

ORDINANCE NO. 2483

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR THE CANNERY PROJECT**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Davis (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, the City certified the Environmental Impact Report (SCH 2012032022), as certified by Resolution No. 13-159 and the Mitigation Monitoring and Reporting Program adopted therewith for The Cannery Subdivision; and

WHEREAS, the City Council of the City of Davis adopted the First Amendment to the Development Agreement for The Cannery Project (Ordinance No. 2450) on May 26, 2015; and

WHEREAS, the developer of the site desires to carry out the development of the Property consistent with the General Plan, as amended, and the Development Agreement, as amended (the "Development Agreement"); and

WHEREAS, the Development Agreement will assure both the City and the Developer that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, the proposed Amendment is consistent with approved subdivision and City requirements and does not alter the design or layout of the subdivision or result in any land use changes to the subdivision; and

WHEREAS, the proposed amendments and revisions would be consistent with the intent and vision of The Cannery Project, would facilitate development of project in a timely manner, and would maintain or increase the diversity of housing types; and

WHEREAS, the Planning Commission held public hearings on May 18, 2016 and June 8, 2016 on the proposed Amendments to the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, the City Council held a duly noticed public hearing on June 21, 2016 on the proposed Amendment to the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

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

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Second Amendment to Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations”.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, in that it establishes certain development rights, obligations and conditions for the implementation of the Cannery Subdivision;
- (b) The Development Agreement is compatible with the uses authorized therein, and the regulations prescribed for, the general plan designations which will apply to the Property;
- (c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Development Agreement will not adversely affect the orderly development of the Property or the preservation of property values; and
- (f) The Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The City's General Plan, as amended;
- (c) All City staff reports (and all other public reports and documents) prepared for the Planning Commission and City Council, relating to the Amendment to the Development Agreement and other actions relating to the Property;

- (e) All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Amendment to the Development Agreement, and other actions relating to the Property; and
- (f) All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Second Amendment to the Development Agreement, attached hereto as Exhibit A, subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan, as amended, as approved by the City Council and the voters.

SECTION 6. Upon the effective date of this Ordinance as provided in Section 9 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Second Amendment to the Development Agreement on behalf of the City of Davis

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Second Amendment to the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

INTRODUCED on the 21st day of June, 2016, and PASSED AND ADOPTED by the City Council of the City of Davis on this 12th day of July, 2016, by the following vote:


AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A

SECOND 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 SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (“Second Amendment”) is entered into this ____ day of _____, 2016, 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 Second Amendment is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This Second 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) located in the incorporated area of the City of Davis (herein the "Property"), which is the site of the project known as The Cannery (the “Project”). The Property is described in Exhibit A.;
- 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. 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;
- D. The Parties desire to amend the Development Agreement to reflect current progress and negotiations regarding the funding and construction of a grade-separated bicycle/pedestrian crossing at the western or southwestern edge of the Project site;

- E. Under the approved Planned Development (PD) and Final Planned Development (FPD) for The Cannery, up to 24 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 35 feet in height on the west side, and no building shall exceed 45 feet on the east side.
- F. 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 35 feet to 45 feet, to be consistent with the east side which already allows a maximum height of 45 feet. Developer has further requested to revise the PD and FPD to increase the allowed residential units from 24 to 36 units, which represents a net increase of 12 units compared to the Project as approved.
- G. The approved Design Guidelines describe the “stacked flat” residential units as 4-story buildings, with a garage on the ground level, three floors of single-level units accessible by elevator, with a minimum of one garage space per unit. The Developer has proposed an increase in the number of stacked flat units from 96 to 120, while maintaining the same design concepts previously approved. The Developer has requested approval of the PD, FPD and Design Guidelines to permit an increased density of 24 units (from 12 units per building (i.e., 4 units per floor), to 15 units per building (i.e., 5 units per floor). Under the approved 96-unit stacked flat design, the unit sizes were previously planned to range between 1,600 square feet and 1,800 square feet. The Developer’s requested 120 stacked flat units will effectively increase the range of the unit sizes to be between approximately 1,200 square feet and 2,000 square feet and provide a wider array of housing options.
- H. While the Developer’s request to increase the number of stacked flats units by 24 would increase the density of this unit type, Developer’s request is consistent with Section B(1) of the approved PD which allows a density of up to 40 dwelling units per acre (du/ac) for Sub Area G (The University Flats). The previous density based on 96 units on 3.08 net acres was 31.2 du/ac; whereas the proposed density based on 120 units on 3.08 net acres is 38.96 du/ac.
- 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. The revisions to the previously approved development entitlements specified by this Second Amendment would not increase the environmental impacts of the Project beyond the level analyzed in the previously certified EIR. Therefore, no new information showing significant changes to the project or changes in circumstances require additional analysis under the provisions of the California Environmental Quality Act.
- K. This Second Amendment is entered into pursuant to Government Code §§ 65868 and 65867.5, which require that this Second Amendment be approved by City Ordinance;
- L. Under this Second Amendment the Project will continue to provide for orderly growth and development consistent with the General Plan; and
- M. The City Council has determined that this Second 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:

