

306-8364
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Davis
Community Dev. & Sustain. Dept.
23 Russell Boulevard, Suite 2
Davis, California 95616



Yolo Recorder's Office
Freddie Oakley, County Recorder
DOC- 2015-0021019-00

Acct 104-Placer Title
Tuesday, JUL 28, 2015 09:08:00
Ttl Pd \$0.00 Rcpt # 0001155621
VRB/R6/1-10

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF DAVIS, AND TNHC LAND COMPANY, LLC
Relating to the Development

of the Property Commonly Known as The Cannery
THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into this 26 day of May, 2015, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and TNHC LAND COMPANY, a Delaware limited liability company and its affiliates ("New Home" or "Developer"). This Amendment is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This Amendment refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

RECITALS

- A. Developer owns in fee or has a legal or equitable interest in certain real property(ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in the incorporated area the City of Davis (herein the "Property"), which is the site of the project known as The Cannery (the Project");
- B. On December 10, 2013 the City adopted Ordinance 2429, approving a Development Agreement (the "Development Agreement") between the City and Developer for the Property. The Development Agreement was recorded in the Official Records of Yolo County on April 11, 2014, as Instrument No. 2014-0007671;
- C. The Parties desire to amend the Development Agreement to reflect continuing planning efforts and negotiations regarding the implementation of a grade-separated bicycle crossing at the western or southwestern edge of the Project site;

Cannery: First Amendment to Development Agreement: Page 1 of 8

This instrument is filed for record by Placer Title Co.
as an accomodation only and has not been examined
as to its execution or its affect on the title.

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- D. This Amendment is entered into pursuant to Government Code §§ 65868 and 65867.5, which require that this Amendment be approved by City Ordinance,;
- E. Under this Amendment the Project will continue to provide for orderly growth and development consistent with the General Plan;
- F. The City Council has determined that this Amendment is consistent with the General Plan, does not affect the density or intensity of the development, 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:

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

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

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

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

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

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

(A) Section 2(B) [Sec. 201] 8, *Bicycle Connections*, is amended to read as follows:

8. Bicycle Connection

a. The City shall engage a consultant to prepare an evaluation of grade-separated bicycle path connections alternatives at the western or southwestern edge of the Project site. Pursuant to Exhibit M, Section 3, Traffic/Roadway Capital Improvement Fees of the Development Agreement, on December 17, 2014, Developer funded \$465,000 for engineering and design for the grade-separated crossing on the Covell corridor and improvements to the H/F Street Tunnel and corridor enhancements. Said funds shall be utilized by the City to prepare the evaluation pursuant to this section. City shall complete the bicycle path alternatives analysis and select a preferred alternative within twelve months of the Effective Date of this amendment. City shall consult with Developer to keep Developer apprised of progress and to ascertain potential connectivity details within the Cannery development.

b. In the event a preferred alternative is selected that is neither the connection to the South Side of Covell Blvd nor the H Street Tunnel route, previously studied as part of The Cannery project, the City shall be solely responsible for the design, permitting and construction of said alternative. In consideration of the cost of the "Southwest Grade Separated Pathway beneath Covell Blvd" identified in Exhibit G of the Development Agreement as a Cannery (project) cost, should another preferred alternative be selected other than as specified above, Developer agrees to advance the estimated funds that would otherwise be required of Developer to construct the Southwest Grade Separated Pathway beneath Covell Blvd to the South Side of Covell Blvd (construction costs for estimated funds include hard cost bid estimates described herein, a 30% contingency factor, and a 10% engineering, design and administration factor). Such funds shall be expended by the City for the sole purpose of designing, engineering, bidding, and constructing a grade-separated

bicycle crossing at the western or southwestern edge of the Property. The estimate for the cost of the Southwest Grade Separated Grade Pathway beneath Covell Blvd to the South Side of Covell Blvd will be calculated by obtaining bids on a 30% design level set of preliminary construction drawings (to be prepared by Carlson, Barbee and Gibson engineers) from two mutually agreeable contractors. The estimated Developer construction cost for the Southwest Grade Separated Pathway beneath Covell Blvd to the South Side of Covell Blvd. will be mutually agreed to by City and Developer based upon the bids obtained by the contractors and finalized within 60 days of the Effective Date of the amendment. In the event that the City selects a preferred alternative other than as specified above, Developer agrees to pay an additional \$253,000 for the City's use that would have otherwise been potentially used for the purpose of acquiring necessary offsite easements and/or right-of-way acquisition that were contemplated for the H Street Tunnel route. Developer shall deposit 50% of the estimated funds pursuant to this section within 30 days of the City's selection of a preferred alternative, and the remaining 50% within 30 days of the latter of: (1) City's completion of necessary environmental clearances required for the preferred alternative, or (2) City's approval of final design for the preferred alternative. If the City's actual cost of land acquisition and construction of the grade-separated bicycle crossing as specified herein is below the amount of the funds deposited by Developer pursuant to this section, the City may apply such surplus funds deposited by Developer, if any, toward other bicycle facilities or improvements, or other community enhancements, elsewhere in the City, at the City's sole discretion. In the event that the City selects either the connection to the South Side of Covell Blvd or the H Street Tunnel route as the preferred alternative, that has been previously studied in the Cannery project EIR, the Developer shall be solely responsible for the design, permitting and construction of said alternative. If the City elects to pursue a condemnation proceeding to acquire offsite easements

and/or right-of-way acquisition contemplated for the H Street Tunnel route, such condemnation proceedings for said route shall be filed by the City in the Superior Court within six months from the Effective Date of this amendment or by December 18, 2015, whichever date is earlier. If legal action on the condemnation proceedings for the H Street Tunnel route offsite easements and/or right-of-way are not timely filed by the City, the Developer will no longer be required to fund any additional expenses associated with condemnation or acquisition of offsite easements/and or right-of-way. Should the City choose not to proceed with condemnation, such action would not preclude the City from reaching an agreement on the acquisition of a mutually agreeable route to the H Street Tunnel with concerned parties.

