

ORDINANCE NO. 2523

**ORDINANCE APPROVING AN AGREEMENT
BY AND BETWEEN THE CITY OF DAVIS AND NISHI GATEWAY, LLC,
RELATING TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE NISHI PROPERTY**

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 Nishi Property (the "Nishi Property") is a component of the Nishi Gateway Mixed-Use Innovation District that also includes properties on West Olive Drive (collectively, the "Nishi Gateway Project"); and

WHEREAS, the Nishi Property is owned by Nishi Gateway, LLC, a California Limited Liability Corporation ("Developer"); and

WHEREAS, on February 16, 2016, the City certified the Final Environmental Impact Report for The Nishi Gateway Project (the "Final EIR"); and

WHEREAS, the City Council, on February 16, 2016, adopted Resolution No. 16-13, finding that, where feasible, mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts and that social, economic and other benefits outweigh the remaining adverse environmental impacts that cannot be mitigated to a level of insignificance; and

WHEREAS, the Nishi Residential Development Project proposal is a modification of the previously-approved Nishi Gateway Project; and

WHEREAS, the City has prepared an Environmental Checklist Addendum to the Nishi Gateway Environmental Impact Report (the "Addendum"); and

WHEREAS, on February 6, 2018, the City adopted the Addendum and Mitigation Monitoring and Reporting Program, and made findings of facts regarding significant environmental impacts of the project; and

WHEREAS, the City Council of the City of Davis adopted Resolution No. 18-023, which approved a general plan amendment for the Nishi Property's component of the Nishi Gateway Project; and

WHEREAS, the City Council of the City of Davis adopted the Preliminary Development project entitlement for the Nishi Property, vested within the Development Agreement; and

WHEREAS, Developer desires to carry out the development of the Nishi Property consistent with the General Plan, as amended, and the Development Agreement and the vested entitlements referenced therein; and

WHEREAS, the Development Agreement will assure the City and its residents and the Developer that the Development will proceed as proposed and that the public improvements and other amenities and funding obligations, will be accomplished as proposed; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 24, 2018, on the Addendum, the General Plan Amendment, and project entitlements, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, following the public hearing, the Planning Commission made a recommendation to the City Council on the Addendum, the General Plan Amendment and the Development Agreement; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on February 6, 2018, held a duly noticed public hearing on the Addendum, the General Plan Amendment, project entitlements, and the Development Agreement, during which public hearing, the City Council received comments from the Developer, City staff, public agencies and members of the general public; and

WHEREAS, pursuant to "Measure R" as codified in Davis Municipal Code Chapter 41, the General Plan amendment for the Nishi Property will not become effective unless and until it is approved by an affirmative majority vote of the voters of the City, voting on the proposal; and

WHEREAS, the Nishi Property General Plan amendment, together its Baseline Project Features, will be submitted to the voters of the City at the June 5, 2018 election.

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 Development Agreement attached hereto, subject to the provisions of Section 5 hereof.

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

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

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

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) Resolution No. 16-013, adopted by the City Council on February 16, 2016, making findings as to the Final EIR for the Nishi Gateway Project, including the Statement of Findings and Facts and Statement of Overriding Considerations (Exhibit A thereto), and the Mitigation Monitoring and Reporting Program (Exhibit B thereto) approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
- (c) Resolution No. 18-022, adopted by the City Council on February 6, 2018, making findings as to the Environmental Checklist Addendum to the Nishi Gateway EIR;
- (d) The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 18-023 prior to adoption of this Ordinance;
- (e) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Addendum, the Final EIR, the General Plan Amendment, the Development Agreement, and other actions relating to the Property;
- (f) All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Final EIR, the General Plan Amendment, the Development Agreement, and other actions relating to the Property; and

- (g) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City general ordinances, policies and regulations.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to the provisions of Section 6 hereof, and subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as approved by the City Council.

SECTION 6. The approval contained in Section 5 hereof is subject to and conditioned upon Resolution No. 18-023, adopted by the City Council approving the General Plan amendment, becoming effective, including approval of the General Plan Amendment by the voters, as required by Chapter 41 of the Municipal Code, the "Citizens' Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance."

SECTION 7. 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 Development Agreement on behalf of the City of Davis.

SECTION 8. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

INTRODUCED on the 6th day of February, 2018, and PASSED AND ADOPTED by the City Council of the City of Davis on this 20th day of February, 2018, by the following vote:


AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS,
NISHI GATEWAY LLC
Relating to the Development
of the Property Commonly Known as the Nishi Property

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and Nishi Gateway, LLC, a California limited liability company (herein “Developer”). This Agreement is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This agreement refers to the City and the Developer collectively as the “Parties” and singularly as the “Party.”

Recitals

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et seq.* of the Government Code which authorizes any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

B. The Developer owns in fee or have 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 the Developer seeks to develop as the Nishi project (the “Project”). The Project is a student focused medium density residential use and open spaces. stormwater detention, surface parking, and associated infrastructure. This Agreement is voluntarily entered into by the 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.

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

- (1) General Plan Amendment #08-14, including establishment of Baseline Project Features (the “Baseline Project Features”) which cannot be eliminated, reduced or significantly modified without subsequent voter approval.
- (2) Rezoning and Preliminary Planned Development #06-14
- (3) Development Agreement by and between the City of Davis and Developer.
- (4) Environmental Impact Report (2015012066), as certified by Resolution No. 16-013 February 16, 2016 and the Mitigation Monitoring and Reporting Program adopted therewith, together with the Addendum to the Environmental Impact Report dated January 2018.

D. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for 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.

E. 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 section 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. The 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.

B. [Sec. 101] Effective Date and Term. The effective date of this Agreement shall be the date General Plan Amendment #08-14 is ratified by the voters pursuant to Chapter 41 of the Municipal Code, the “Citizens’ Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance.” Should General Plan Amendment #08-14 not be ratified by December 31, 2018, this Agreement shall terminate and be of no force and effect. The term of this Agreement (the “Term”) shall commence upon the effective date and shall extend for a period of fifteen (15) years thereafter, unless said Term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties, subject to the provisions of Section 105 hereof. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 408 hereof.

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 sections 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.

4. 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.

5. 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.

6. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the subdivision maps identified in Exhibit 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.

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 larger than five (5) acres (i.e., not a *de minimis* portion) 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] Major Amendments and Minor Amendments.

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

3. No amendments may be made that are not consistent with the Baseline Project Features approved by the voters with General Plan Amendment No. 08-14, unless such change has been approved by the voters in an election called for that purpose.

H. [Sec. 107] Notice of Termination as to Other Parcels. Upon a Property Owner's request with respect to any such parcel or lot at the Property that has had a building constructed upon it or is a finished lot, City shall record a notice of termination that the Agreement has been terminated as to that lot or parcel. The aforesaid notice may specify, and Developer agrees, that termination shall not affect in any manner any continuing obligation to pay an item specified by this Agreement. Termination of this Agreement as to an individual parcel or lot with a building constructed upon it shall not affect Developer's rights or obligations under any of the Approvals applicable to the remainder of the Project at the Property. City shall confirm that all improvements which are required to serve the parcel or lot, as determined by City, have (1) been accepted by City, or (2) in the discretion of the City, adequate security for certain improvements has been provided. Termination of this Agreement for any parcel or lot as provided for in this Section 107 shall not in any way be construed to terminate or modify any assessment district, fee district, public financing district, special tax district, tax and/or any Mello Roos Community Facilities District lien affecting such lot at the time of termination.