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

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

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

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

Section 4. Meaning of Terms. All terms set forth in this Second 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) Section 2(B) [Sec. 201] 8, *Bicycle Connections*, is amended to read as follows:

8. Bicycle Connection

- a. Developer agrees to pay a total of \$1,653,000 for the grade-separated bicycle crossing, as follows: (1) Developer agrees to advance \$1,400,000, which represents 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. identified in Exhibit G of the Development Agreement, and (2) 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.
- b. Developer shall deposit 50% of the funds pursuant to this section, and pursuant to Exhibit J item 7 (\$826,500 plus \$250,000) within 30 days of the Effective Date of this Second Amendment, and the remaining 50% of the

funds (\$826,500 plus \$250,000) 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 construction of the preferred alternative 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.

- c. The Developer hereby agrees to provide disclosure to home buyers in the Cannery on the exploratory efforts underway and the timeline and range of potential pathway connection options, and to cooperate with City in the development of the grade-separated bicycle crossing pursuant to this section including: 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. The City will consult with and make good-faith efforts to obtain concurrence from the Developer on the design and 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. City expects to commence construction of the preferred alternative grade-separated bicycle path connection within one (1) year of the date the preferred alternative is selected by the City.
- e. 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 City’s obligations to allow 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 or City construction of preferred alternative bicycle crossing.

(B) 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:

The New Home Company
2220 Douglas Blvd., Suite 240
Roseville, CA 95661
Attn: 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. 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#1-16, PD #1-16, AHP#1-16, FPD#2-16 and DR#6-16 for the Neighborhood Mixed Use Commercial District reviewed or approved by the Planning Commission on May 18, 2016 and by the City Council on _____, 2016 for:

Revisions to increase maximum allowed height of buildings on the west side of the Neighborhood Mixed Use site from 35 feet to 45 feet, to be consistent with the east side which already allows a maximum height of 45 feet; and revisions to increase the allowed residential units from 24 to a maximum of 36 units, which represents a net increase of 12 units, as shown and approved in Ordinance No. _____ amending The Cannery Preliminary Planned Development (PD#1-11) and City Council Resolution No. _____ for revisions to The Cannery Final Planned Development, Affordable Housing Plan, and Neighborhood Design Guidelines.

- DEV#1-16, PD#1-16, AHP#1-16, and RFPD #3-16 for the Stacked Flat Units reviewed or approved by the Planning Commission on June 8, 2016 and by the City Council on _____, 2016 for:

Revisions to adjust the standards for height and setbacks for the stacked flat buildings; and revisions to increase the allowable number of stacked flat units to 120 units, as shown and approved in Ordinance No. _____ amending The Cannery Preliminary Planned Development (PD#1-11) and City Council Resolution No. _____ 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 A to this Second Amendment.

Section 8. Amendment to DA Exhibit J. Exhibit J (Community Enhancements) of the Development Agreement is hereby amended as shown in Attachment B to this Second Amendment.

Section 9. Amendment to DA Exhibit M. Exhibit M (Fees and Credits) of the Development Agreement is hereby amended as shown in Attachment C to this Second Amendment.

Section 10. 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 Second Amendment by the City and Developer, all references in the Second Amendment to the Development Agreement shall be and be deemed to constitute references to the Development Agreement as amended hereby.

Section 11. Counterparts. This Second 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 Second 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

The Cannery Affordable Housing Plan Project Individualized Plan

Revised August 28, 2013 June 13, 2016

1.0 Proposed Project

ConAgra Foods Inc. and The New Home Company (“Applicant”) propose The Cannery project on the Con Agra Food, Inc. property north of East Covell Boulevard in the City of Davis. The Cannery project (“project”) is a mixed-use, multi-generational neighborhood with housing opportunities for families, young professionals and seniors, a neighborhood mixed-use site, parks, open space and urban farm uses.

