



OVERSIGHT BOARD TO THE CITY OF WINTERS SUCCESSOR AGENCY TO
THE WINTERS COMMUNITY DEVELOPMENT AGENCY

City Council Chambers
318 First Street
Monday, July 28, 2014

1:00 p.m. – Regular Meeting

AGENDA

Members of the Oversight Board

Harold Anderson- City of Winters
Sarah Chapman- Solano College District
Diane Cirolini- Yolo County Office of Education
Larry Justus- Winters Cemetery District
Nanci Mills- City of Winters CDA Employees
Jiley Romney- Yolo County Public Appointee
Don Saylor- Yolo County

Staff to Oversight Board

John W. Donlevy, Jr., City Manager
Shelly Gunby, Director of Financial Management
Dan Maguire, Housing Programs Manager
Tracy Jensen, Secretary to Oversight Board

PLEASE NOTE – The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Chairman of other Board Members. Public comments time may be limited and speakers will be asked to state their name.

Roll Call

Pledge of Allegiance

Approval of Agenda

BOARD COMMENTS

PUBLIC COMMENTS

At this time, any member of the public may address the Oversight Board on matters, which are not listed on this agenda. Citizens should reserve their comments for matter listed on this agenda at the time the item is considered by the Board. An exception is made for members of the public for whom it would

create a hardship to stay until their item is heard. Those individuals may address the item after the public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

CONSENT CALENDAR

All matters listed under the consent calendar are considered routine and non-controversial, require no discussion and are expected to have unanimous Board support and may be enacted by the Oversight Board in one motion in the form listed below. There will be no separate discussion of these items. However, before the Oversight Board votes on the motion to adopt, members of the Oversight Board, staff, or the public may request that specific items be removed from the Consent Calendar for separate discussion and action. Items(s) removed will be discussed later in the meeting as time permits.

- A. Minutes of the June 2, 2014 meeting of the Oversight Board to the City of Winters Successor Agency to the Winters Community Development Agency (pp 4-6)

PRESENTATIONS

None at this meeting.

DISCUSSION ITEMS

- 1. Public Hearing and Consideration of Resolution OB-2014-07 Approving the Domus Development Purchase and Sale Agreement (pp 7-50)

STAFF REPORT

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the July 28, 2014 meeting of the Winters Oversight Board was personally delivered to each Board member by electronic mail, and by United States Postal Service in a sealed envelope with postage prepaid and posted on the outside public bulletin board at City Hall, 318 First Street on July 21, 2014, and made available to the public during normal business hours.



Tracy Jensen, Management Analyst

Questions about this agenda – Please call the City Manager’s office at (530) 795-4910 ext. 110. Agendas and staff reports are available on the city web page www.cityofwinters.org

General Notes: Meeting facilities are accessible to persons with disabilities. To arrange aid or services to modify or accommodate persons with disability to participate in a public meeting, contact the City Clerk.

Staff recommendations are guidelines to the Oversight Board. On any item, the Board may take action, which varies from that recommended by staff.

The city does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

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City Clerk’s Office – City Hall – 318 First Street

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MINUTES OF THE REGULAR MEETING OF THE OVERSIGHT BOARD
TO THE CITY OF WINTERS SUCCESSOR AGENCY TO THE WINTERS
COMMUNITY DEVELOPMENT AGENCY

City Council Chambers
318 First Street
June 2, 2014

Chairman Larry Justus called the meeting to order at 2:08 p.m.

Present: Members Nanci Mills, Jiley Romney, Don Saylor and Chair Larry Justus.
Absent: Members Harold Anderson, Sarah Chapman, and Diane Cirolini.
Staff: City Manager John Donlevy, Director of Financial Management Shelly Gunby, Environmental Services Manager Carol Scianna, and Board Secretary Tracy Jensen.

Don Saylor led the Pledge of Allegiance.

Approval of Agenda: The date of the minutes was corrected from May 5 to April 7, as there was no Oversight Board meeting in May. Motion by Saylor, second by Romney to approve the agenda. Motion carried with the following vote:

AYES: Mills, Romney, Saylor, Justus
NOES: None
ABSENT: Anderson, Chapman, Cirolini
ABSTAIN: None

BOARD COMMENTS: None

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the April 7, 2014 meeting of the Oversight Board to the City of Winters Successor Agency to the Winters Community Development Agency

Motion by Romney, second by Saylor to approve the Consent Calendar. Motion carried with the following vote:

AYES: Mills, Romney, Saylor, Justus
NOES: None
ABSENT: Anderson, Chapman, Cirolini
ABSTAIN: None

PRESENTATIONS: None

DISCUSSION ITEMS

1. Purchase and Sale Agreement for 311 First Street, Winters

Director of Financial Management Gunby gave an overview. Motion by Mills, second by Romney to approve the Purchase and Sale Agreement for 311 First Street. Motion carried with the following vote:

AYES: Mills, Romney, Saylor, Justus
NOES: None
ABSENT: Anderson, Chapman, Cirolini
ABSTAIN: None

2. Setting a New Regular Meeting Day for the Oversight Board

Director of Financial Management Gunby gave an overview. Moving the meeting to a later day in the month will give staff enough time to receive the forms from the DOF, prepare the forms and reports with ample time for the board to consider and approve and eliminate the need to call special meetings.

The proposed meeting day is the 4th Monday of the month. If the absent members are OK with this change, the board will approve.

STAFF REPORT: None

ADJOURNMENT: Chairman Justus adjourned the meeting at 2:17 p.m.

Larry Justus, Chairman

Tracy Jensen, Secretary to Oversight Board



**OVERSIGHT BOARD TO THE DISSOLVED WINTERS COMMUNITY
DEVELOPMENT AGENCY
STAFF REPORT**

TO: Honorable Chair and Members of the Oversight Board to the Dissolved
Winters Community Development Agency

DATE: July 28, 2014

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Dan Maguire, Economic Development and Housing Manager *DM*

SUBJECT: Consideration of Resolution OB-2014-07 Approving the Domus
Development Purchase and Sale Agreement

RECOMMENDATIONS:

It is recommended that the Oversight Board take the following actions: 1) Hold a Public Hearing regarding Approval of Successor Agency Sale of Portions of the Real Property commonly referred to as the Grant Avenue Commercial Property (APN #s 003-370-028, 003-370-029, 2) Approve the Sale of Portions of the Grant Avenue Commercial Property to Domus Development, and 3) Adopt Resolution OB-2014-07.