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 Project consists of multi-family rental housing, and ancillary retail as described in the Preliminary Planned Development and Baseline Project Features.

The Developer hereby agrees to develop the Project in accordance with the Project Approvals, including the Baseline Project Features, 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 106, *supra*.

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 also described and attached hereto as Exhibits E through L 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. Therefore, the Developer and the City have agreed to the sustainability strategy set forth in Exhibit E.

2. Transportation and Circulation Improvements. In addition to the street and roads requirements set forth in the Project Approvals and required as part of the Baseline Project Features and EIR mitigation measures, the Developer will make financial contributions toward additional transportation, bicycle and pedestrian improvements set forth in Exhibit F.

3. Community Enhancements. The Developer shall provide for additional contributions to community enhancements, as set forth in Exhibit G.
4. Predevelopment Contribution. Developer shall repay predevelopment expenses incurred by City in accordance with the Pre-Development and Cost-Sharing Agreement approved by the City Council on November 27, 2012. Repayment will be allocated per parcel, on a basis such parcel size, parcel use, and/or anticipated as on a building square footage basis, at the time of approval of the first Design Review or Final Planned Development application for the project. Payment for each parcel shall be made with Certificate of Occupancy for the first building on that parcel.
5. Affordable Housing. The Developer shall comply with the affordable housing requirements as set forth in Exhibit L.
6. Reimbursement for Property Taxes. Prior to issuance of building permit, Developer shall record a covenant on the title to the Project Site regarding property tax payments. The covenant shall include a permanent obligation for the property owner to make payments to the City, Yolo County, and Davis Joint Unified School District in lieu of the City's, Yolo County's and Davis Joint Unified School District's respective share of otherwise-required property taxes in the event that the Property is acquired, or master leased in whole or in part by an entity exempt from payment of property taxes. Wording of the covenant is subject to review and approval of the City Attorney. Alternatively, at the City's sole and absolute discretion, a Land-Secured Financing District for Public Services shall be established such as a Community Facilities District, to provide an ongoing revenue source to the City for municipal services. Specific amounts of assessment shall be established to provide replacement revenue equal to the amounts that otherwise would be realized for the respective agencies through property taxes. The Developer shall agree to participate in said financing district. The timing of establishment of the district shall be prior to the first map for the property or first building permit, whichever occurs first.
7. Water and Energy Conservation Information and Incentive Plan. The Developer shall comply with and implement the measures identified in Exhibit K to provide information and incentives to residents on their water and energy use to encourage conservation.

8. Local Hiring Program. The Developer shall implement a Local Hiring Program as set forth in Exhibit J.
9. Onsite Recreational Amenities. The Developer shall provide an onsite recreational amenity plan at the time of the site plan and design review application.
10. Urban Forest Plant and Tree Species. Incorporate native plant and tree species in the urban forest to the greatest extent feasible given air quality objectives. The Developer shall bring a plan to the Open Space and Habitat Commission and the Tree Commission for review and comment as part of the design review application.

C. [Sec. 202] Subsequent Discretionary Approvals. The Developer's 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.

In reviewing and approving applications for subsequent discretionary approvals, the City may exercise its discretionary review and may attach such conditions and requirements as may be deemed necessary or appropriate to carry out the policies, goals, standards and objectives of the General Plan and to comply with legal requirements and policies of the City pertaining to such reserved discretionary approvals, so long as such conditions and requirements do not preclude the uses or the density and intensity of use set forth in this Agreement.

Pursuant to California Government Code section 66452.6(a) the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this

Agreement. Design review approvals (including Final Planned Development approvals) are subject to review pursuant to the procedures as set forth in Chapter 40 of the City's Municipal Code, and shall remain in effect for the term of the Agreement.

Conditional Use Permits may be reviewed and approved by the City during the term of this Agreement. However, these permits shall not "vest" under this Agreement and will terminate if not used, as set forth in the City's Municipal Code, including its Zoning Ordinance. The term of any conditional use permit shall be determined by the City's Zoning Regulations or the conditions of approval of the conditional use permit but shall not be extended by reason of this Agreement.

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 phases of 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 Section 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. 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.

The infrastructure phasing and the physical phases of the Project accomplished through the approval of tentative maps, final maps, and building permits shall be governed by the Phasing Plan (Exhibit H) and the other Project Approvals. Consistent with this Agreement and the Project Approvals, each Final Map shall include a detailed description of the infrastructure improvements and other requirements for the phase shown in the particular final map. As necessary for orderly development, the City may modify the infrastructure requirements, such as water, sewer, utilities, and roads and road improvements, necessary to serve each phase as shown on particular final maps so long as such modifications substantially comply with this Agreement.

E. [Sec. 204] Property Acquisition for Off-site Infrastructure. The Developer shall, in a timely manner as determined by City and consistent with the requirements of the Project and the conditions of approval of the Project, acquire the property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement and the Project Approvals. In any instance where the Developer is required to construct any public improvement on land to which neither the Developer nor the City has sufficient title or interest, including an easement or license determined necessary by the City, the Developer shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event the Developer is unable, after exercising all reasonable efforts as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time any final map is filed with the City, and upon the Developer's provision of adequate security for costs the City may reasonably incur, the City shall negotiate the purchase of the necessary real property interests to allow the Developer to construct the public improvements as required by this Agreement and, if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests. For the purposes of this Section, "reasonable efforts" shall include proof that the Developer made a written offer to purchase the property interest at fair market value, in accordance with an appraisal conducted by an MAI appraiser. The Developer shall pay all costs associated with such acquisition or condemnation proceedings including but not limited to attorneys' fees, expert witness fees, and jury awards of any kind. If and to the extent this section 204 conflicts with Section 66462.5 of the Subdivision Map Act, this section will control. Upon acquisition of the necessary interest in land, or upon obtaining a right of entry, either by agreement or court order, the Developer shall commence and complete the public improvements. This requirement shall be included, and, if necessary, detailed, in any subdivision improvement agreement entered into between the Developer and the City pursuant to Government Code section 66452.

F. [Sec. 205]. Credits and/or Reimbursement for Dedication of Property or Construction of Infrastructure for "Oversizing". To the extent the Developer dedicates

land, funds or construct public facilities that exceed the size or capacity required to serve the Property for the benefit of other properties or the City, the City shall enter into an agreement to reimburse the Developer to the extent of such benefit as determined by the City. The Developer, at the City's election, may be reimbursed for oversizing: (1) under a separate agreement between the City and the Developer which will provide that if and when a particular property benefiting from the oversizing is developed, the City will require the benefiting property to reimburse the Developer its pro rata share of the costs of the oversizing, as set forth in the agreement. A written agreement under this provision shall have a term of no longer than twenty-five (25) years; or (2) as credits against impact fees that the Developer or the Project would otherwise be required to pay for the type of infrastructure (e.g. sewers, roads) or payments from impact fees paid by other properties developed in the City for the type of infrastructure. If the mitigation fees paid by other persons or entities, or the credit available from the impact fees to be paid by the Developer in the particular category of infrastructure, are insufficient to repay the Developer in full for the cost of oversizing, the Developer shall have no recourse against the City. Similarly, if the benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City; however, the Developer will retain all its rights against the benefiting property and its owners, if any. In no case shall the City reimburse the Developer from general funds of the City.

