

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 _____, 2016, 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 master-planned mixed-use innovation district, including high density residential uses; a business park component; open spaces including parks, greenbelts, and stormwater detention; and associated infrastructure. The Project is a component of a Mixed-Use

Innovation District envisioned for the Property and properties located on West Olive Drive, as described in the Environmental Impact Report as the Nishi Gateway Project.

C. 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.

D. 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. _____ and the Mitigation Monitoring and Reporting Program adopted therewith.

E. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for 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.

F. In exchange for the benefits to the City, the Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code 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, 2016, 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 or non-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] Automatic Termination as to Residential Units/ Notice of Termination as to Other Parcels. This Agreement shall automatically be terminated, without any further action by any party or need to record any additional document, with respect to any condominium unit within a parcel designated by the Approvals for residential use, upon completion of construction and issuance by City of a final occupancy permit for such a dwelling unit and conveyance of such improved unit to a bona-fide good faith purchaser thereof. In connection with its issuance of a final inspection for such condominium unit, City shall confirm that all improvements which are required to serve the unit, 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, and that the dwelling is ready for occupancy by the homebuyer. Termination of this Agreement for any condominium unit as provided for in this Section 108 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. With regard to other parcels or lots which are not improved condominium units, 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.

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, for-sale condominiums, Office/Research and Development uses, and ancillary retail as described in the Preliminary Planned Development and Baseline Project Features. Preliminary estimate of residential unit bedrooms and sizes is as follows:

Rental Apartments			For-Sale Condominiums		
Rooms	Square Feet	Number of Units	Rooms	Square Feet	Number of Units
Studio	580	44	1BR/1BA	720	21
1BR/1BA	780	132	1BR/1BA w/Studio	840	42
2BR/2BA	1,100	88	2BR/2BA	1,150	42
3BR/3BA	1,320	44	2BR/2BA w/Studio	1,350	42
4BR/4BA	1,600	132	3BR/2BA	1,600	33
			3BR/2BA	2,200	30
Total		440			210

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 I and incorporated herein by reference. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement.

1. Environmental Sustainability. The City and the Developer have agreed that environmental concerns and energy efficiency are critical issues for new developments. 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 Tentative Subdivision Map for the project. Payment for each parcel shall be made with Certificate of Occupancy for the first building on that parcel.

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. Parks and Greenbelts. Parks and greenbelt space shall be installed in accordance with the Baseline Project Features and as established in Exhibit H. Each tentative and final map shall set forth the parks and green spaces to be constructed with that final map. The City shall review and approve the design, construction, and landscaping of the parks, greenbelts, and other green spaces in the project area. Park and open space amenities shall be consistent with the Implementing Actions of Chapter 6 of the Sustainability Implementation Plan, as applicable to each Tentative Map. 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.

7. Affordable Housing. The anticipated deal points for in the Pre-Development and Cost-Sharing Agreement approved by the City Council on November 27, 2012 assumed that there would be no affordable housing obligation for housing with densities exceeding 30 units per acre. In recognition of project location supporting of reduced costs for vehicle ownership and use, high-density housing including small ownership and rental units, and energy-efficiency features reducing resident energy costs, the Project is not required to provide price- and income-restricted rental or ownership housing.

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. Special District Formation.

A. [Sec. 1100] Land-Secured Financing District for Public Services. Developer agrees to participate in a land-secured financing district, as established in the Baseline Project Features, such as a Community Facilities District, to provide an ongoing revenue source to the City for municipal services. The initial amount of assessment or tax shall be no less than \$300,000 per year at full buildout, but no more than \$630,000 per year, and there shall be inflation adjustments. Specific amounts of assessment shall be established by the City Council to maximize revenue to the City, recognizing economic feasibility of the Project and anticipated assessed values. The district shall be established by the City Council, with review and recommendation from the Finance and Budget Commission, prior to or concurrently with the first Final Map or any land transfer within the Project.

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

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

CITY OF DAVIS

By _____

Daniel M. Wolk
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 Utah 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

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;
- ◆ Approval of Design Guidelines;
- ◆ 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

All residential, office, and research and development buildings on the Property shall be certified under the Leadership in Energy & Environmental Design (LEED) program offered by the U. S. Green Building Council, with a commitment to achieving silver level and a goal of reaching gold, or higher.

The City and the Developer shall pursue Leadership in Energy & Environmental Design Neighborhood Development (LEED-ND) certification for the Property. Developer and City shall consider modifications to the Project, consistent with the Baseline Project Features, to improve consistency with LEED-ND certification requirements. However, the project shall not be detrimentally modified, such as by adding intersections not providing improved connectivity or increasing the length and cost of grade-separated crossings with minimal sustainability benefit, in order to meet LEED-ND prerequisites or garner LEED-ND points.

The City shall establish an Environmental Certification Panel to make recommendations to the City Council. The Environmental Certification Panel shall be appointed by the City Council with representatives from City Commissions (Bicycling, Transportation, and Street Safety; Finance and Budget; Natural Resources; Open Space and Habitat; and Recreation and Park), Cool Davis, Developer, and at-large members with LEED credentials. UC Davis will be invited to provide an ex-officio member. The Environmental Certification Panel shall be charged with the following tasks regarding the Project:

1. Making recommendations to the City Council on consistency of Subsequent Discretionary Approvals with the Sustainability Implementation Plan for Nishi Gateway; and
2. Reviewing LEED-ND applications and alternative certification (if necessary) as described below.