BACKGROUND:

In May 2009, the Winters CDA ("Redevelopment Agency") purchased the Grant Avenue lot on the south side of Grant Avenue between East Street and Morgan Street formerly known as Granite Bay Commercial. The CDA subsequently authorized the issuance of an RFP for potential developers to offer proposals for development of the site. Although the CDA did enter into an Exclusive Negotiation Agreement ("ENA") with the Yackzan Group, that ENA did not result in any development on the property.

The City and Successor Agency have continued to pursue mixed use development on the property, consistent with the original intent of the acquisition. Earlier this year, the City Council authorized the issuance of a Request for Proposal/Qualifications ("RFP/RFQ") for the development of an Affordable Senior Housing Multifamily project.

Domus Development LLC was selected by City Council as the preferred developer for the project and the City Manager was authorized to enter into an Exclusive Negotiation Agreement ("ENA") with Domus. Domus Development is pursuing site control of the property, which is a threshold requirement for applications to pursue funding from various Federal funding sources, such as HOME, CDBG, and Tax Credit Allocations, and to do so desires to enter into the proposed Purchase and Sale Agreement with the Successor Agency for the property at issue.

The offer price of \$5.00 per square foot is more than the original acquisition price, and is also greater than the most recent appraisal price. The proposed acquisition is for 1.5 acres (65340 square feet)

The proposed sale of the property is consistent with the Successor Agency's Long Range Property Management Plan, which has been approved by the Oversight Board and the Department of Finance. The Long Range Property Management Plan noted that the Successor Agency contemplated that it would sell a portion of the Grant Avenue Commercial Property for the development of a senior affordable housing project

FISCAL IMPACTS:

The City's and Successor Agency's costs associated with selling the properties are to-be-determined; however, at the proposed sales price, the Successor Agency stands to realize approximately \$326,700 from the transaction, with the proceeds to be allocated to the local taxing agencies as prescribed by law.

ATTACHMENTS:

Purchase and Sale Agreement with Domus Development
Resolution OB-2014-07

RESOLUTION NO. OB-2014-07

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE DISSOLVED WINTERS COMMUNITY DEVELOPMENT AGENCY APPROVING A REAL PROPERTY PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE CITY OF WINTERS, SUCCESSOR AGENCY TO THE WINTERS COMMUNITY DEVELOPMENT AGENCY AND DOMUS DEVELOPMENT

WHEREAS, in May 2009, the Winters CDA (“Redevelopment Agency”) purchased the Grant Avenue lot on the south side of Grant Avenue between East Street and Morgan Street formerly known as Granite Bay Commercial (APNs: 003-370-028, 029 and 030); and

WHEREAS, as part of the Fiscal Year 2011-2012 State budget bill, the California state legislature enacted, and the Governor signed, Assembly Bill X1 26 (“AB 26”), which added Parts 1.8 and 1.85 to the Community Development Law (the “CRL”) (Health and Safety Code Sections 33000 et seq.), and which laws caused the dissolution and winding down of all redevelopment agencies in California (the “Dissolution Act”); and

WHEREAS, on December 29, 2011, in the petition California Redevelopment Association v. Matosantos, Case No. S194861, the California Supreme Court upheld the Dissolution Act and thereby all redevelopment agencies in California were dissolved as of February 1, 2012 under the dates in the Dissolution Act that were reformed and extended thereby; and

WHEREAS, by Resolution considered and approved by the City Council in 2012, the City elected to become and serve as the successor agency to the Redevelopment Agency (the “Successor Agency”), with responsibility to wind down the affairs of the Redevelopment Agency and dispose of its assets under the direction of an oversight board (the “Oversight Board”); and

WHEREAS, as of February 1, 2012, the Redevelopment Agency dissolved and the Successor Agency became operational; and

WHEREAS, AB 26 was amended by the State Legislature in June, 2012, pursuant to Assembly Bill 1484 (“AB 1484”) to provide new requirements to wind down the affairs of the dissolved Redevelopment Agency; and

WHEREAS, the Successor Agency has authority to sell assets of the former Redevelopment Agency pursuant to the requirements of AB 26 and AB 1484; and

WHEREAS, on June 17, 2014, the City Council, acting as Successor Agency, adopted Resolution SA 2014-05 approving a Purchase and Sale Agreement with Domus Development with respect to the property; and

WHEREAS, at the June 17, 2014 City Council meeting, the City Council authorized the City Manager to execute a Purchase and Sale Agreement with Domus Development for residential development on a portion of the property (the "Site"), consistent with the original intent of the acquisition. The Agreement allowed for up to 180 days for Domus to complete their due diligence review, with the close of escrow to be completed by December 31, 2015; and

WHEREAS, Health and Safety Code Section 34191.5(b) requires the Successor Agency to submit a Property Management Plan to the Successor Agency's oversight board and the Department of Finance for approval no later than six months following the issuance to the Successor Agency of the finding of completion pursuant to Health and Safety Code Section 34179.7; and

WHEREAS, the Successor Agency, upon receiving a Finding of Completion from the Department of Finance, prepared and approved a Property Management Plan ("PMP") at the July 2, 2103 Council meeting. The PMP then went to the Oversight Board for approval on July 8, 2013. The PMP was submitted to the Department of Finance on July 8, 2013; and

WHEREAS, the Department of Finance subsequently approved the PMP; and

WHEREAS, on July 18, 2013, the City received a call from the Department of Finance indicating that if the P&S agreements were executed by the Successor Agency, the sales proceeds would go directly to the Redevelopment Property Tax Trust Fund ("RPTTF"); and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER WINTERS COMMUNITY DEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. CEQA Compliance. The Oversight Board of the Successor Agency to the dissolved Winters Community Development Agency determines that approval of the proposed Purchase and Sale Agreement does not qualify as a project for purposes of the California Environmental Quality Act. The City Clerk is authorized and directed to file, on behalf of the Successor Agency, a Notice of Exemption with the appropriate official of the County of Yolo, California, within five (5) days following the date of adoption of this Resolution.

Section 3. Approval of Purchase and Sale Agreement. The Oversight Board of the Successor Agency hereby approves the Real Property Purchase And Sale Agreement and Joint Escrow Instructions by and between the City of Winters, Successor Agency to the Dissolved

Winters Community Development Agency and Domus Development LLC, in substantially the form currently on file with the City Clerk.

Section 4. Authorization to Take Action. The Oversight Board of the Successor Agency to the dissolved Winters Community Development Agency hereby authorizes the City Manager to take all actions and do all things required by or necessary and proper to perform and carry out the proposed Purchase and Sale Agreement, including without limitation the sale of the Site to Domus Development pursuant to the Purchase and Sale Agreement, and to execute and deliver all certifications, agreements and other documents necessary or required under the Purchase and Sale Agreement, to effectuate sale of the Site to Domus Development. Furthermore, the City Manager is hereby authorized and directed to take any action necessary to carry out the purposes of this Resolution and comply with applicable law regarding including submitting the Purchase and Sale Agreement to the Department of Finance for approval.