The 100.1-acre Cannery site is generally a slanted rectangle and its boundaries are defined by East Covell Boulevard on the south, existing Union Pacific Railroad (UPRR) line and the F Street open drainage channel on the west and agricultural lands on the north and east.

The Cannery project includes ~~547~~583 residential units in a variety of housing types and configurations, a mixed-use center featuring commercial, office, flex, and neighborhood-serving uses, park, open space, and urban farm and clubhouse uses, as shown on The Cannery Planned Development (PD) Exhibit, Figure 1. The residential portion of the project consists of the following unit mix:

	Planned Development Density Range	Gross Acres	Units
Low Density Residential	3.0 to 5.9 units/acre	152	87
Medium Density Residential	6.0 to 13.9 units/acre	26.3	208
High Density Residential	14 to 40 units/acre	12.4 ¹	228 <u>252</u>
Mixed Use Residential Units			<u>2436</u>
		53.9	<u>547</u> 583

¹ Acreage and unit count for the High Density Residential category does not include Mixed-Use site units.

Residential units will be provided in a variety of housing types and sizes suitable for a variety of residents including families, small households, working professionals and seniors.

PUD Area	Housing Area	Residential Product Type	Lot Sizes	Units
Area A	The Park Homes	Single Family Units	50'-55' x 90'	87
Area B	Cannery Village	Single Family Units with Cottage Units	45' x 105'	16
Area C	The Cottages	Single Family Units	48' x 75'	76
Area D	The Bungalow Alleys	Alley Homes with Above Garage Units	40' x 80'	44
Area E	The Courts	Court Homes	-	72
Area F	The Brownstones	Row Houses	-	72
Area G	The University Flats	Stacked Flats	-	<u>96</u> 120
Area H	The Cannery Lofts	Multi-Family Apartments	-	40-60
Area I	Market Flats <u>Mixed Use</u>	Mixed Use – Apartments	-	<u>12</u> 0 -24
Area I	Studio Row <u>Mixed Use</u>	Mixed Use – Live-Work Units <u>Vertical</u>	-	12
		Total		<u>547</u> 583

The unit mix shown above is based on specific density targets for each land use category. Due to the density ranges allowed in The Cannery project, the actual market rate residential units may vary as the project develops over time.

2.0 Affordable Housing Policy

State law (California Government Code Section 65584) requires each city and county plan accommodate a fair share of the region's housing needs through zoning and land use. In urban areas, state law provided for councils of governments to prepare regional needs allocation plans that assign a share of the region's housing needs to each city and county. In the six-county greater Sacramento region, the Sacramento Area Council of Governments (SACOG) is the entity authorized to determine the future housing needs for the region, known as the regional housing needs allocation. Each housing allocation includes a distribution for housing affordable to very-low, low and moderate-income households.

In order to meet the City of Davis' fair share of the regional housing need for the very-low-, low and moderate-income households, the City implemented policies within the Housing Element of the General Plan to provide for such housing. General Plan implementing policies require that, to the extent feasible, affordable housing units be affordable to very low, low and moderate-income households. General Plan policies also require that affordable units be rental or ownership units. On July 9, 2013, the Davis City Council amended the City's Housing Element to adopt a tiered requirement for ownership housing products and to provide a menu of options for satisfying the need for affordable housing in the City.

The City of Davis' Affordable Housing Ordinance (18.05 of the Municipal Code) ("Ordinance") requires that developers seeking entitlement approvals for new development projects include or provide for an affordable housing component.

2.1 Updated City Affordable Housing Ordinance

The Davis City Council voted on July 9, 2013 to amend its Affordable Housing Ordinance to reflect the loss of the Redevelopment Agency as a subsidy source for housing projects, changes in development patterns as the City sees more compact infill projects, and a focus on rental housing to serve very-low income households.

The July 9, 2013 City Council decision followed a public forum held by the Social Services Commission on February 25, 2013, a City Council hearing at which they voted unanimously on March 26, 2013 to direct staff to revise the City's Inclusionary Affordable Housing Ordinance and applicable Housing Element Policies, and a Planning Commission hearing on May 22, 2013.

