

INDEMNITY AGREEMENT
Grande Affordable Units Buyer Selection Process

This Indemnity Agreement ("Agreement") is made this ____ day of _____, 2016, by and between the City of Davis, a California municipal corporation (hereinafter referred to as the "City"), Grande Village, LLC, a California limited liability corporation (hereinafter referred to as the "Developer"), and the Davis Joint Unified School District, a California school district (the "District"). City, Developer and District are individually referred to herein as a "party" and collectively as the "parties."

RECITALS

This Agreement is made with respect to the following facts:

A. District was previously the owner of that certain real property consisting of approximately 8.83 acres, commonly identified by the Yolo County Assessor's Office as Assessor's Parcel Number 035-970-12, generally located South of Grande Avenue and North of Covell Park (hereinafter referred to as the "Property").

B. On December 16, 2008 and January 6, 2009, following application by the District, the City Council approved certain entitlements for the development of the Property as a 41 unit residential development (the "Development"), which entitlements included an amendment to the General Plan land use designation of the parcel from Public Semi-public to Residential Low Density, approval of an ordinance adopting a Development Agreement relating to the Property, approval of a Planned Development Ordinance that rezones the parcel from Residential One-family to Planned Development #7-07 permitting the proposed residential subdivision and uses, approval of a vesting tentative map subdividing the Property for single-family residential lots, greenbelt lots, roadway and a park lot, and approval of a final planned development permit establishing final zoning standards for the residential lots in the new P-D district (the "Entitlements").

C. Pursuant to the terms of the approved Entitlements, the City and District entered into that certain Agreement by and between the City of Davis and Davis Joint Unified School District Relating to the Development of the Property Commonly Known as the Grande School Site dated December 16, 2008 (the "Development Agreement").

D. The Development will include eight units that will be sold to low and moderate income households in accordance with the requirements of Article 18.05 of the Davis Municipal Code, and six units that will be sold to middle income households in accordance with the requirements of Article 18.06 of the Davis Municipal Code (collectively, the "Affordable Units").

E. The Development Agreement and the conditions of approval contained in the Entitlements require that the Affordable Units will be sold in accordance with the City Buyer Selection Guidelines for Affordable Housing, except that upon completion of the Affordable Units, the District and the Developer of the Development shall conduct an initial lottery for the

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sale of the Affordable Units for District employees only, with each eligible applicant having a single ticket in the lottery. In the event that Affordable Units are offered to all eligible District employee applicants, as applicable, and there are still unsold Affordable Units, the Developer shall conduct a second lottery in accordance with the City's Buyer/Selection Guidelines. City's agreement to provide this preference to District employees in the selection process is conditioned upon the District's agreement to fully indemnify the City for any claims based on the implementation of such preference.

F. District has sold the Property to Grande Village, LLC, a private residential developer (the "Developer"), and assigned the Entitlements, including the Development Agreement, to the Developer. Further, on May 27, 2015, the Planning Commission approved an updated Final Planned Development permit for the Development.

G. As a condition for the Developer to implement the preference for District employees, Developer requires the District to indemnify and hold harmless the Developer from claim or legal action that arises based on the preference for District employees in the selection of buyers for the Affordable Units.

H. City, Developer and District desire to enter into this Agreement to make clear that notwithstanding the District's conveyance of the Property and the Entitlements to Developer, including the rights and responsibilities to hold an initial lottery for District employees, the District is still obligated to defend, indemnify and hold harmless the City from any claim or legal action that arises based on the implementation of the preference for District employees in selection of buyers for the Affordable Units, as set forth in the Development Agreement and the conditions of approval for the Entitlements, and to pay all costs and expenses related to the City's defense in the manner set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City, Developer and District agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City, Developer and the District have entered into this Agreement. City, Developer and District each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. Indemnification. To the fullest extent permitted by law, District shall fully indemnify, defend (at District's sole cost and expense), protect and hold harmless the Developer and the City, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys from and against: any and all actual claims, demands, obligations, acts, causes of action, damages, costs, expenses, losses, judgments, fines penalties and liabilities, in law or in equity, to person or property, of every kind or nature whatsoever made or suffered by any person, including but not limited to claims relating to the implementation of the preference for District employees in buyer selection for the Affordable