Section 5. Certification. The City Clerk shall certify to the adoption of this Resolution.

Section 6. Effectiveness. Pursuant to Health and Safety Code section 34179(h), all actions taken by the Oversight Board may be reviewed by DOF and, therefore, this Resolution shall become effective five (5) business days after the date of its adoption, except to the extent that a request for review of the actions taken in this Resolution is made by DOF, in which case the Resolution shall be effective when approved by DOF within the time frames for approval required by law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Oversight Board of the Successor Agency to the dissolved Winters Community Development Agency on the 28th day of July, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Larry Justus, Chair

ATTEST:

Secretary

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Portion of Grant Avenue Commercial Property – Domus Development)**

by and between the

CITY OF WINTERS, a municipal corporation,

**acting as SUCCESSOR AGENCY TO THE DISSOLVED COMMUNITY
DEVELOPMENT AGENCY**

and

DOMUS DEVELOPMENT, LLC

[Dated as of June 30, 2014, for reference purposes only]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Portion of Grant Avenue Commercial Property – Domus Development)**

This REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (Portion of Grant Avenue Commercial Property) (“**Agreement**”) is dated as of June 30, 2014, for reference purposes only, and is entered into by and between the CITY OF WINTERS, a municipal corporation acting as SUCCESSOR AGENCY TO THE DISSOLVED WINTERS COMMUNITY DEVELOPMENT AGENCY (“**Seller**” or “**Successor Agency**”), and DOMUS DEVELOPMENT, LLC, a California limited liability company (“**Buyer**”). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a “**Recital**”):

RECITALS

A. The Successor Agency of the City of Winters (“**Successor Agency**”) owns that certain real property constituting approximately 4.522 acres of real property located on East Grant Avenue between Morgan Street and East Street (APNs 003-370-028, -029, 030) (the “**Property**”).

B. Buyer is a reputable and highly successful affordable housing real estate development company, specializing in affordable housing properties. Buyer desires to acquire the southern-most portion of the Property, as more particularly described below (the “**Site**”), for development of a Multifamily project in support of affordable housing to accommodate a senior housing project.

C. The Successor Agency has prepared, and the State Department of Finance has approved, a Long Range Property Management Plan pursuant to California Health & Safety Code Section 34191.5, which contemplates that the Site will be sold and developed as a senior affordable housing development.

D. Seller and Buyer desire to enter into this Agreement to provide for Buyer’s acquisition of the Site at its “as is” fair market value of the fee simple estate.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS OF SELLER AND BUYER SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, SELLER AND BUYER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **Definitions.** The following words, terms and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Agreement.** This Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Portion of Grant Avenue Commercial Property) by and between Seller and Buyer, including all of the attached exhibits.

1.1.2 **Approval.** Any approval, consent, certificate, ruling, authorization or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to complete the purchase and sale of the Site.

1.1.3 **Business Day.** Any weekday on which the Seller is open to conduct regular governmental functions.

1.1.4 **Buyer.** Domus Development LLC, a California limited liability company, and any assignee of or successor to the rights, powers or responsibilities of Domus Development LLC under this Agreement.

1.1.5 **Buyer Title Policy.** A standard CLTA owner's policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Site vested in Buyer, subject to Permitted Exceptions.

1.1.6 **CEQA.** The California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* and implementing regulations contained in Title 14, Chapter 3, Section 15000, *et seq.* of the California Code of Regulations.

1.1.7 **CEQA Documents.** Any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government Agency, pursuant to CEQA, to issue any discretionary Approval required to approve this Agreement.

1.1.8 **City.** The City of Winters, a California municipal corporation.

1.1.9 **City Manager.** The City Manager of Seller or his or her designee or successor in function.

1.1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and, if an Indemnitor improperly

fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.11 **Close of Escrow.** The first date on which the Escrow Agent has filed the Seller Deed with the County for recording in the official records of the County.

1.1.12 **County.** The County of Yolo, California.

1.1.13 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.14 **Deposit.** Ten Thousand Dollars and No Cents (\$10,000.00).

1.1.15 **Due Diligence Completion Notice.** A written notice from Buyer delivered to both Seller and Escrow Agent, prior to the end of the Due Diligence Period, indicating Buyer's unconditional acceptance of the condition of the Site or indicating Buyer's rejection of the condition of the Site and refusal to accept a conveyance of title to the Site, describing in reasonable detail the actions that Buyer reasonably believes are indicated to allow Buyer to unconditionally accept the condition of the Site.

1.1.16 **Due Diligence Investigations.** Buyer's due diligence investigations of the Site to determine the suitability of the Site, including investigation of the environmental and geotechnical suitability of the Site, as deemed appropriate in the discretion of Buyer, all at the sole cost and expense of Buyer.

1.1.17 **Due Diligence Period.** The time period of one hundred fifty (150) continuous days commencing on the day immediately following the Escrow Opening Date; provided such time period may be extended by a period equal to the greater of (a) thirty (30) days or (b) ten (10) Business Days after the recordation of the Lot Line Adjustment at the option of Buyer, upon Buyer's delivery of written notice to Seller regarding such extension prior to expiration of the initial Due Diligence Period.

1.1.18 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.19 **Environmental Laws.** All Federal, State, local (including City) laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Site, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act

of 1980 ("CERCLA") [42 USC Section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 *et seq.*]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 *et seq.*]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 *et seq.*]; the Clean Air Act [42 USC Section 7401 *et seq.*]; the Safe Drinking Water Act [42 USC Section 300f *et seq.*]; the Solid Waste Disposal Act [42 USC Section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USC Section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USC Section 11001 *et seq.*]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 *et seq.*]; together with any regulations promulgated under the authorities referenced in this Section 1.1.25.

1.1.20 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Site from Seller to Buyer pursuant to this Agreement.

1.1.21 **Escrow Agent.** Placer Title Company, Davis, CA, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.22 **Escrow Closing Date.** The date that is not later than thirty (30) days following Buyer's receipt of a building permit for construction of the Project on the Site (or evidence that City is ready to issue a building permit for development of the Project on the Site upon final payment of all fees required for issuance of such building permit), or such other date mutually agreed upon in writing between the Parties for the Close of Escrow, but in any event not later than December 31, 2015.

1.1.23 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent's estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.24 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.25 **Escrow Opening Date.** The first date on which a copy of this Agreement, signed by both Seller and Buyer, is deposited with the Escrow Agent, as provided in Section 4.1.