Whenever in this Agreement or in future reimbursement agreements, the City is making reimbursements to the Developer, the reimbursements shall be made on a quarterly basis.

The City shall not reimburse the Developer for costs of interim temporary improvements (improvements with a service life of less than 5 years) as determined by City.

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 approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

4. The Parties intend that the provisions of this Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1 *et seq.* of the Government Code or any other state law now or hereafter enacted purporting to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Agreement, the Developer agrees that:

(a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use 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 increases as set forth 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 residential unit or non-residential building in question. Certain impact fees and credits applicable to development of the Project shall be as set forth in Exhibit I, and paid in the manner specified.

2. Except as otherwise provided in this Agreement, as to the fees required to be paid, the Developer shall pay the 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 and any tentative maps approved pursuant to this Agreement.

3. The City may charge and the Developer shall pay processing fees for land use approvals, building permits, and other similar permits and entitlements which are in force and effect on a citywide basis at the time the application is submitted for those permits, as permitted pursuant to California Government Code section 54990 or its successor sections(s).

4. Except as specifically permitted by this Agreement or mandated by state or federal law, the City shall not impose any additional capital facilities or development

impact fees or charges or require any additional dedications or improvements through the exercise of the police power, with the following 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 section 66006. As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

6. Open Space: Open Space shall be installed in accordance with the Baseline Project Features. The City shall review and approve the design, construction, and landscaping of the open spaces in the project area. Open space shall include a tree buffer between buildings and Interstate 80 and a concentrated area of trees at the western edge of the site. Trees shall be planted in the green buffer with the first phase of development. City and Developer to work with Caltrans to install trees on the Caltrans right-of-way to the extent feasible.

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, and issuance of such permits is not inconsistent with the Baseline Project Features and Exhibit H.

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.

The Developer and the City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act, for the processing of parcel and tentative subdivision maps and final maps.

With City approval, the Developer may utilize an expedited plan check process for the review of improvement plans and building plans for the Project. Within two (2) weeks of a written request by the Developer, the City shall determine whether expedited plan check is feasible for the requested work. If the City determines that expedited plan check is feasible, the City shall retain an outside consultant for review of the Developer's improvement plans and building plans. Such outside consultant shall be at the sole selection of the City and shall be paid for at the sole cost and expense of the Developer. Upon written request, the Developer shall advance a deposit sufficient to cover the City's estimated costs of retaining the outside consultant. Such deposit shall be replenished as necessary, from time to time, to assure that the City shall not bear any of the cost of the outside consultant.

ARTICLE 4. Default, Remedies, Termination.

A. [Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, 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. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or

conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

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. 404] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, 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. 405] Limitation of Legal Actions. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

F. [Sec. 406] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review

of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

G. [Sec. 407] Invalidity of Agreement.

1. If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

2. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either Party in good faith determines that such provision is material to its entering into this Agreement, either Party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 400, subject, however, to the provisions of Section 408 hereof.

H. [Sec. 408] 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 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, this Agreement, and/or the Measure J/R election, 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 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 Section 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 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. 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:

Nishi Gateway LLC
PO Box 4188
Davis CA 95617
Attn: Tim Ruff

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

ARTICLE 9. Recordation.

A. [Sec. 900] When fully executed, this 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.

ARTICLE 11. Reserved

ARTICLE 12. 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 will 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 9 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, and Baseline Project Features
- Exhibit C: Project Approvals
- Exhibit D: Subsequent Discretionary Approvals
- Exhibit E: Environmental Sustainability

- Exhibit F: Transportation and Circulation Commitments
- Exhibit G: Community Enhancements
- Exhibit H: Phasing Plan
- Exhibit I: Impact Fees and Credits
- Exhibit J: Local Hiring Program
- Exhibit K: Water and Energy Conservation Information and Incentive Plan
- Exhibit L: Affordable Housing Plan

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

CITY OF DAVIS

By _____

Robb Davis
Mayor

Attest _____

Zoe Mirabile
City Clerk

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

NISHI GATEWAY, LLC, a
California Limited Liability Company

By _____

Tim Ruff
Manager

EXHIBIT A
DESCRIPTION OF PROPERTY

The land referred to in this agreement is situated in the unincorporated area of the County of Yolo, State of California, and is described as follows:

PARCEL ONE:

All that certain piece of Parcel of land formerly situate in the County of Solano, State of California, and known as a portion of the "Briggs Vineyard" the Map of which was filed May 27, 1980 in Book 1 of Maps, at Page 65 and bounded on the East Bay by the North and South center line of Sections 15 and 22, T. 8N., R. 2E., M.D.B. & M. bounded on the South and West by lands formerly of H. Hamel (more recently owned by Lester J. Hamel, et al and described in decree recorded May 29, 1944 in Book 316 of Solano County Official Records at Page 361, Instrument No. 4442) and bounded on the North by the Southeasterly line of the right of way of the Southern Pacific Railroad Company, being a portion of Section 15 and 22 of T.8N., R. 2E., M.D.B. & M.

EXCEPTING THEREFROM that portion lying within the Parcel of land described in the Deed from Ellis Nishi, et ai, to the State of California , dated December 18, 1959, recorded February 19, 1960 in Book 1015 of Solano County Official Records at Page 379, Instrument No. 3306.

ALSO EXCEPTING THEREFROM the Parcel of land described in the Deed from Dick Nishi, et ai, to the State of California , dated March 4, 1971, recorded July 16, 1971 in Book 1696 of Solano County Official Records at Page 213, Instrument No. 14144.

ALSO EXCEPTING any portion within Solano County.

PARCEL TWO:

Beginning at the Southwest corner of that certain parcel of land conveyed to the State of California by Deed recorded February 19, 1960 in Book 1015 of Official Records at Page 379, Instrument No. 3306, Solano County Records ; thence (1) along said Southeasterly line of the Southern Pacific Railroad right of way N. 34° 49' 32" E., 679.16 feet; thence (2) N. 74° 33' 11" E, 443.82 feet; thence (3) from a tangent that bears N. 74° 33' 06" E , along a curve concave to the Northwest having a radius of 2,896.72 feet through an angle of 9° 53' 30", an arc distance of 500.10 feet, thence (4) from a tangent that bears N. 57° 13' 53" E , along a curve concave to the Northwest having a radius of 4,380 feet through an angle of 5° 57' 07", an arc distance of 456.00 feet to the North South one quarter section line of said Section 15; thence (5) S. 40° 55' 58" W., 680.38 feet; thence (6) from a tangent that bears S. 43° 18' 11" W., along a curve concave to the Northwest having a radius of 5,500 feet through an angle of 2° 45' 17", an arc distance of 264.43 feet; thence (7) from a tangent bearing S. 60° 09' 30" W., along a curve concave to the Northwest having a radius of 5,000 feet through an angle of 10° 01' 24", an arc distance of 874.7 feet; thence (8) S. 78° 28' 11" W., 233.11 feet to the point of beginning.