3.0 Project's Affordable Housing Requirement

Based on the City's Affordable Housing Ordinance, as amended on July 9, 2013, the affordable housing requirements that are applicable to the Project are as follows:

- Provide a graduated scale for for-sale inclusionary obligations that is more compatible with the City's planning policies to promote infill and a greater variety of housing types, according to the following ranges:
 - 25% of large-lot single-family units (5,000 square feet or larger)
 - 15% of small-lot single family detached units
 - 10% of single-family attached units
 - 0% for stacked flat condominiums, or rental units in vertical mixed-use buildings
- Provide a credit for Accessory Dwelling Units (ADUs or second units), toward the inclusionary requirements on a 50% basis, according to the following criteria:
 - No more than 50% of a project's obligation may be met by ADUs
 - ADUs must meet performance standards to promote leaseability, including minimum size of unit and the provision of direct access from a street, alley or greenbelt
- Retain the land dedication option

Consistent with the City's Affordable Housing Ordinance (18.05 of the Municipal Code) and applicable Housing Element policies, The Cannery is required to provide 58 affordable housing units.¹

	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' x 90' (4950')	42	15%	6.3
Cannery Village	SF detached	>5,000'	5	25%	1.25
Cannery Village	SF detached	45'x 105'(4725')	11	15%	1.65
The Cottages	SF detached	48' x 75' (3600')	76	15%	11.4
The Bungalow Alleys	SF detached	40' x 80' (3200')	44	15%	6.6
The Courts	SF detached	-	72	15%	10.8
The Brownstones	SF attached	-	72	10%	7.2
Studio Row	SF attached	-	12	10%	1.2
The University Flats	SF attached	-	96	0%	0
The Cannery Lofts		-	40-60	0%	0
Market Flats	Mixed Use - Apartments	Potential Mixed Use Vertical	120-24	0-35%	0-8.4
Mixed Use – Vertical		-	12	0%	0
Total Affordable Housing Requirement¹					57.65 Rounded to 58

¹ 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 projects Affordable Housing Requirement shall be increased or decreased accordingly.

ATTACHMENT B

Exhibit J

Community Enhancements

Developer shall provide the following Community Enhancements, which are above and beyond the Project's requirements to mitigate for project-related impacts, conditions of approval and features included in the project description.

Unless otherwise set forth herein, all payment obligations are to be applied to the 487 for-sale market rate residential units constructed in the Project.

1. \$3,886,179 in Community Enhancement Funds for transportation and circulation improvements, as set forth in Exhibit G.
2. \$2,103,656 for community park and community-wide improvements/renovations, payable in the amount of \$4,319.65 per for-sale market rate residential unit prior to issuance of a Certificate of Occupancy.
3. \$100,000 for the City's Greenhouse Gas Reduction programs, payable prior to approval of the first Final Map.
4. Developer commits to implement Zero Net Electric (ZNE) on 25% of the first 100 homes developed in the Project. Multifamily or single-family attached housing would not count toward the first 100 homes requirements, however, Developer has the right to satisfy the requirement by including these housing types at Developer's discretion. Developer's satisfaction of this requirement shall be demonstrated based upon measurable calculations, to the satisfaction of the Director of Community Development and Sustainability. Any Small Builder Lots meeting the ZNE requirement shall count toward the 25% obligation. Small Builder Lots not meeting ZNE requirements will not count toward the first 100 homes subject to this requirement.
5. \$300,000 for start-up operation, maintenance and staffing of the Cannery Farm, as set forth in Exhibit F.
6. \$75,000 for the City's Civic Arts Program, payable prior to approval of the first Final Map.
7. \$500,000 for any community-wide programs/projects, as determined by the Davis City Council. The timing for payment shall be in accordance with Section 2(B) [Sec. 201] 8, Bicycle Connections, as amended.

ATTACHMENT C
Exhibit M

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 M shall be paid by the Project as modified in this Exhibit M. All other fees, connection fees, and payments shall be subject to the general provisions of Section 207 and the Municipal Code.

Unless otherwise set forth herein, all fee credits are to be applied to the 487 market rate single-family attached and detached residential units constructed in the Project.