1.1.26 **Event of Default.** The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or the bond, surety or insurance not provided;

(b) *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted;

(c) *Non-Monetary Default.* Any Non-Monetary Default that is not cured within fifteen (15) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within fifteen (15) days after the effective date of such Notice, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within fifteen (15) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such fifteen (15) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.27 **FIRPTA Affidavit.** A certification that Seller is not a "foreign person" within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

1.1.28 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.29 **Government Agency.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.1.30 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the

United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.31 Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Site, or during transportation of any Hazardous Substance to or from the Site, whether or not caused by a Party.

1.1.32 Indemnify. Where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.1.33 Indemnitee. Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.34 Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.35 Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government Agency applicable to the Site, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Site or otherwise relating to this Agreement or any Party's rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.36 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.37 Monetary Default. Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond, surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.38 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

1.1.39 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

1.1.40 **Notice of Default.** Any Notice claiming or giving Notice of a Default.

1.1.41 **Notify.** To give a Notice.

1.1.42 **Parties.** Collectively, Seller and Buyer.

1.1.43 **Party.** Individually, either Seller or Buyer, as applicable.

1.1.44 **Permitted Exception.** All of the following: (a) all items shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy that are approved by Buyer pursuant to Section 3.3; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Site; (d) this Agreement; (e) any existing improvements on the Site, if any; and (f) any other document or encumbrance expressly required or allowed to be recorded against the Site pursuant to the terms of this Agreement.

1.1.45 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.46 **Preliminary Report.** A preliminary report issued by the Title Company in contemplation of the issuance of the Buyer Title Policy, accompanied by the best available copies of all documents listed in the preliminary report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.47 **Prohibited Encumbrance.** Any security instrument, mechanic's lien, easement, property interest or other encumbrance recorded or asserted against the Site that is not a Permitted Exception.

1.1.48 **Project.** The Project shall include development of a commercial/retail building on the Site, in conformance with all Approvals, which shall include, among other things, construction at the sole cost of the Buyer of all street, curb, gutter, sidewalk and other public improvements along Grant Avenue and any public utility or other easements that may be required by the City, all in conformance with the Grant Avenue Design Guidelines.

1.1.49 **Purchase Price.** An amount equal to Five Dollars (\$5.00) per square foot of land area included within the Site.

1.1.50 **Seller.** The City of Winters, a California municipal corporation, acting as Successor Agency to the Dissolved Community Development Agency and any assignee of or successor to the rights, powers or responsibilities of the Seller.

1.1.51 **Seller Deed.** A grant deed conveying Seller's interest in the Site from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit B** attached to this Agreement.

1.1.52 **Seller Parties.** Collectively, the Seller, the Seller's governing body, and the Seller's elected officials, employees, agents and attorneys.

1.1.53 **Site.** That 1.5 acre portion of the Property, generally shown on the Map of the Site attached hereto as **Exhibit A**, to be conveyed by the Seller to Buyer. The final size and configuration of the Site shall be determined by the Seller and Buyer, following the Lot Line Adjustment provided for in Section 3.1, prior to conveyance of the Site to the Buyer.

1.1.54 **Third Person.** Any Person that is not a Party, an affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.55 **Title Company.** Placer Title Company or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.56 **Title Notice.** A written notice from Buyer to Seller indicating Buyer's acceptance of the state of the title to the Site, as described in the Preliminary Report for the proposed Buyer Title Policy, or Buyer's disapproval or conditional approval of specific matters shown in Schedule B of such Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy for the Site, describing in suitable detail the actions that Buyer reasonably believes are indicated to obtain Buyer's unconditional approval of the state of the title to the Site.

1.1.57 **Title Notice Response.** The written response of Seller to the Title Notice, in which Seller either elects to: (a) cause the removal from the Preliminary Report of any matters disapproved or conditionally approved in the Title Notice; (b) obtain title or other insurance or endorsement in a form reasonably satisfactory to Buyer insuring against any matters disapproved or conditionally approved in the Title Notice; or (c) not take either action described in clause "(a)" or "(b)" of this Section 1.1.57.

1.1.58 **Title Notice Waiver.** A written notice from Buyer to Seller waiving Buyer's previous disapproval or conditional approval in the Title Notice of specific matters shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.59 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or

inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. **EFFECTIVE DATE.** This Agreement shall become effective on the first date on which all of the following have occurred: ("**Effective Date**"): (a) Seller has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Buyer; and (b) Seller provides Buyer with written notice that this Agreement has been approved and executed by Seller's governing body.

3. **PURCHASE AND SALE OF SITE**

3.1 **Lot Line Adjustment.** Buyer desires to purchase a portion of the Property consisting of approximately 65,340 square feet of land area, located on the sothern-most boundary of the Property, extending generally from East Street along Baker Street, as generally shown on Exhibit A. Following the Effective Date of this Agreement, the City, at its sole cost, shall use good faith efforts to prepare such documents and take such actions as are necessary to obtain Approvals for a lot line adjustment or lot split ("**Lot Line Adjustment**") to create a legal parcel suitable to the Buyer, constituting the Site. Upon obtaining final Approvals for and recordation of such Lot Line Adjustment, a formal legal description of the Site acceptable to both Parties shall be attached to the Seller Deed (**Exhibit B**) and used for purposes of conveyance of the Site to Buyer. Further, the size and actual Purchase Price for the Site shall be established based on the actual square footage of the Site following such Lot Line Adjustment, which size shall be acceptable to Buyer in Buyer's reasonable discretion.

3.2 **Escrow.** Following such Lot Line Adjustment, Seller shall sell and convey fee title to the Site to Buyer and Buyer shall purchase and acquire fee title to the Site from Seller, subject to the Permitted Exceptions and the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Site from Seller to Buyer and the purchase of the Site by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open the Escrow with the Escrow Agent. The provisions of Section 4 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

3.3 **Consideration.** Buyer shall purchase the Site from Seller for the Purchase Price to be determined based on the final configuration and size of the Site following the Lot Line Adjustment, subject to the terms and conditions of this Agreement. Buyer shall deposit the Purchase Price into the Escrow, as follows:

3.3.1 **Deposit.** Within three (3) days after the Escrow Opening Date, Buyer shall deposit the Deposit into the Escrow. If requested by buyer, the Deposit shall be placed in an interest-bearing FDIC insured account, and all fees associated with such interest-bearing account shall be the responsibility of the Buyer. Any interest earned on the Deposit shall become part of the Deposit. Prior to the expiration of the Due Diligence Period, the Deposit shall be refundable to the Buyer in the event of the failure of a Buyer's condition to Close of Escrow, a termination of this Agreement not due to Buyer's default, or as otherwise expressly provided in this Agreement. Following expiration of the Due Diligence Period, the Deposit shall be non-refundable unless this Agreement is thereafter terminated due to a Seller default or as

otherwise provided for herein. If this Agreement has not been earlier terminated, the Deposit shall be held in Escrow until the Close of Escrow and shall be applied to the Purchase Price.