PARCEL THREE:

A portion of the Southwest quarter of Section 15 and of the Northwest quarter of Section 22, both in T. 8N., R. 2E., M.D.M., more particularly described as follows :

Beginning at the Southwest corner of that certain parcel of land conveyed to the State of California by deed recorded February 19, 1960 in Book 1015 of Official Records at Page 379, Instrument No. 3306, Solano County Records ; thence (1) S. 0° 30' OS" W., 364.88 feet; thence (2) from a tangent that bears S. 59° 29' 28" W., along a curve concave to the Northwest having a radius of 5,500 feet, through an angle of 4° 43' 06", an arc distance of 452.93 feet to said Southeasterly line of the Southern Pacific Railroad; thence (3) along last said line N. 34° 49' 32" E, 704.72 feet to the point of beginning .

EXCEPTING THEREFROM all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the above described Parcel of land, together with the perpetual right of drilling, mining, exploring and operating therefore and removing the same from said land, including the right to whipstock or directionally drill and mine from said lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through and across the subsurface of the land hereinabove described and to bottom such whipstock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, explore and operate through the surface of the upper 100 feet of the subsurface of the land hereinabove described or otherwise in such manner as to endanger the safety of any highway that may be constructed on said lands, as granted in the deed from the State of California, to Lester J. Hamel, et ux, dated August 28, 1972, recorded September 12, 1972 in Book 1775 of Official Records at Page 537, Instrument No. 21033, Solano County Records.

PARCEL FOUR:

Beginning at a point which is North 0° 20' East, 53.9 chains from the Southeast corner of a tract of land formerly known as the George G. Briggs Orchard and Vineyard, a map of which is on file, and which said Southeast corner is described on said map as being the Southeast corner of the Northwest quarter of Section 22, in T. 8N., R. 2E, M.D.M., said point of beginning is also North 0° 20' East 21.78 chains from the Southeast corner of land of G. W. Schlichten; thence North 88° 40' East, 12.65 chains to an iron stake at fence; thence to and along picket fence on East side of house enclosure North 0° 24' East, 17.19 chains to the middle of the channel of Putah Creek; thence up same in a Westerly and Northerly direction about 23 chains; thence along the boundary between land of Hamel and the land of Schlichten South 0° 20' West, 31.03 chains to the place of beginning.

EXCEPTING THEREFROM all that portion thereof lying Southeasterly and Southerly of the Northwesterly line of the parcel of land described in the Deed from Lester J. Hamel, et ux, to State of California, dated January 11, 1960, recorded April 1, 1960 in Book 1021 of Official Records at Page 542, Instrument No. 6426, Solano County Records.

ALSO EXCEPTING THEREFROM all of Lot 9, in the Northeast one-quarter of Section 15, T. 8N., R. 2E., M.D.B. & M., according to the Official Plat thereof.

PARCEL FIVE:

All of Lot 9, in the Northeast one-quarter of Section 15, T. 8N., R. 2E., M.D.B. & M., according to the Official Plat thereof.

EXCEPTING FROM THE PARCELS DESCRIBED ABOVE THE FOLLOWING:

BEGINNING at the most southwesterly corner of Parcel 2 of a Record of Survey as said map is filed for record in the Office of the County Recorder of Yolo County in Book 8 of Maps and Surveys at Page 103, said point being on the southeasterly right-of-way of SPRR: thence from said point of beginning, along the southerly line of said Parcel 2, S. 78°13'00" E., 314.75 feet; thence leaving said Parcel 2 the following nine (9) courses along the creekbed of the Putah Creek; 1) S. 55° 45' 56" E., 99.14 feet; 2) S. 39°48'40" E., 61.38 feet; 3) S. 01°32'00" E., 97.09 feet; 4) S. 05°55'00" W., 100.60 feet; 5) S. 10°46'00" W., 152.89 feet; 6) S. 00°13' 00" W., 49.99 feet; 7) S. 11°07'10" E., 50.87 feet; 8) S. 03°13'30" E., 100.10 feet; and 9) S. 20°40'10" E, 53.26 feet; thence leaving said creekbed of Putah Creek and along the westerly side of the proposed acquisition the following 7 courses: 1) N. 45°04'24" W., 76.60 feet; 2) along a curve to the right with a radius of 234.25 feet, a central angle of 49°13'11", an arc length of 201.23 feet; 3) N. 04°08'47" E 305.46 feet; 4) along a curve to the left with a radius of 93.83 feet, a central angle of 98°35'38" and an arc length of 161.46 feet; 5) S. 85°33'09" W. 77.11 feet; 6) N. 82°05'35" W., 84.90 feet; 7) N. 87°32'46" W., 140.69 feet to a point on the easterly right-of-way of SPRR: thence along said easterly right-of-way N. 34°22'30" E., 133.99 feet to the point of beginning.

APN: 036-170-18

EXHIBIT B

GENERAL PLAN AMENDMENT RESOLUTION
AND BASELINE PROJECT FEATURES

NISHI PROPERTY BASELINE PROJECT FEATURES

Project Goals

The essential concept for development on the Nishi property is to serve as a new student focused apartment neighborhood that takes advantage of the site’s close proximity to both Downtown Davis and UC Davis, major transit corridors, unique adjacent open space features along the Putah Creek corridor, Davis Bike Loop, and Arboretum, Project goals include meeting the critical need for student housing at the highest feasible levels of sustainability, defined as long-term and balanced outcomes for people, the environment, and the economy. City Council goals for the development include fiscal, economic, and social benefits for the overall community.

Land Use Summary

The land use program for the development of the Nishi property is a medium high-density student focused residential use; accessory commercial/retail space; on-site stormwater detention and open spaces, private open space for the proposed residential uses; and parking. A Land Use Map depicting the location of the proposed land uses, along with proposed roadways and connections to adjacent areas, is attached as Exhibit A.

The acreages are subject to minor changes to reflect requirements of engineering, sustainability, and other implementation requirements. The total number of residential units and accessory retail/office and parking cannot be greater than those outlined below without a further vote of the electorate, except as expressly set forth in these baseline project features.

Future development will be required to be consistent with the land use program enumerated in these Baseline Project Features (number of units, square footage, etc.) but would have flexibility in how specific buildings and exterior spaces on each block are designed in terms of orientation, floorplates, building footprints, etc.

Residential

As set forth in the General Plan amendment, a maximum of 700 multifamily residential rental units shall be permitted. The project will include no more than 2200 beds. Accessory buildings are permitted in this zone-along with management offices. This area is approximately 27 acres as shown on Exhibit A.

Accessory Retail/Office

10,000 square feet of Ancillary ground-floor retail, office, and service space, is permitted in the residential area as established in the Preliminary Planned Development for the Nishi property

Open Space

Open space within the Nishi site will include the Putah Creek corridor expanded to 3.3 acres, the Urban Forrest, and stormwater open space area totaling approximately 13.6 acres as depicted on Exhibit A.

Green Buffer- Urban Forrest

Open space shall include a continuous Urban Forest tree buffer between buildings and Interstate 80 as shown on Exhibit A.

