footage analyzed in the EIR. Revisions in 2016 which allowed an additional 36 units within The Cannery Project were determined to be consistent with the analysis of the Project impacts analyzed in the previously certified EIR.
- K. An Addendum to The Cannery EIR has been prepared evaluating the revisions to the approved project for the additional building square footage and the 48 additional residential apartment units. The EIR Addendum adequately analyzed the environmental impacts related to the revisions and determined that the revisions to the previously approved development entitlements specified by this Third Amendment would not result in any new significant environmental impacts and would not require any new mitigation measures beyond the level analyzed for the Project in the previously certified EIR. The proposed revisions do not result in a substantial change to the approved Project that would require major revisions to the previously certified EIR and therefore does not require preparation of a Subsequent EIR under the provisions of the California Environmental Quality Act.
- L. This Third Amendment is entered into pursuant to Government Code §§ 65868 and 65867.5, which require that this Third Amendment be approved by City Ordinance;
- M. Under this Third Amendment the Project will continue to provide for orderly growth and development consistent with the General Plan; and

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N. The City Council has determined that this Third Amendment is consistent with the General Plan, does not affect the density or intensity of the development except as specifically approved herein, and has conducted all necessary proceedings in accordance with state law and the Municipal Code.

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

**Section 1. Effective Date of Amendment.** This Third Amendment shall become effective upon the date that the ordinance approving this Third Amendment becomes effective (the “Effective Date of this Third Amendment”).

**Section 2. Term of Amendment.** The “Term” of this Third Amendment shall be the same as the Development Agreement.

**Section 3. Recordation of Amendment.** The City Clerk shall cause a copy of this Third Amendment to be recorded against title to the Property within ten (10) days of the Effective Date of this Third Amendment.

**Section 4. Meaning of Terms.** All terms set forth in this Third Amendment with an initial capitalized letter which are not otherwise defined herein shall have the meaning ascribed to them in the Development Agreement.

**Section 5. Amendments to Agreement Provisions.** The Development Agreement is amended as follows.

(A) Article 8 [Sec. 801], *Notices*, is amended as follows:

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 Developers shall be addressed as follows:

Leeland Cannery Marketplace, LLC  
5122 Ellington Court  
Granite Bay, CA 95746

With a copy to:

Phillips Land Law, Inc  
5301 Montserrat Lane  
Loomis, California 95650  
Attn: George E. Phillips

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address.

**Section 6. Amendment to DA Exhibit C.** Exhibit C of the Development Agreement is hereby amended to add as follows.

Project approvals for actions by the Davis Planning Commission and City Council for the following revisions:

- DEV#2-17, PD/REZ #3-17, AHP#2-17, RFPD#5-17, and DR#23-17 for the Neighborhood Mixed Use Commercial District reviewed or approved by the Planning Commission on January 24, 2018, and by the City Council on November 13, 2018 and November 27, 2018 for:

Revisions to increase maximum allowed height of buildings on the west side of the Neighborhood Mixed Use site from two stories or 45 feet to three stories or 48 feet; and

revisions to increase the allowed residential units from 36 to a maximum of 84 units, which represents a net increase of 48 units, as shown and approved in Ordinance No. 2543 amending The Cannery Preliminary Planned Development (PD#1-11) and City Council Resolution No. 18-192 for revisions to The Cannery Final Planned Development, Affordable Housing Plan, and Neighborhood Design Guidelines.

**Section 7. Amendment to DA Exhibit I.** Exhibit I (The Cannery Affordable Housing Plan) of the Development Agreement is hereby amended to reflect the approvals in Section 6, and as shown in Attachment B to this Third Amendment.

**Section 8. Exhibit N (Mixed-Use Commercial District Commitments) Addition.** The Development Agreement is hereby amended to add Exhibit N (Mixed-Use Commercial District Commitments), which lists additional commitments by the owner of the Mixed-Use Commercial District property as provided in Attachment C to this Third Amendment.


**Section 9. Agreement in Full Force.** Except as specifically modified herein, the Development Agreement remains in full force and effect as written. From and after the execution and delivery of this Third Amendment by the City and Developer, all references in the Third Amendment to the Development Agreement shall be and be deemed to constitute references to the Development Agreement as amended hereby.

**Section 10. Counterparts.** This Third Amendment may be executed simultaneously and in several counterparts, each which shall be deemed an original, but which together shall constitute one and the same instrument.