3.3.2 **At Close of Escrow.** Upon the Escrow Closing Date, Buyer shall deposit into the Escrow the amount of the Purchase Price, less the amount of the Deposit then held by the Escrow Agent.

3.4 Buyer's Approval of Title to Site.

3.4.1 **Title Notice.** Within ten (10) days after the Escrow Opening Date, Seller shall request the Preliminary Report from the Title Company and that the Title Company deliver a copy of the Preliminary Report to Buyer. Within sixty (60) days following Buyer's receipt of the Preliminary Report, Buyer shall send the Title Notice to both Seller and Escrow Agent.

3.4.2 **Failure to Deliver Title Notice.** If Buyer fails to send the Title Notice to both Seller and Escrow Agent within the time period provided in Section 3.4.1, Buyer will be deemed to disapprove the status of title to the Site and refuse to accept conveyance of the Site and either Buyer or Seller shall have the right to cancel the Escrow and terminate this Agreement by Notice, in their respective sole and absolute discretion.

3.4.3 **Title Notice Response.** Within five (5) days following Seller's receipt of the Title Notice (if any), Seller shall send the Title Notice Response to both Buyer and Escrow Agent. If the Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report for the proposed Buyer Title Policy or Buyer fails to deliver the Title Notice, Seller shall not be required to send the Title Notice Response. If Seller does not send the Title Notice Response, if necessary, within the time period provided in this Section 3.4.3, Seller shall be deemed to elect not to take any action in reference to the Title Notice. If Seller elects in the Title Notice Response to take any action in reference to the Title Notice, Seller shall complete such action, prior to the Escrow Closing Date or as otherwise specified in the Title Notice Response.

3.4.4 **Title Notice Waiver.** If Seller elects or is deemed to have elected not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, then within ten (10) days after the earlier of: (a) Buyer's receipt of Seller's Title Notice Response; or (b) the last date for Seller to deliver its Title Notice Response pursuant to Section 3.4.3, Buyer shall either: (i) refuse to accept the title to and conveyance of the Site, or (ii) waive Buyer's disapproval or conditional approval of all such matters set forth in the Title Notice by sending the Title Notice Waiver to both Seller and Escrow Agent. Failure by Buyer to timely send the Title Notice Waiver, where the Title Notice Response or Seller's failure to deliver the Title Notice Response results in Seller's election not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, will be deemed Buyer's continued refusal to accept the title to and conveyance of the Site, in which case either Buyer or Seller shall have the right to cancel the Escrow and terminate this Agreement by Notice, in their respective sole and absolute discretion.

3.4.5 Disapproval of Encumbrances Securing Seller Obligations. Notwithstanding any other provision of this Agreement, Buyer disapproves any and all encumbrances against the Site securing monetary (other than non-delinquent property taxes and assessments) obligations.

3.4.6 No Termination Liability. Any termination of this Agreement or cancellation of the Escrow pursuant to this Section 3.4 shall be without liability to the other Party or any other Person. Termination shall be accomplished by delivery of a Notice of termination to both the other Party and the Escrow Agent. Following issuance of a Notice of termination of this Agreement pursuant to a right provided under this Agreement, the Parties and the Escrow Agent shall proceed pursuant to Section 4.12. Once a Notice of termination is given pursuant to this Section 3.4, delivery of a Title Notice or Title Notice Waiver shall have no force or effect and this Agreement shall terminate in accordance with the Notice of termination.

3.5 Due Diligence Investigations.

3.5.1 Time and Expense. Buyer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Buyer's sole cost and expense. Within five (5) days of the Effective Date, the Seller shall deliver to Buyer copies of any and all reports, studies or other written information about the Property within the control or possession of Seller.

3.5.2 Right to Enter. Seller hereby grants a license to Buyer and Buyer's consultants, contractors and agents to enter the Property for the sole purpose of conducting the Due Diligence Investigations at Buyer's sole cost and expense, subject to all of the terms and conditions of this Agreement. The license given in this Section 3.5 to enter the Property to conduct Due Diligence Investigations shall terminate regarding Buyer on the earlier of: (i) termination of this Agreement; or (ii) the Close of Escrow. Any Due Diligence Investigations by Buyer shall not unreasonably disrupt any existing use or occupancy of the Site. Buyer's exercise of any license provided pursuant to this Section 3.5 after expiration of the Due Diligence Period shall not extend the Due Diligence Period.

3.5.3 Limitations. Buyer shall not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil samples, without Seller's prior written consent. Buyer shall pay all of Buyer's vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any such Persons. Following the conduct of any Due Diligence Investigations on the Property, Buyer shall restore the Property to substantially the Property's condition prior to the conduct of such Due Diligence Investigations, provided, however that Buyer shall have no obligation to remediate any Hazardous Substance discovered on the Property. Buyer shall Indemnify Seller against any and all costs or damages arising from or relating to Buyer's Due Diligence Investigations regarding the Property provided, however, that Buyer shall have no obligation to indemnify, defend and hold Seller harmless from and against any Claims resulting from Seller's acts or omissions or Buyer's mere discovery of adverse physical conditions affecting the Property, including, without limitation, the discovery of any Hazardous Substance on the Property. Buyer shall provide Seller with evidence of liability insurance reasonably acceptable to Seller and naming Seller as an additional insured under such

policy of insurance by endorsement prior to the commencement of any Due Diligence Investigations on the Property.

3.5.4 Due Diligence Completion Notice. Buyer shall deliver a Due Diligence Completion Notice to both Seller and Escrow Agent prior to the end of the Due Diligence Period. If Buyer does not unconditionally accept the condition of the Site by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Buyer shall be deemed to have rejected the condition of the Site and refused to accept conveyance of title to the Site. If the condition of the Site is rejected or deemed rejected by Buyer, then either Seller or Buyer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 4.12.