Backbone Infrastructure

Backbone infrastructure includes a roadway bike and pedestrian connecting to the UC Davis campus, bicycle paths and sidewalks, public utilities, stormwater drainage and detention, and open space, and a grade-separated crossing of the Union Pacific Railroad. These improvements are solely the responsibility of Developer, at the Developer’s sole cost, with fee credits as set forth in the Development Agreement. Notwithstanding the above, City and Developer shall collaborate to seek grant or other financing for grade-separated connection to UC Davis, sustainability improvements, or other infrastructure components.

Roadways, Circulation, and Parking

The proposed circulation system for the Nishi site consists of new local streets, along with a system of pedestrian and bicycle “greenways” that would connect the site with the West Olive Drive subarea to the northeast and the UC Davis campus to the west. This system would provide enhanced connectivity for pedestrians, bicyclists, and transit riders, via new

multi-modal connections and linkages to existing greenways along the historic Putah Creek corridor.

The backbone access of the Nishi circulation system will connect with Old Davis Road and the UC Davis campus via a new grade-separated crossing of the UPRR line, subject to approval by the Regents of the University of California.

There will be no vehicular traffic access allowed to West Olive Drive except for emergency vehicles, & public transit.

Not more than 700 off-street surface parking spaces may be constructed on the site for residents as shown on Exhibit A. Visitor parking will also be provided as well as parking for on-site management.

Phasing

Construction of backbone infrastructure, including the central street, utility mains, and drainage improvements, may be commenced only after commencement of construction of the grade separated connection to UC Davis at Old Davis Road. Certificates of Occupancy will not be issued for any buildings on the property until the UC Davis connection (which is subject to approval by the Regents of the University of California), has been completed and adequate secondary emergency vehicle access is provided to the satisfaction of the City Manager.

Sustainability Components

The project is subject to Sustainability Commitments as established in the Development Agreement. Specific components required by these Baseline Project Features are the following:

- Compliance with EIR Mitigation Measure calling for a Transportation Demand Program, including limitations on peak-hour vehicle trips.
- Project will maximize photovoltaics, or equivalent, as established in the Development Agreement with goal of net zero. Project will join CCE once established and operative and will buy power at the “green rate” from CCE (if available) if project does not achieve net zero.
- All buildings shall meet LEEDv3 Gold standards or equivalency.
- The City Council may allow other energy generation or conservation features as substitutes for any or all of the photovoltaics, upon review by the Environmental Certification Panel and a determination that the substitution would provide additional sustainability benefits and be consistent with other requirements of the Baseline Project Features, EIR Mitigation Measures,
- For the sustainability program, developer shall install water sub metering to allow for individual monitoring for individual apartment units

Community Enhancements & Fees

Reimbursement for Property Taxes. Developer shall record a covenant on the title to the Project Site regarding property tax payments. The covenant shall include a permanent obligation for the property owner to make payments to the City, Yolo County, and Davis Joint Unified School District in lieu of the City’s, Yolo County’s and Davis Joint Unified School District’s respective share of otherwise-required property taxes in the event that the Property is acquired or master leased by an entity exempt from payment of property taxes. Wording of the covenant is subject to review and approval of the City Attorney

Developer shall repay predevelopment expenses incurred by City in accordance with the Pre-Development and Cost-Sharing Agreement approved by the City Council on November 27, 2012 as set forth in the Development Agreement

Developer shall contribute two hundred thousand (\$200,000) to community enhancement programs to be used at the sole discretion of the City Council for the following three City programs: on-site civic arts, establishment of a local carbon offset program, and implementation of the Downtown Parking Management Plan.

Developer will pay Development Impact Fees to City of Davis as outlined in Development Agreement, currently estimated as follows: \$11,000,000 impact fees plus \$2,100,000 in construction tax and \$2,100,000 permit fees.

Developer will pay Yolo County Impact Fees currently estimated at: \$2,200,000

Developer shall pay the Davis Joint Unified School District impact fees currently estimated at: \$2,100,000.

Agricultural mitigation

Agricultural mitigation shall be provided in accordance with City of Davis Municipal Code requirements. Mitigation lands shall be identified prior to commencement of construction activity on the Property. Location of mitigation lands is subject to review and approval by the City Council and will not include any City-owned land.

Affordable Housing:

The Developer shall comply with the affordable housing requirements as set forth in the Development Agreement, which is focused on providing housing for extremely low and very low income students.

Baseline Project Features: Implementation

The Nishi Gateway project is required to develop in a manner consistent with these Baseline Features. As provided for in Measure J/R, the Baseline Features may not be changed without approval by the voters of the City. The Planning Commission will review compliance with these Baseline Project Features as it considers application for Final Planned Development, Tentative Subdivision Map, approval of Design Guidelines, implementation of sustainability plans, and through the annual review of implementation of the Project's Development Agreement. There are other additional requirements for the Nishi Gateway project, including but not limited to, the mitigation measures set forth in the Final Environmental Impact Report, and the Development Agreement that, while important to the Project, are not Baseline Project Features and may be modified with the approval of the City, after the appropriate public process. In addition, minor changes to the Project can be anticipated during the course of this multiple year build out. Such changes, often the result of detailed engineering, sustainability obligations, or changing conditions, may be changed without voter approval, if they are substantially consistent

with the Baseline Features and they do not materially alter the character of the project, as established in Resolution 06-40 Establishing Criteria to Determine What Constitutes a Significant Project Modification or Change Requiring a Subsequent Measure J Vote.

EXHIBIT C

PROJECT APPROVALS

The Nishi Project required the following discretionary actions by the Davis City Council (the “Project Approvals”)

- ◆ Certification of the EIR and adoption of the Mitigation Monitoring and Reporting Program;
- ◆ Approval of the General Plan Amendment #08-14 and Establishment of the Baseline Project Features, as described on Exhibit B
- ◆ Rezoning and Planned Development #06-14
- ◆ Development Agreement

Applicable development standards include, but are not limited to, the following as of the Effective Date:

- ◆ 2007 General Plan Update, as amended (including but not limited to amendments adopted as Project Approvals)
- ◆ Chapter 40 of the City of Davis Municipal Code (Zoning) as amended (including but not limited to amendments adopted as Project Approvals)
- ◆ Chapter 36 of the City of Davis Municipal Code (Subdivisions)
- ◆ Section 8.01.065(A) of the City of Davis Municipal Code (Green Building Requirements)
- ◆ Chapter 40A of the City of Davis Municipal Code (Right to Farm Ordinance)

EXHIBIT D

SUBSEQUENT DISCRETIONARY APPROVALS

Following City Council approval of the Project Approvals, the following discretionary approvals and actions by the City are also required to implement the Project:

- ◆ Tax-share Agreement and Annexation;
- ◆ Tentative Subdivision Map(s), as required;
- ◆ Final planned development approvals, as required;
- ◆ Additional subdivision map approvals, as required
- ◆ Conditional use permits where applicable;
- ◆ Design Review where applicable;
- ◆ Complete other processing as required.

EXHIBIT E

ENVIRONMENTAL SUSTAINABILITY

LEED Obligations

The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. Therefore, the Developer and the City have agreed to the attached Sustainability Implementation Plan. The Project shall meet LEEDv3 Gold standards. Compliance for meeting LEEDv3 equivalency standards shall be demonstrated by an evaluation prepared by a third party mutually agreeable to the City and Developer, prior to building permit issuance. Developer may choose to maximize photovoltaic energy generation, or to adjust or substitute credits provided the point count for LEEDv3 Gold is met, to the satisfaction of the Director of Community Development and Sustainability. The Director may require third party verification of any changed credits, or monitoring during construction for compliance, at the cost of the Developer. Formal certification of the Project by the U.S. Green Building Council is not required.