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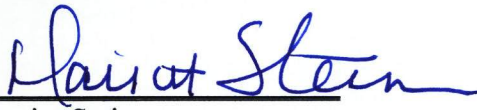
IN WITNESS WHEREOF, the City and the Developer have executed this Third Amendment as of the date set forth above.

CITY OF DAVIS

By  \_\_\_\_\_  
Brett Lee  
Mayor

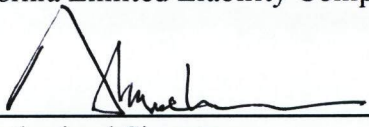
Attest  \_\_\_\_\_  
Zoe Mirabile  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Harriet Steiner  
City Attorney

DEVELOPER

LEELAND CANNERY MARKETPLACE, LLC, a  
California Limited Liability Company

By  \_\_\_\_\_  
Authorized Signatory  
DANIEL LEE

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## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Placer

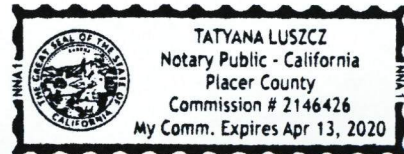
On December 6, 2018 before me, Tatyana Luszc, Notary Public  
(insert name and title of the officer)

personally appeared Daniel Lee  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature T. Luszc (Seal)





# CALIFORNIA NOTARY ACKNOWLEDGEMENT (INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

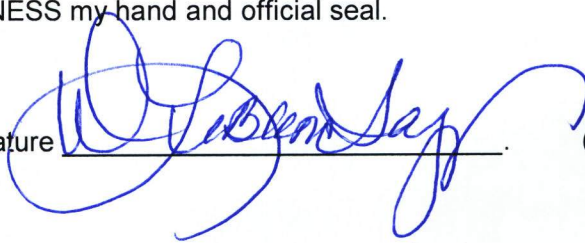
State of California  
County of YOLO

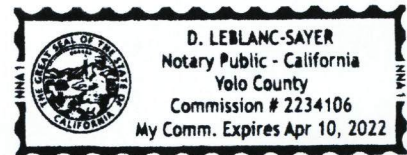
On Dec 20, 2018 before me, D. LeBlanc-Sayer, Notary Public (insert name and title of the officer), personally appeared Brett Lee, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

 (Seal)



## **Attachment A**

### **Legal Description**

#### **DESCRIPTION OF PROPERTY**

Parcels V and W, as shown on Subdivision Map 5026, The Cannery – Large Lot Final Map, recorded on November 21, 2014 in Book 2014 at Pages 70 to 85, inclusive, of Maps in the Office of the Yolo County Recorder.

**Attachment B**

**Amendment to Exhibit I of The Cannery Development Agreement**

**Addendum to the Affordable Housing Plan  
for the Cannery Project**

**Addendum to  
The Cannery Affordable Housing Plan  
Project Individualized Plan  
(November 2018)**

The Cannery Affordable Housing Plan Project Individualized Plan was adopted by the City of Davis as part of the approval of the Cannery Development Agreement. Revisions to the Cannery Project in 2016 affecting the Cannery's Affordable Housing Plan resulted in an update to the Cannery Affordable Housing Plan. See the Cannery Affordable Housing Plan, revised June 13, 2016.

This Addendum to the Cannery Affordable Housing Plan Project Individualized Plan addresses additional revisions to the Cannery Project relative to the Project's affordable housing requirement. This Addendum reflects the change in affordable housing requirements and provisions resulting from the increase in multi-family units permitted in the Cannery Village Marketplace in the Mixed-Use Commercial District.

Consistent with the Cannery Affordable Housing Plan (revised June 13, 2016) and the City's Affordable Housing Ordinance (18.05 of the Municipal Code), the revised Cannery Project is required to provide a total of 82 affordable housing units, based on the updated table below from page 3 of the Cannery Affordable Housing Plan.