3.6 "AS-IS" Acquisition. The Close of Escrow shall evidence Buyer's unconditional and irrevocable acceptance of the Site in the Site's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, shoring or bluff stability or support, subsurface or lateral support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Site (active, inactive or abandoned), the suitability of the Site or the existence or absence of Hazardous Substances affecting the Site and with full knowledge of the physical condition of the Site, the nature of Seller's interest in and use of the Site, all laws applicable to the Site and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Site. The Close of Escrow shall further constitute Buyer's representation and warranty to Seller that: (a) Buyer has had ample opportunity to inspect and evaluate the Site and the feasibility of the uses and activities Buyer is entitled to conduct on the Site; (b) Buyer is relying entirely on Buyer's experience, expertise and Buyer's own inspection of the Site in the Site's current state in proceeding with acquisition of the Site; (c) Buyer accepts the Site in the Site's present condition; (d) to the extent that Buyer's own expertise with respect to any matter regarding the Site is insufficient to enable Buyer to reach an informed conclusion regarding such matter, Buyer has engaged the services of Persons qualified to advise Buyer with respect to such matters; (e) Buyer has received assurances acceptable to Buyer by means independent of Seller or Seller's agents of the truth of all facts material to Buyer's acquisition of the Site pursuant to this Agreement; and (f) the Site is being acquired by Buyer as a result of Buyer's own knowledge, inspection and investigation of the Site and not as a result of any representation made by Seller or Seller's agents relating to the condition of the Site, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Site.

3.7 Reservations. The Seller is a separate public agency from the City of Winters, and the approval of this Agreement by the Seller shall not be binding on the City Council of the City or any other commission, committee, board or body of the City regarding any other Approvals required by such bodies. No action by the Seller with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required Approvals by the City or such other bodies regarding the Site or Buyer.

4. JOINT ESCROW INSTRUCTIONS

4.1 Opening of Escrow; Escrow Instructions. The purchase and sale of the Site shall take place through the Escrow to be conducted by Escrow Agent. Escrow shall be deemed opened when a fully signed copy of this Agreement has been delivered to Escrow Agent. Escrow Agent shall confirm the Escrow Opening Date in writing to each of the Parties, with a copy of the Escrow Agent Consent signed by the authorized representative(s) of the Escrow Agent.

4.2 Escrow Instructions. This Section 4 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Site, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

4.3 Escrow Agent. Seller and Buyer authorize Escrow Agent to:

4.3.1 **Charges.** Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow and in accordance with the common practice between Sellers and Buyers in Yolo County;

4.3.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

4.3.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

4.3.4 **Counterpart Documents.** Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one version of the same document.

4.4 Buyer's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Site from Seller on or before the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions precedent on or before the Escrow Closing Date:

4.4.1 **Lot Line Adjustment.** Seller obtains all Approvals for a Lot Line Adjustment to create a legal parcel constituting the Site, in accordance with Section 3.1;

4.4.1 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each applicable Government Agency;

4.4.2 **Building Permit, Approvals.** Buyer obtains, at its sole cost, all Approvals, including through the City's normal plan check, review and development approval process, as necessary for issuance of a final building permit by the City, subject only to final payment of all fees required for issuance of such building permit, for development of the Project on the Site;

4.4.3 **No Material Change.** There has occurred no material change to the condition of the Property or title to the Property (except the elimination of Disapproved Matters) since the issuance of the Due Diligence Completion Notice.

4.4.4 **Title Policy.** Title Company has agreed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

4.4.5 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each applicable Government Agency;

4.4.6 **Seller Escrow Deposits.** Seller deposits all of the items into Escrow required by Section 4.7;

4.4.7 **Settlement/Closing Statement.** Buyer approves Buyer's Escrow Closing Statement; and

4.4.8 **Seller Pre-Closing Obligations.** Seller performs all of Seller's material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

4.5 **Seller's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Site to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent on or before the Escrow Closing Date:

4.5.1 **Lot Line Adjustment.** Seller obtains all Approvals for a Lot Line Adjustment to create a legal parcel constituting the Site, in accordance with Section 3.1;

4.5.2 **Title.** Buyer accepts the state of the title of the Site, in accordance with Section 3.4;

4.5.3 **Due Diligence.** Buyer timely delivers its Due Diligence Completion Notice to both Seller and Escrow Agent stating Buyer's unconditional acceptance of the condition of the Site, in accordance with Section 3.5;

4.5.4 **Oversight Board/DOF Approval.** This Agreement and the sale of the Site pursuant hereto is approved by the Oversight Board to the Successor Agency and following notification to the State Department of Finance, the State Department of Finance either approves such sale of the Site or does not object within the timeframes set forth in California Health & Safety Code Section 34181(f).

4.5.5 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each applicable Government Agency;

4.5.6 **Building Permit, Approvals.** Buyer obtains, at its sole cost, all Approvals, including through the City's normal plan check, review and development approval process, as necessary for issuance of a final building permit by the City, subject only to final payment of all fees required for issuance of such building permit, for development of the Project on the Site;

4.5.7 **Buyer Financing.** Buyer has demonstrated to the satisfaction of Seller that Buyer has secured financing in an amount sufficient to develop the Project as a senior multifamily affordable housing development.

4.5.8 **Buyer Escrow Deposits.** Buyer deposits all of the items into Escrow required by Section 4.6;

4.5.9 **Settlement/Closing Statement.** Seller approves the Seller's Escrow Closing Statement;

4.5.10 **Consistency Finding.** The Planning Commission of the City has determined that the disposition of the Site to the Buyer pursuant to this Agreement is consistent with the City's General Plan, in accordance with Government Code Section 65402; and

4.5.11 **Buyer Pre-Closing Obligations.** Buyer performs all of Buyer's material obligations required to be performed by Buyer pursuant to this Agreement prior to the Close of Escrow.

4.6 **Buyer's Escrow Deposits.** Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least one (1) Business Day prior to the Escrow Closing Date:

4.6.1 **Closing Funds.** All amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow;

4.6.2 **Certificate of Seller Deed Acceptance.** The Certificate of Acceptance attached to the Seller Deed signed by Buyer in recordable form;

4.6.3 **Escrow Closing Statement.** The Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer;

4.6.4 **Other Reasonable Items.** Any other documents or funds required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not previously been delivered by Buyer.

4.7 **Seller's Escrow Deposits.** Seller shall deposit the following documents into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Buyer, at least one (1) Business Day prior to the Escrow Closing Date:

4.7.1 **Seller Deed.** The Seller Deed signed by the authorized representative(s) of Seller in recordable form;

4.7.2 **Escrow Closing Statement.** The Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

4.7.3 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form provided by the Escrow Agent;

4.7.4 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

4.7.5 **Other Reasonable Items.** Any other documents or funds required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not been previously delivered by Seller.