Other Obligations

The Project is also subject to sustainability commitments in the Baseline Project Features, including:

- Compliance with EIR Mitigation Measure calling for a Transportation Demand Program, including limitations on vehicle trips for every project phase.
- The Developer shall engage a 3rd party photovoltaic energy consultant agreeable to the City to evaluate the site, building design and parking lot development areas, and produce a report that describes where to place photovoltaics and in what amount for maximum efficient energy production. The City shall review said report at the time the site plan and design review applications are made by the Developer and make recommendations to the Planning Commission and/or City Council on the placement of photovoltaics in effort to maximize photovoltaics while balancing tree and landscape placement. The Developer agrees to provide said photovoltaics on buildings, parking lots, or other areas in the amount conditioned by the City at the time the future site plan and design review application is approved by the City.
- The City Council may allow other energy generation or conservation features as substitutes for any or all of the photovoltaics, upon review by the Environmental Certification Panel and a determination that the substitution would provide additional sustainability benefits and be consistent with other requirements of the Baseline Project Features, EIR Mitigation Measures, and this Agreement.
- Project will maximize photovoltaics, or equivalent, as established in the Development Agreement with goal of net zero. Project will join CCE once established and operative and will buy power at the “green rate” from CCE (if available) if project does not achieve net zero.

Additional sustainability components include the following:

- All parking for multifamily rental units shall be charged separately from rent charges. Any resident may have the option of renting car-free housing.
- Developer shall implement a minimum \$2.00 “exit charge” for vehicles owned by residents that leave off-street parking lots and structures during peak hours. The Transportation Demand Management Program required by the Sustainability Implementation Plan and EIR Mitigation Measure 4.14-5 shall provide details on implementation, including method of charge and definition of “peak hour.”
- For the purpose of the sustainability program, developer shall install water submetering to allow for individual monitoring for individual apartment units. Nothing in this section shall change the City’s utility provisions that require that the property owner is the customer for City’s utility system.

Mitigation Measures

The project shall comply with Mitigation Measures identified in the Approved Mitigation Monitoring Plan, with modifications as identified in the Addendum to the Environmental Impact Report dated January 2018, including but not limited to Air Quality Mitigation Measures.

EXHIBIT F

TRANSPORTATION AND CIRCULATION COMMITMENTS

Circulation improvements to serve the Property, including the grade-separated crossing to the UC Davis campus and any at-grade or grade-separated crossing at Putah Creek Parkway are solely the responsibility of Developer, at the Developer's sole cost, subject to the of fee credits as set forth on Exhibit I. Notwithstanding the above, City and Developer shall collaborate to seek grant or other financing for grade-separated connection to UC Davis.

City shall diligently pursue Richards/I80 interchange improvements, provided, however, that the City Council shall determine whether it has the available funds to construct the improvements prior to construction. City and Developer shall attempt to leverage local funds with SACOG or grant funding.

Developer shall own and be responsible for all maintenance of roadways and pedestrian/bicycle infrastructure within the project area, and shall grant the City full public access rights over said facilities in a manner that is acceptable to the Public Works Director. The privately owned and maintained roadway, bicycle and pedestrian facilities shall be built and maintained in accordance with City standards or as otherwise acceptable to the Public Works Director.

At the time in which public transit routes and schedules are being evaluated for the site, Developer and City agree to engage public transit agencies to confirm new and/or modified public transit routes and schedules.

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

EXHIBIT G

COMMUNITY ENHANCEMENTS

Pursuant to the Baseline Project Features, Developer shall provide the following Community Enhancements, which are above and beyond the Project's requirements to provide additional benefits to the community.

1. Community Enhancement Contribution

Developer shall contribute two hundred thousand (\$200,000) community enhancement programs to be used at the sole discretion of the City Council for the following three City programs: on-site civic arts, establishment of a local carbon offset program, and implementation of the Downtown Parking Management Plan. This contribution will be allocated per parcel, on a basis such parcel size, parcel use, and/or anticipated as on a building square footage basis, at the time of approval of the first Tentative Subdivision Map for the project. Payment for each parcel shall be made with Certificate of Occupancy for the first building on that parcel.

2. Agricultural Mitigation

Agricultural mitigation shall be provided in accordance with City of Davis Municipal Code requirements. Mitigation lands shall be identified prior to commencement of construction activity on the Property. Location of mitigation lands is subject to review and approval by the City Council and will not include any City-owned land.

3. Telecommunications Conduit

Project shall construct and dedicate to the City telecommunications conduit to accommodate future expansion of broadband services, namely fiber optic cable to serve all buildings on the Property. Location and size of the conduit shall be subject to approval of the City as part of improvement plans.

4. Sales Tax Place of Sale

To the extent permitted by federal, state, and local law and upon approval of the Project, Developer shall designate the Project Site as the "Place of Sale" for the purposes of designating the retail sales location and calculating the sales tax obligations for the Property.

EXHIBIT H
PHASING PLAN

Consistent with the Baseline Project Features, construction of backbone infrastructure, including the central street, utility mains, and drainage improvements, may be commenced only after commencement of construction of the connection to UC Davis Certificates of Occupancy will not be issued for any buildings on the Property until the UC Davis connection (which is subject to approval by the Regents of the University of California), has been completed and adequate secondary emergency vehicle access is provided to the satisfaction of the City Manager.

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

1. Water

Water connection fees paid for residential units shall be capped at the existing City rates, based on meter size, of \$8,970 per ¾-inch meter, \$14,950 per 1-inch meter, \$29,900 per 1 ½-inch meter, \$47830 per 2-inch meter, and \$89,690 per 3-inch meter, through and including July 1, 2024, which shall not be extended pursuant to any of the provisions that allow extensions or tolling. Thereafter, if the water connection fee has increased, the residential units shall pay the then current connection fee. City shall investigate potential adjustments to water connection fees for smaller residential units to reflect a possibility of fewer residents residing within the unit and, therefore, lower water use.

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.

Water connection fees shall not be required by the City of Davis if the Project is connected to the UC Davis water treatment system and not the City system.

2. Wastewater

Wastewater connection fees for residential units shall be capped at the existing City rate of \$4,780 for condominium units, and \$3,320 for multi-family units through and including July 1, 2024, which shall not be extended pursuant to any of the provisions that allow extensions or tolling. City shall investigate potential adjustments to water connection fees for smaller residential units to reflect a possibility of fewer residents residing within the unit and, therefore, lower wastewater use. .

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.

Wastewater connection fees shall not be required by the City of Davis if the Project is connected to the UC Davis wastewater treatment system and not the City system.