No later than June 30, 2017, Developer shall submit a complete application, plus fees, for a Prerequisite Review to the U. S. Green Building Council to ascertain eligibility to meet the prerequisites for the Leadership in Energy & Environmental Design Neighborhood Development (LEED-ND) certification. The application shall be reviewed by the Environmental Certification Panel prior to submittal to the U. S. Green Building Council.

Should the Project be determined by the U.S. Green Building Council to meet the prerequisites for LEED-ND, Developer shall submit complete application for LEED-ND certification, representing

a minimum of gold level certification and a goal of platinum level, no later than six months prior to consideration of Tentative Subdivision Map and Final Planned Development applications by the Planning Commission. The application shall be reviewed by the Environmental Certification Panel prior to submittal to the U. S. Green Building Council.

Should the Project be determined by the U.S. Green Building Council to be ineligible for LEED-ND certification at levels requested, the Developer will provide funds for a company or individual knowledgeable with LEED certification, selected by the City Council with recommendation by the Environmental Certification Panel, to review the project and rate it using the LEED-ND point system as a guide, reflecting Baseline Project Feature and Development Agreement commitments over and above LEED-ND requirements such as installation of photovoltaics and reductions in parking. Certification review shall be completed, subject to review by the Certification Panel and approval by the City Council, no later than approval of the first Tentative Subdivision Map for the Project.

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

- Compliance with EIR Mitigation Measure 4.14-5 calling for a Transportation Demand Program, including limitations on vehicle trips for every project phase.
- 4.9 megawatts of photovoltaic, or equivalent. 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.
- Buildings exceeding 2013 Title 24 Energy Efficiency standards by 30%, or more restrictive standard established by State law at the time of building permit.

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.

EXHIBIT F

TRANSPORTATION AND CIRCULATION COMMITMENTS

Circulation improvements to serve the Property, including the grade-separated crossing to the UC Davis campus and the bridge over the Putah Creek Parkway, are solely the responsibility of Developer, at the Developer's sole cost, subject to the possibility 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.

Construction of transportation improvements pursuant to Baseline Project Features and Exhibit H are required. Olive Drive improvements shall be constructed concurrently with the improvements to the Richards Boulevard and Olive Drive intersection. Prior to construction of Olive Drive frontage improvements, City and Developer shall enter into an agreement for reimbursement from Olive Drive property owners for frontage improvements constructed by Developer should Olive Drive properties be redeveloped within 25 years of the effective date of this Agreement.

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. Affordable Housing Trust Fund Contribution

The anticipated deal points in the Pre-Development and Cost-Sharing Agreement approved by the City Council on November 27, 2012 assumed that there would be no affordable housing obligation for housing with densities exceeding 30 units per acre. In recognition of project location supportive of reduced costs for vehicle ownership and use, high-density housing including small ownership and rental units, and energy-efficiency features reducing resident energy costs, the Project is not required to provide price- and income-restricted rental or ownership housing. Nonetheless, the project will contribute one million dollars (\$1,000,000.00) to the City of Davis for deposit to the affordable Housing Trust Fund, to be used at the sole discretion of the City Council. This contribution will be allocated per parcel, on a basis such parcel size, parcel use, and/or anticipated 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. 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.

3. 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.

4. 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.

5. 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.

6. City Option / Right of First Refusal for Office/R&D Parcels

Developer shall give City an option to purchase and a right of first refusal to purchase any or all office/R&D parcels for a period of eighteen months from completion of backbone infrastructure and recordation of Final Map, whichever is later. Implementing Agreement(s) shall be approved and executed by the Parties prior to or concurrently with the first Final Map or any land transfer within the Project and recorded no later than concurrently with the first Final Map.

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 both the connection to UC Davis and the reconfiguration of the Richards Boulevard interchange identified as the “I-80/Richards Interchange” in the Sacramento Area Council of Governments 2012 Metropolitan Transportation Plan. 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), the Interchange improvements, and the road connection to West Olive Drive from the Project have been completed.

Backbone infrastructure, including roadways, utilities, and telecommunications conduit, necessary for development of R&D properties shall be provided with the first phase of construction, so that parcels are ready for application for design review and building permits.

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, \$47,830 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 \$6,023 per single-family attached unit, \$3,047 per studio/1BR unit, \$4,942 for other multifamily unit, \$5,192 per thousand square feet (ksf) for office/business park, 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 \$4,775,462 in roadway impact fees, reflecting the project components described in Section 200. 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. City anticipates that three million dollars (\$3,000,000) of the Roadway Impact Fees will be used for the Richards Boulevard Interchange.

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.

The Project shall be entitled to fee credits for construction of the Olive Drive and Richards Boulevard Intersection improvements and the bridge over the Putah Creek Parkway, but only to the extent that these fee credits do not reduce the total Roadway Impact Fee payment to less than the three million dollars (\$3,000,000) identified above. This credit will be applied to Roadway Impact Fees due after three million dollars in Roadway Development Impact Fees has been collected from the Project, or through other allocation system approved by the City Manager and set forth as a Minor Amendment to this Agreement,

4. Quimby Act Fees and Park Impact Fees

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

5. 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.