**Affordable Housing Requirement**

Housing Area	Unit Type	Lot Sizes	Total Units	Affordable Housing Requirement	
				Percentage	Units
The Park Homes	SF detached	>5,000'	45	25%	11.25
The Park Homes	SF detached	50-55'x90' (4,950 sf)	42	15%	6.3
Cannery Village	SF detached	>5,000'	5	25%	1.25
Cannery Village	SF detached	45'x 105' (4,725 sf)	11	15%	1.65
The Cottages	SF detached	48'x75' (3,600 sf)	76	15%	11.4
The Bungalow Alleys	SF detached	40'x80' (3,200 sf)	44	15%	6.6
The Courts	SF detached	-	72	15%	10.8
The Brownstones	SF attached	-	72	10%	7.2
The University Flats	SF attached – stacked flat condos	-	120	0%	0
The Cannery Lofts	Apartments – affordable apts.	-	62	0%	0
Cannery Village Marketplace – Apts.	Apartments	-	72	35%	25.2
Cannery Village Marketplace – Vertical	Apartments – mixed use vertical	-	12	0%	0
					81.65
Total Affordable Housing Requirement <sup>1</sup> (rounded)					82

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<sup>1</sup> The Cannery will be consistent with the City's Affordable Housing Ordinance (18.05 of the Municipal Code). Should ultimate unit counts vary The Cannery project's Affordable Housing Requirement shall be increased or decreased accordingly.

Under the existing Affordable Housing Plan, the Cannery Project is providing a total of 82 affordable units. However, the equivalent of additional affordable units will be provided in the Cannery Village Marketplace Mixed-Use Commercial District. They consist of in-lieu housing fees of \$150,000 equivalent to two units. It results in 84 total affordable units in the Cannery Project, as shown in the updated table below from page 4 of the Cannery Affordable Housing Plan, and would exceed the minimum of 82 affordable units required.

The \$150,000 in-lieu affordable housing fees, equivalent to the two units at \$75,000 per unit, shall be paid to the City prior to the first certificate of occupancy of the Cannery Village Marketplace Apartments.

**Affordable Housing Units Provided**

Housing Area	Affordable Housing Type	Unit Type	Affordable Units
The Cannery Lofts	Land Dedication – Multi Family Apartments (Bartlett Commons)	Rental	62 Units
Cannery Village	Second Units – Cottage Units	Rental	8 Units (16 <sup>1</sup> ADUs)
The Bungalow Alleys	Second Units – Above Garage	Rental	12 Units (24 <sup>1,2</sup> ADUs)
Cannery Village Marketplace	Multi Family Apartments	Rental	2 Units (2 Units In-Lieu Fee)
<b>Total Provided</b>			<b>84 Units</b>

<sup>1</sup> A total of 40 second units are proposed to help meet the project's affordable obligation, which would provide a credit of 20 units towards inclusionary requirements. This represents less than 50% of the project's total requirement.

<sup>2</sup> For each unit the Land Dedication Multi-Family Apartment final site plan yields in excess of 42 units, the Bungalow Alleys requirement for Second Units may be reduced by two units, but will not result in a reduction below 12 second units (e.g. 42 Multi Family apartments + 16 Cannery Village ADUs/2 + 24 Bungalow Alley ADUs/2 = 62 Affordable Units). An example of a footnote 2 scenario includes 45 Multi Family Apartments + 16 Cannery Village ADUs/2 + 18 Bungalow Alley ADUs/2 = 62 Affordable Units.

**Attachment C**

**Amendment to The Cannery Development Agreement**

**Addition of Exhibit N  
(Mixed-Use Commercial District Commitments)**

## Exhibit N

### Mixed-Use Commercial District Commitments

In addition to other commitments and obligations in the Cannery Development Agreement applicable to this site, the owner of the Cannery Mixed-Use Commercial District also agrees to the following:

1. Commit to developing the West Block in a single construction phase with the apartments, offices, and retail buildings to be developed concurrently. Prior to occupancy of the residential apartment building, construction shall be underway or building permits issued for a minimum of 50% of the retail or office square footage on the West Block. Construction of the remaining buildings on the West Block shall be underway or issued prior to occupancy of the first retail or office building.
2. Record a covenant on the property for a permanent obligation by the property owner to make payments to the City in lieu of the City's share of otherwise-required property taxes in the event that the apartment site is acquired or master leased by an entity exempt from payment of property taxes. The covenant shall be subject to review and approval of the Community Development and Sustainability Director and shall be recorded prior to issuance of building permits on the property.
3. Provide an additional \$25,000 contribution to the City to be used for the study and implementation of safety improvements and/or traffic calming at the southwestern corner of Cannery Loop and along the east-west Cannery Loop straight-away. Payment shall be made prior to issuance of building permits on the property.