3. Traffic/Roadway Capital Improvement Program Fees

The City has determined that Roadway Impact Fees for the retail component of the Project shall be assessed at the Core/AC retail rate given the proximity of the Project to the

Downtown Core Area and the UC Davis campus and the restrictions on on-site parking. Roadway Development Impact fees paid by the Project shall be capped at the existing City rate of, \$3,047 per studio/1BR unit, \$4,942 for other multifamily unit, , and \$8,448 per ksf retail, through and including July 1, 2024, which shall not be extended pursuant to any of the provisions that allow extensions or tolling. Thereafter, if the roadway connection fee has increased, Project shall pay the then current roadway fee.

Based upon the current adopted Capital Improvement Program, the Project is estimated to generate \$3,661,790 in Roadway Impact Fees, reflecting the project components described in Section 200. The City will apply a credit of up \$3,000,000 for the improvements across Putah Creek to Richards Blvd. to serve Unitrans, bike/ped, and emergency vehicle access. The amount of the credit will be based upon actual costs but shall not exceed \$3,000,000. The remaining \$661,790 will be applied towards the Project’s fair share of the Richards Boulevard/I-80 interchange. The City retains the discretion to apply the Roadway Development Impact Fees contributed by Developer to specific public improvements, as the City may determine appropriate.

Payment of Roadway Development Impact Fees, as set forth herein, shall fulfill Developer’s obligations to make a fair-share contribution to the costs of Interchange Improvements (Phase 1 Improvement: Richards Boulevard/I-80 Westbound Ramps and Phase 2 Improvements) required by EIR Mitigation Measure 4.14-2.

4. Community Enhancement Fund Multiplier for Units in Excess of Three Bedrooms

For any units in the project that contain more than three bedrooms, additional Community Enhancement Funds shall be paid as follows:

A multiplier shall be determined by dividing the total number of bedrooms in the project by the total number of units in the project to determine the average number of bedrooms per multifamily household for the project. The average number of bedrooms per multifamily unit for the project shall be divided by the Development Impact Fee occupants per multifamily unit assumption in place at the time of building permit for each building which will result in the Bedroom Count Basis Multiplier that would be applied to following Development Impact Fee categories:

Parks, Open Space, Public Safety Facilities, and General Facilities.

The formula to determine the additional Community Enhancement Funds shall be calculated as follows:

Development Impact Fee Amount * Bedroom Count Basis Multiplier – Development Impact Fee Amount = Community Enhancement Funds on a per Unit Basis prior to Subtracting Units comprised of Three or less Bedrooms

Community Enhancement Funds on a per Unit Basis prior to Subtracting Units Three Bedrooms or less*total units = Total Amount of Community Enhancement Funds prior to Subtracting Two and Three Bedroom Units (Raw Total)

Community Enhancement Funds on a per Unit Basis prior to Subtracting Two and Three Bedroom Units*Total Number of Two and Three Bedroom Units = Total Amount of Community Enhancement Funds to be Subtracted from Raw Total (Two and Three Bedroom Unit Reduction Amount)

Raw Total – Two and Three Bedroom Unit Reduction Amount = Total Community Enhancement Funds

5. Quimby Act Fees

Quimby Act fees do not apply to the project should it be developed as one (1) parcel. Should the project be mapped to include more than one (1) parcel, Quimby Act Fees may be applicable as determined by the Public Works Director.

6. Other Fees

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.

EXHIBIT J

Local Hiring Program for Construction

Local Hiring Policy for Construction. Developer shall implement a local hiring policy (the “**Local Hiring Policy**”) for construction of the Project, consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by Developer and its contractors at the Project of residents of the City of Davis (the “**Targeted Job Applicants**”), and in particular, those residents who are “**Low-Income Individuals**” (defined below).
2. Definitions.
 - a. “**Contract**” means a contract or other agreement for the providing of any combination of labor, materials, supplies, and equipment to the construction of the Project that will result in On-Site Jobs, directly or indirectly, either pursuant to the terms of such contract or other agreement or through one of more subcontracts.
 - b. “**Contractor**” means a prime contractor, a sub-contractor, or any other entity that enters into a Contract with Developer for any portion or component of the work necessary to construct the Project (excluding architectural, design and other “soft” components of the construction of the Project).
 - c. “**Low Income Individual**” means a resident of the City of Davis whose household income is no greater than 80% of the Median Income.
 - d. “**Median Income**” means the median income for the Yolo County median income, which is published annually by HUD.
 - e. “**On-Site Jobs**” means all jobs by a Contractor under a Contract for which at least fifty percent (50%) of the work hours for such job requires the employee to be at the Project site, regardless of whether such job is in the nature of an employee or an independent contractor.
3. Priority for Targeted Job Applicants. Subject to Section 6 below in this Exhibit L, the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority;
 - a. First Priority: Low Income Individuals living within one mile of the Project;

- b. Second Priority: Low Income Individuals living in census tracts throughout the City for which household income is no greater than 80% of the Median Income;
 - c. Third Priority: Low Income Individuals living in the City, other than the first priority and second priority Low Income Individuals; and
 - d. Fourth Priority: City residents other than the first priority, second priority, and third priority City residents.
4. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs related to the construction of the Project, by Developer or its Contractors.
 5. Outreach. So that targeted Job Applicants are made aware of the availability of On-Site Jobs, Developer or its Contractors shall advertise available On-Site Jobs in the Davis Enterprise or similar local newspaper.
 6. Hiring. Developer and its prime contractor shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs, in accordance with their respective normal hiring practices. The City acknowledges that the Contractors shall determine in the respective subjective business judgment whether any particular targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied.
 7. Term. The Local Hiring Policy extend throughout the construction of the Project until the final certificate of occupancy for the Project has been issued by the City.

EXHIBIT K

Water and Energy Conservation Information and Incentive Plan

Incentive Plan Goal. To reduce water and electric usage by incentivizing the residents to think conservatively.

Incentive Plan. Starting once the Project reaches 90% occupancy, and occurring every month thereafter, the residents in each specific unit type, i.e. studio, 1-bedroom, 2-bedroom, 4-bedroom and 5-bedroom, with the lowest usage for both water and energy will each receive a \$50 gift card. No unit can receive a gift card for more than two (2) consecutive months.

Water Usage Fee. Developer shall charge a water usage fee on units with “excessive” monthly usage above a baseline amount, which shall be established as an appropriate average amount for units of similar size and occupancy. The baseline water amount and fee shall be reviewed annually in consultation with the City to determine whether any adjustments are needed. Adjustments are subject to review and approval by the Director of Community Development and Sustainability.

Notices. Each unit will receive a monthly summary of that unit’s water and electric usage (with comparison information).

EXHIBIT LAffordable Housing Plan

Nishi Student Living

Developer will satisfy the City's affordable housing requirements through the rental of individual beds within the 700 multifamily rental units (the "Nishi Multifamily Units") that are developed in the Nishi development to very-low and extremely low income students.

1. Structure of Program

Developer intends to lease individual beds within the Nishi Multifamily Units, with the project marketed primarily to students. The 700 multifamily units are anticipated to include approximately 2,200 total beds. A minimum of 330 total beds (the "Affordable Beds") within the Nishi Multifamily Units shall be designated as affordable beds pursuant to this Affordable Housing Plan, with 220 beds rented to very low income students and members of their household ("Very-Low Income Beds"), and 110 beds rented to extremely low income students ("Extremely Low Income Beds"). There will be no distinction made between the Affordable Beds and beds rented at market rate, except that market beds may in one-bed bedrooms while all Affordable Beds are anticipated to have two beds per bedroom. Renters of the Affordable Beds will enjoy the same amenities and living experience as all other residents in the project. Affordable Beds shall be disbursed throughout the Nishi Student Living Project. Management staff employed by the owner of the Nishi Multifamily Units will administer both eligibility and suitability of residents and matches, subject to oversight by the City.