4.8 **Closing Procedure.** When each of Buyer's Escrow deposits, as set forth in Section 4.6, and each of Seller's Escrow deposits, as set forth in Section 4.7, are deposited into Escrow, Escrow Agent shall request confirmation in writing from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow, as set forth in Sections 4.4 or 4.5, respectively, are satisfied or waived. Upon Escrow Agent's receipt of written confirmation from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

4.8.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the Seller Deed to be filed with the Recorder of the County for recording in the official records of the County regarding the Site. At Close of Escrow, Escrow Agent shall deliver conformed copies of the Seller Deed filed for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of such document. Each conformed copy of a document filed for recording by Escrow Agent pursuant to this Agreement shall show all recording information;

4.8.2 **Funds.** Distribute all funds held by Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer;

4.8.3 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

4.8.4 **Form 593.** File the Form 593 with the California Franchise Tax Board;
and

4.8.5 **Title Policy.** Obtain from the Title Company and deliver to Buyer, with a copy to the Seller, the Buyer Title Policy issued by the Title Company.

4.9 **Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The City Manager, acting on behalf of the Seller, is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of Seller up to a maximum time period extension of two (2) months in the aggregate, in the City Manager's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent upon which time the Escrow Agent shall return the Deposit to Buyer. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 4.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 4.9, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 4.9 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

4.10 **Escrow Costs.** Escrow Agent shall notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Seller shall pay one-half (1/2) of the Escrow Agent charges for the conduct of the Escrow, all documentary transfer taxes regarding the conveyance of the Site through the Escrow and the full amount of the premium charged by the Title Company for a standard CLTA owner's title insurance policy towards the cost of the premium for the Buyer Title Policy, exclusive of any endorsements or other supplements to the coverage of the Buyer Title Policy that may be requested by Buyer. Buyer shall pay one-half (1/2) of the Escrow Agent charges for the conduct of the Escrow, the amount of the premium for the Buyer Title Policy exceeding the amount paid by Seller toward the cost of the Buyer Title Policy, the premium costs of any and all endorsements to the Buyer Title Policy requested by Buyer, all recording fees and the full amount of any and all other charges, fees and taxes levied by each and every Government Agency relative to the conveyance of the Site through the Escrow.

4.11 **Escrow Cancellation Charges.** If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Buyer or Seller, Buyer and Seller shall each pay one-half (1/2) of any ordinary and

reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

4.12 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

4.12.1 Cancellation Instructions. The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

4.12.2 Return of Funds and Documents. Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Site or the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Site or the Escrow; (c) Escrow Agent shall, unless otherwise expressly provided in this Agreement, return to Buyer all funds deposited in Escrow, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 4.11; and (d) Escrow Agent shall, unless otherwise expressly provided in this Agreement, return to Seller all funds deposited in Escrow, less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 4.11.

4.13 Report to IRS. After the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service under applicable Federal law, if such report is required pursuant to Internal Revenue Code Section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the Site to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e). Concurrently with the filing of such reporting form with the Internal Revenue Service, Escrow Agent shall deliver a copy of the filed form to both Seller and Buyer.

4.14 Condemnation. If any material portion of the Site, or any interest in any portion of the Site, is taken by condemnation prior to Close of Escrow by any condemning authority other than Seller, including, without limitation, the filing of any notice of intended condemnation or proceedings in the nature of eminent domain, commenced by any governmental authority, other than Seller, Seller shall immediately give Buyer notice of such occurrence, and Buyer shall have the option, exercisable within ten (10) business days after receipt of such notice from Seller, to either: (i) terminate this Agreement; or (ii) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer any right of Seller to receive any condemnation award attributable to the Site.

4.15 Seller's Obligations. During the term of this Agreement, Seller shall act with respect to the Property in accordance with its preexisting practices as if the Property were not to be sold, including, without limitation, by maintaining at least the same levels of insurance in

effect as of the Effective Date. Notwithstanding the foregoing, Seller shall not enter into or modify any lease, agreement or contract relating to the Property which is not terminable upon thirty (30) without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

4.16 Possession. Possession of the Property shall be delivered to Buyer as of Close of Escrow free of any and all tenancies and/or occupancy rights.

5. REMEDIES AND INDEMNITY

5.1 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

5.2 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, including, without limitation, Section 5.4 hereof, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

5.3 Indemnification.

5.3.1 **Seller Indemnity Obligations**. Seller shall Indemnify Buyer against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the Seller Parties related to this Agreement, but only to the extent that Seller may be held liable under applicable law for such wrongful intentional act or negligence and exclusive of any violation of law (including the State Constitution) relating to Seller's approval, entry into or performance of this Agreement. Nothing in this Agreement is intended nor shall be interpreted to waive any limitation on Seller's liability, any exemption from liability in favor of Seller, any claim presentment requirement for bringing an action regarding any liability of Seller or any limitations period applicable to liability of Seller, all as set forth in Government Code Section 800 *et seq.*, Section 900 *et seq.*, or in any other law, or require Seller to Indemnify any Person beyond such limitations on Seller's liability.

5.3.2 **Buyer Indemnity Obligations**. Buyer shall Indemnify the Seller Parties against any Claim related to this Agreement to the extent such Claim arises from: (a) any act, omission or negligence of the Buyer; (b) any agreements that Buyer (or anyone claiming by or through Buyer) makes with a Third Person regarding the Site; (c) any workers compensation claim or determination relating to any employee of Buyer or its contractors; or (d) any Environmental Claim attributable to any action or omission by Buyer.

5.3.3 **Independent of Insurance Obligations**. Buyer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Buyer's insurance or other obligations under this Agreement. Buyer's obligation to Indemnify the Seller Parties under this Agreement is independent of Buyer's insurance and other obligations under this Agreement. Buyer's compliance with Buyer's

insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Buyer's indemnification obligations under this Agreement and are independent of Buyer's indemnification and other obligations under this Agreement.

5.3.4 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

5.3.5 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

(a) *Prompt Notice.* The Indemnitee shall promptly Notify the Indemnitor of any Claim.

(b) *Selection of Counsel.* The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel is reasonably determined by Indemnitee to be incompetent regarding such representation. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee's option and Indemnitee's own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee exists that requires them to be represented by separate legal counsel or Indemnitor's legal counsel is reasonably determined by Indemnitee to be incompetent regarding such representation, in any such case, Indemnitor shall pay the Legal Costs of Indemnitee's separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee's defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel.

(c) *Cooperation.* The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

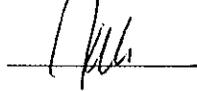
(d) *Settlement.* The Indemnitor may only settle a Claim with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claims, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee, nor the Indemnitor on behalf of the Indemnitee, admits any liability.