1. Water

Water connection fees paid by the Project shall be capped at the existing City rate of \$8,970 per residential unit, for the first five years of the Term of this Agreement. Thereafter, if the water connection fee has increased, the residential units shall pay the then current connection fee. The City commits to prepare a comprehensive citywide update of the water connection fee, commencing in the Spring 2014. If the water connection fee is reduced from the existing level (\$8,970 per residential unit) as a result of this fee update, the water connection fees payable by the Project shall be reduced to the amount of the updated fee for all residential units in the Project, including those that may have paid the water connection fee prior to the effective date of the new fee. After the new water connection fee is effective, the Project shall continue to pay \$8970 per residential unit, however, with the difference between the water connection fee and \$8,970 including the difference/credit for any residential unit water impact fee paid by the Project prior to the effective date of the new fee) shall deposited into the Park Impact Fee account until the total paid into the Park Impact Fee Account pursuant to this provision equals \$1,600,000. Upon the date that the total amount paid under this section into the City's Park Impact Fee account has equaled \$1,600,000, if this occurs, Developers shall pay future water connection fees on remaining residential units in the amount of the updated water connection fee.

Water connection fees for non-residential development in the Project are to be paid at the rate then in effect when the fee is paid.

Developers shall be entitled to a credit against water connection fees paid by market rate residential development in the Project for Developers' grant of the water line easement along Covell Boulevard (to be calculated at a rate of \$8.62 per square foot of easement area) and the City well expansion site (\$209,171), and a dollar-for-dollar credit for the cost of the agricultural well and associated irrigation system, based upon actual construction cost.

Developers shall not be required to pay any water connection fees associated with the backup irrigation water system associated with the agricultural well.

2. Wastewater

Wastewater connection fees shall be capped at the existing City rate of \$6,150 for single-family attached and detached residential units, and \$4,780 for single-family condominium units, and \$3,320 for multi-family (5 or more units) for the first five years of the Term of this Agreement.

Sewer connection fees for non-residential development in the Project are to be paid at the rate then in effect when the fee is paid.

3. Traffic/Roadway Capital Improvement Program Fees

Based upon the current adopted Capital Improvement Program, the Project is estimated to generate \$5,598,004 in roadway impact fees.

The Project shall be entitled to fee credits for construction of the L Street Intersection improvements (\$218,500) and Oak Tree Plaza Median improvements (\$174,800), based upon pro-rata fair share contribution to impacts (12.6%) as calculated by the traffic analysis contained in the Final EIR.

Of the remaining \$5,204,704 in roadway impact fee, \$4,605,800 is anticipated to be allocated toward the infrastructure improvements identified in Exhibit G, if adopted by the City as part of a future Covell Boulevard Corridor Plan following public review and CEQA compliance. Allocation of these funds toward specific improvements shall be made at the discretion of the City.

Payment of the \$3,886,179 contribution by Developer as identified in Exhibit J shall be made as follows:

- \$150,000 shall be advanced for purposes of preliminary engineering and design for the Covell Boulevard Corridor Plan, and \$465,000 for engineering and design for the grade-separated crossing on the Covell corridor, anticipated to be between J and L Streets, and improvements to the H/F Street tunnel and corridor enhancements. The timing for payment of these advanced funds shall be the earlier of: (1) 90-days after City adoption of the Covell Boulevard Corridor Plan, or (2) one year after the Effective Date of this Agreement.
- The remaining \$3,271,179 shall be paid on a per-unit basis, in the amount of \$6,717 per market rate residential unit prior to issuance of a Certificate of Occupancy for each market rate residential unit.

The Project shall receive credit in the amount of \$3,271,208 against any incremental increases in the roadway impact fees that may be adopted by the City in the future (new or increased roadway impact fees above the fees in effect as of the Effective Date of this Agreement, associated with the future Covell Boulevard Corridor Plan Improvements) for the costs of the improvements identified in a future Covell Boulevard Corridor Plan that are funded in whole or in part by Developer's contribution .

4. Stormwater

Developers' mitigation of upstream stormwater impacts satisfies Developers' stormwater impact fee obligations (estimated at \$141,323) in its entirety. No additional stormwater impact fees shall be required for the Project.

5. Quimby Act Fees and Park Impact Fees

Developers' Quimby Act and park impact fee obligations shall be deemed satisfied through the combination of the Project's required land dedication, turn-key park, greenbelt and open space improvements, and park-related Development Agreement enhancement funds.

6. Trees

Developers may mitigate tree impacts through tree planting onsite, as required by Mitigation Measure 3.4-12 and pursuant to the Municipal Code. Developers shall prepare and submit a tree monitoring plan, which shall assure to the satisfaction of the City the successful establishment of trees for a period of three years through monitoring and replacement by the Developers, payment of the City's street tree fee, or a combination of both.