2. Qualification for Affordable Beds

The Affordable Beds will be made available to full-time students. To qualify to lease a Very-Low Income Bed, a full-time student must demonstrate that he or she is a member of a household whose annual income does not exceed a very-low income household income, adjusted for household size, as determined by the California Department of Housing and Community Development ("HCD") on an annual basis pursuant to California Code of Regulations Title 25, Section 6932 ("Very-Low Income"). To qualify to lease an Extremely Low Income Bed, a full-time student must demonstrate that he or she is a member of a household whose annual income does not exceed the annual income for an extremely low income household, adjusted for household size, as determined by HCD on an annual basis pursuant to California Code of Regulations Title 25, Section 6932 ("Extremely Low Income"). Students that participate in the program must also prove their full-time status with a schedule from any community college or four-year college or university. Full-time status will be reviewed at the execution of each lease, and subsequently on an annual basis prior to entering into a new lease or lease extension.

Developer shall be responsible for developing selection criteria for the Affordable Beds that are consistent with all state and federal fair housing laws, including but not limited to the Federal Fair Housing Act, the California Fair Employment and Housing Act, and the California Unruh

Act (collectively, “Fair Housing Laws”). The City shall reasonably consider changes to the eligibility criteria for the Affordable Beds if deemed necessary to comply with Fair Housing Laws.

Both financially dependent full-time students and financially independent full-time students will be eligible for the program if the following criteria are met:

A. Financially Dependent Full-time Students

Full-time students claimed as an income tax dependent by any individual for the tax year preceding application to the program may qualify for the program by demonstrating that the income of the student’s household, including the student’s income, does not exceed Very-Low Income or Extremely Low Income, as applicable to the Affordable Bed for Yolo County.

i. *Verifying Student Household’s Low Income Status:* The full-time student must verify his or her household income by means of documentation such as tax returns, W-2s, pay stubs, bank statements, and other information as deemed appropriate. “Income” shall be defined as set forth in 25 Cal. Code Regs. §6914. Developer shall be responsible for developing written procedures for verification of income status consistent with the Fair Housing Laws, this Affordable Housing Plan and the Regulatory Agreement to be recorded against the Nishi Multifamily Units. The written criteria shall be subject to review and approval by the City.

B. Financially Independent Full-time Students

Full-time students who have not been claimed as an income tax dependent by any individual for the tax year immediately preceding application to the program may qualify by verifying financial independence and by demonstrating that the full-time student’s income does not exceed Very-Low Income or Extremely Low Income for a single person household, as applicable to the Affordable Bed for Yolo County.

i. *Verifying Financially Independent Status:* Financially independent full-time students must be able to demonstrate that they are not claimed as a dependent on anyone else’s tax return and show financial self-sufficient status by means of verifying documentation such as tax returns and W-2s, and additional information to demonstrate financial independence.

ii. *Verifying Low Income Status:* The full-time student or non-student must document his or her income by means of verifying documentation such as tax returns, W-2s, FAFSA documentation, bank statements, etc. “Income” shall be defined as set forth in 25 Cal. Code Regs §6914. Developer shall be responsible for developing written procedures for verification of income status consistent with the Fair Housing Laws, this Affordable Housing Plan and the Regulatory Agreement to be recorded against the Nishi Multifamily Units. The written criteria shall be subject to review and approval by the City.

Alternatively, rather than Developer leasing the Affordable Beds described in this Affordable Housing Plan directly to qualified students, the Developer may, at its discretion, enter into an agreement with the University of California at Davis (the “University”), under which the Developer agrees to lease some or all of the Affordable Beds required under this Affordable Housing Plan to the University for the University to lease the beds to qualifying students as provided in this Affordable Housing Plan. The lease payment paid by the University for each bed leased under any such agreement will not exceed the amount allowed under this Affordable Housing Plan for the Affordable Bed leased to the University, considering whether the Bed is designated for a Very Low Income or an Extremely Low Income student. Any agreement completed under this provision shall contain a requirement that the University re-lease/sublet all Affordable Beds leased under this provision to full time students that meet the Income Qualifications for the individual Affordable Bed re-leased/subletted, whether Very Low Income or Extremely Low Income at the affordable rents, as set-forth in this Affordable Housing Plan.

3. Affordable Rent Determination

The monthly rent for each Affordable Bed will not exceed:

- i For a Very-Low Income Bed, 1/12 of 30% of the maximum annual income for a one person Very-Low Income household in Yolo County as determined by HCD; or
- ii. For an Extremely Low Income Bed, 1/12 of 30% of the maximum annual income for a one person Extremely Low Income household in Yolo County as determined by HCD.

This rental rate includes all utilities and any cost for amenities provided to residents of the Nishi Multifamily Units.

Priority of tenant applications will be based on demonstrated need. However, where qualifying tenant applicants outnumber available beds, a waitlist will be implemented that takes the order in which applications are received into account in addition to demonstrated need.

4. Marketing of Program

Developer shall develop and implement a marketing plan for the Affordable Beds that shall be subject to the review and reasonable approval by the City. The marketing plan shall include, at a minimum, use of social media channels, outreach to student programs on the UC Davis campus that represent traditionally underserved groups, as well as communication with the City of Davis, Yolo County Housing, and the UC Davis Housing Office to target outreach to eligible full-time college students in Davis and the surrounding region.

5. Reporting for Affordable Beds

Developer will provide an annual report to the City of Davis demonstrating compliance with this program.

In the event that Developer fails to lease all of the Affordable Beds in any year, after diligent efforts, Developer will pay the City of Davis' Housing Fund an amount equivalent to the difference between the total annual market rent and the rent for the Affordable Bed for each bed that is not rented to an Extremely Low or Very-Low Income student, as applicable for that year, and may lease those beds at market rate. If at any time Developer fails to fully rent the required number of Affordable Beds to qualified students for two consecutive years, the City may on its own initiative or at the request of Developer, consider and make modifications to this Affordable Housing Plan, including but not limited to expanding the availability of Affordable Beds to non-students, provided that any such modifications shall ensure to the satisfaction of the City in its discretion that Developer shall provide affordable housing in an amount consistent with the requirements of this Affordable Housing Plan.

6. Regulatory Agreement

The required number of Affordable Beds shall be maintained and rented in the Nishi Multifamily Units in perpetuity and shall be implemented through a Regulatory Agreement and Restrictive Covenants (the "Regulatory Agreement") which shall be recorded against the property upon which the Nishi Multifamily Units shall be located prior to or concurrently with the recordation of a final subdivision map establishing the parcel(s) upon which the Nishi Multifamily Units will be located. The Regulatory Agreement shall be consistent with the Plan as outlined herein and shall be in a form as prepared and approved by the City Manager and City Attorney. The Regulatory Agreement shall remain in effect in perpetuity and shall be in a senior position to any deeds of trust or other security instruments recorded against the Property for any purpose.