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Units, as more specifically described in the Development Agreement and the conditions of approval for the Entitlements, specifically including Rezoning and Preliminary P-D #7-07 Condition of Approval #2.iv.. Notwithstanding the foregoing, this indemnification obligation shall not extend to any claims, demands, obligations, acts, causes of action, damages, costs, expenses, losses, judgments, fines penalties and liabilities, in law or in equity, to person or property, of every kind or nature whatsoever made or suffered by any person, arising from the City's Affordable Housing program requirements, including the City's Buyer/Tenant Selection and Screening Guidelines for Affordable Housing.

3. Duty to Defend. District shall be responsible to defend, at its own cost, expense and risk, any and all such aforesaid claims, demands, acts, causes of action, damages, costs, expenses, losses or liabilities of any kind that may be brought or instituted against the City, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys. Notwithstanding the foregoing, this Duty to Defend shall not extend to any claims, demands, obligations, acts, causes of action, damages, costs, expenses, losses, judgments, fines penalties and liabilities, in law or in equity, to person or property, of every kind or nature whatsoever made or suffered by any person, arising from City's Affordable Housing program requirements, including the City's Buyer/Tenant Selection and Screening Guidelines for Affordable Housing.

4. Satisfaction of Judgment. With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses or liabilities which District has indemnified the City against and which the City has tendered to District for defense, District shall pay and satisfy any judgment, award, settlement or decree that may be rendered or agreed against the City, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys, arising out of any final, non-appealable judicial or administrative action.

5. Obligation Not Restricted. District's obligation to indemnify the Developer and the City, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys, shall not be restricted to insurance proceeds, if any, received by the District as a result of any claims made in connection to the preference for District employees in buyer selection for the Affordable Units, as described in this Agreement.

6. Attorneys' Fees and Costs. If any legal action or other proceeding is brought by one of the parties to this Agreement for the enforcement or defense of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

7. Authority to Enter Agreement. Each party warrants that the individuals who have signed this Agreement on its behalf have the legal power, right, and authority to enter into this Agreement and bind each such respective party.

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8. Entire Agreement. This written document contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written statements or agreements between the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties.

9. Notices. All notices required or necessary under this Agreement shall be given in writing to the following addresses or such other addresses as the parties may designate by written notice:

CITY: City Manager
City of Davis
23 Russell Blvd
Davis, CA 95616

With copy to: Best, Best & Krieger LLP
500 Capitol Mall
Suite 1700
Sacramento, CA 95814
Attn: Harriet A. Steiner

DISTRICT: Superintendent
Davis Joint Unified School District
526 B Street
Davis, CA 95616-3811

With copy to: Atkinson, Andelson, Loya, Ruud and Romo
2485 Natomas Park Drive
Suite 240
Sacramento, CA 95833
Attn: Lisa R. Allred

DEVELOPER Grande Village, LLC
1949 5th Street, Suite 107
Davis, CA 95616
Attn: Don Fouts

All notices shall be delivered by personal delivery, overnight courier, or by US certified mail, return receipt requested, and shall be considered effective upon receipt (or upon the date any addressee refuses delivery). Notices may not be delivered by facsimile or by electronic mail.

10. Waiver. No waiver of any default hereunder shall constitute a waiver of any other breach or default, whether of the same or of any other covenant or condition. No waiver

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given by either party shall give the other party any contractual right by custom, estoppel or otherwise which is in conflict with any written provision of this Agreement.

11. No Assignment. Neither party may assign and/or transfer any interest in this Agreement without the prior written consent of the other party hereto.

12. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

13. Captions. The captions of the various articles and paragraphs of this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first written above.

CITY OF DAVIS:

**DAVIS JOINT UNIFIED SCHOOL
DISTRICT**

By: _____
Dirk Brazil
City Manager

By: _____
Its: _____

ATTEST:

By: _____
Zoe S. Mirabile, CMC
City Clerk

By: _____
Its: _____

APPROVED AS TO FORM:

Harriet A. Steiner
City Attorney

GRANDE VILLAGE, LLC.

By: _____
Its: _____ *Managing Partner*