c. The Developer hereby agrees to cooperate with City in the development of alternative pathway connections described in 8a above, including: providing disclosure to new residents of home buyers in the Cannery on the exploratory efforts underway and the timeline and range of potential pathway connection options, good faith cooperation to accommodate potential pathway landing locations on the Cannery site within City owned property west and southwest of Cannery Loop, and sharing of all Cannery engineering, topographic, utility, and grading plans and data. If the City considers an alternative that involves a grade-separated bicycle overcrossing west of the Property, City will consult with and obtain concurrence from the Developer on agreeable locations in an effort to minimize and mitigate for any aesthetic impacts, and limit the footprint of the proposed alternative to be within the public parcel west or southwest of Cannery Loop so as to minimize or avoid land use conflicts, impacts to the transportation network within the Project, and impacts to property values of adjacent properties.

d. If, after the alternatives analysis specified above is completed, the City determines that either (1) none of the proposed alternatives (pursuant to 8a above) for a grade-separated bicycle crossing are feasible or desired, or (2) an agreement on access to the H Street Tunnel is not feasible or desired, the Southwest Connection to the Covell Boulevard Multi-Use Path (Bike Path Option 1 as referred to in the Development Agreement) will be considered the preferred alternative for purposes of this Amendment and the Southwest Connection (Bike Path Option 1) to the Covell Boulevard Multi-Use Path will be constructed by the Developer.

e. City agrees to undertake and complete the construction of any preferred alternative grade-separated bicycle path connection (in conformity with the preferred alternative) within 3 years of the date the preferred alternative is selected by the City.

f. Developer's commitments under this Amendment shall constitute Developer's full obligation to provide for the funding and construction of a grade-separated bicycle crossing at the western or southwestern edge of the Property. The Parties agree that Developer's implementation of the Project, as otherwise set forth in the Development Agreement, will not be delayed or otherwise negatively affected by any delays associated with the City's study of alternatives, City construction of preferred alternative bicycle crossing or Developer's construction of the connection to the South Side of Covell Blvd or the H Street Tunnel route, that has been previously studied as part of The Cannery project, as described herein. Should the previously studied South Side of Covell Blvd or the H Street Tunnel route be selected, Developer shall commence construction by the latter of (1) one year after route selection or (1) one year after such right-of-way and/or easements are obtained or proceedings are abandoned, whichever is later. The City agrees to diligently process and approve improvement plans associated with the applicable bike connection in a

period less than 60 days after submittal by Developer of an improvement plan set that meets City submittal requirements. The one-year commencement of construction requirement shall be extended for each day that the 60-day processing and approval requirement is not met. Construction of either bike connection alternative shall be completed within one-year following commencement.

(B) Article 8 [Sec. 801], *Notices*, is amended to read 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:

The New Home Company
2220 Douglas Blvd., Suite 240
Roseville, CA 95661
Attn: Ashley J. Feeney
Bonnie Chiu

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. 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 Amendment by the City and Developer, all references in the Amendment to the Development Agreement shall be and be deemed to constitute references to the Development Agreement as amended hereby.

Section 7. Counterparts. This 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.

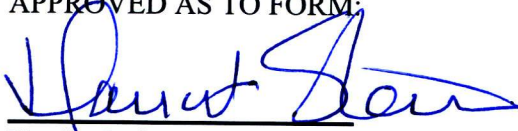
IN WITNESS WHEREOF, the City and the Developer have executed this Amendment as of the date set forth above.

CITY OF DAVIS

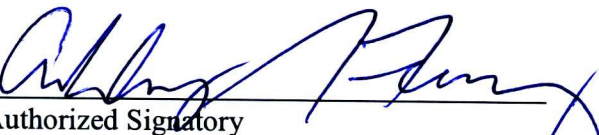
By 
Dan Wolk
Mayor

Attest 
Zoe Mirabile
City Clerk

APPROVED AS TO FORM:


Harriet Steiner
City Attorney

DEVELOPER
TNHC LAND COMPANY, LLC, a Delaware Limited
Liability Company

By 
Authorized Signatory

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 Sacramento)

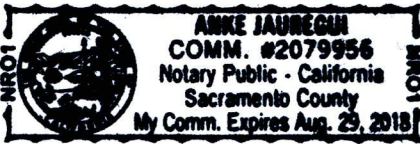
On June 04, 2015 before me, Anke Jauregui, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Ashley J. Feeney
Name(s) of Signer(s)

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 [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

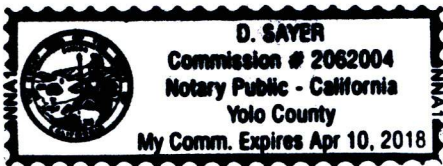
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Yolo)
On June 18, 2015 before me, D. Sayer, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Dan Wolk
Name(s) of Signer(s)

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 [Signature]
Signature of Notary Public

Place Notary Seal Above

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____