5.4 LIQUIDATED DAMAGES. IF THERE EXISTS NO SELLER DEFAULT UNDER THIS AGREEMENT AND SELLER HAS TENDERED THE DEED AND ALL OTHER DOCUMENTS OR INSTRUMENTS REQUIRED BY THIS AGREEMENT, AND IS IN ALL OTHER RESPECTS IN FULL COMPLIANCE WITH ITS OBLIGATIONS HEREUNDER, AND IF BUYER SHOULD FAIL OR REFUSE TO CLOSE ESCROW AS REQUIRED BY THE TERMS OF THIS AGREEMENT, OR IF BUYER OTHERWISE

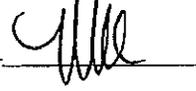
DEFAULTS HEREUNDER SO THAT SELLER HAS THE RIGHT TO REFUSE TO CLOSE ESCROW, THEN SELLER'S SOLE REMEDY SHALL BE TO RETAIN ANY DEPOSITS PREVIOUSLY RELEASED TO IT, AS LIQUIDATED DAMAGES, WHICH AMOUNT IS THE BEST ESTIMATE BY THE PARTIES OF THE DAMAGES SELLER WOULD SUFFER FROM SUCH BREACH, IT BEING AGREED THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, AND IMPRACTICABLE TO FIX THE EXACT AMOUNT OF DAMAGE WHICH WOULD BE INCURRED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER. THEREUPON NEITHER PARTY TO THIS AGREEMENT SHALL HAVE ANY FURTHER RIGHTS, DUTIES OR OBLIGATIONS HEREUNDER.

INITIALS:

SELLER



BUYER



6. GENERAL PROVISIONS

6.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

6.2 Notices, Demands and Communications Between the Parties.

6.2.1 **Delivery.** Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 6.2.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 6.2. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 6.2. Any attorney representing a Party may give any Notice on behalf of such Party.

6.2.2 **Addresses.** The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Buyer:

Domus Development, LLC
9 Cushing, Suite 200
Irvine, CA 92618

To Seller: City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager

6.3 Relationship of Parties. The Parties each intend and agree that Seller and Buyer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

6.4 Warranty Against Payment of Consideration for Agreement. Buyer represents and warrants to Seller that: (a) Buyer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Buyer and Third Persons to whom fees are paid for professional services related to the documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Buyer or any of Buyer's agents, employees or representatives to any elected or appointed official or employee of the Seller in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 6.4 shall entitle Seller to terminate this Agreement and cancel the Escrow (if open) upon seven (7) days Notice to Buyer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Buyer shall immediately refund any payments made to or on behalf of Buyer by Seller pursuant to this Agreement or otherwise related to the Site, any Approval or any CEQA Document, prior to the date of such termination.

6.5 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

6.6 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The

word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

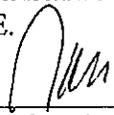
6.7 Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County of Yolo, State of California. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

6.8 Unavoidable Delay; Extension of Time of Performance.

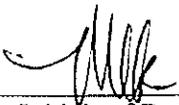
6.8.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within three (3) days after such Party knows of any such Unavoidable Delay; and (b) within three (3) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

6.8.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE

ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.



Initials of Authorized
Seller Representative(s)



Initials of Buyer

6.9 Tax Consequences. Buyer acknowledges and agrees that Buyer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Buyer related to this Agreement.

6.10 Real Estate Commissions.

6.10.1 **Seller Warranty.** Seller: (a) represents and warrants that Seller did not engage or deal with any broker or finder in connection with this Agreement, and no Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by Seller; and (b) shall Indemnify Buyer against any breach of the representation and warranty set forth in clause "(a)" of this Section 6.10.1.

6.10.2 **Buyer Warranty.** Buyer represents and warrants that (a) Buyer did not engage or deal with any broker or finder in connection with this Agreement, and no other Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by Buyer; and (b) shall Indemnify Seller against any breach of the representation and warranty set forth in clause "(a)" of this Section 6.10.2.

6.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

6.12 Buyer Assumption of Risks of Legal Challenges. Buyer assumes the risk of delays or damages that may result to Buyer from each and every Third Person legal action related to Seller's approval of this Agreement or any associated Approvals, even in the event that an error, omission or abuse of discretion by Seller is determined to have occurred, but specifically excluding the gross negligence, willful misconduct or illegal actions of Seller. If a Third Person files a legal action regarding Seller's approval of this Agreement or any associated Approval (exclusive of legal actions alleging violation of Government Code Section 1090 by officials of Seller or any action arising from the gross negligence, willful misconduct or illegal actions of Seller), Buyer shall have the option to either: (1) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 4.12; or (2) Indemnify Seller against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action; provided, however, that option "(1)" under this Section 6.12 shall only be available to Buyer prior to the Close of Escrow. Should Buyer fail to Notify Seller of Buyer's election pursuant to this Section 6.12 at least fifteen (15) days before response to the legal action is required by Seller, prior to the Close of

Escrow, Buyer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to this Section 6.12 and, following the Close of Escrow, Buyer shall be deemed to have elected to Indemnify Seller against such Third Person legal action pursuant to this Section 6.12, all without further Notice to or action by either Party. If Borrower elects to indemnify Seller, Seller shall reasonably cooperate with Buyer in defense of Seller in any legal action subject to this Section 6.12, subject to Buyer completely performing Buyer's indemnity obligations for such legal action. Should Buyer elect or be deemed to elect to Indemnify Seller regarding a legal action subject to this Section 6.12, but fail to or stop providing such indemnification of Seller, then Seller shall have the right to terminate this Agreement or cancel the Escrow (or both) by Notice to Buyer and, if the Escrow is open, to the Escrow Agent. Nothing contained in this Section 6.12 is intended to be nor shall be deemed or construed to be an express or implied admission that Seller may be liable to Buyer or any other Person for damages or other relief regarding any alleged or established failure of Seller to comply with any law. Any legal action that is subject to this Section 6.12 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

6.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.14 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

6.15 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all prior or contemporaneous negotiations or previous agreements between the Parties, whether written or oral, with respect to all or any portion of the Site.

6.16 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

6.17 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

6.18 City Manager Implementation. Seller shall implement this Agreement through the City Manager, acting on behalf of the Seller. The City Manager or his/her designee is hereby authorized by Seller to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement on behalf of Seller, issue approvals, interpretations or waivers and enter into certain amendments to this Agreement on behalf of

Seller, to the extent that any such action(s) does/do not increase the monetary obligations of Seller. All other actions shall require the consideration and approval of the Seller's governing body, unless expressly provided otherwise by action of the Seller's governing body. Nothing in this Section 6.18 shall restrict the submission to the Seller's governing body of any matter within the City Manager's authority under this Section 6.18, in the City Manager's sole and absolute discretion, to obtain the Seller's governing body's express and specific authorization on such matter. The specific intent of this Section 6.18 is to authorize certain actions on behalf of Seller by the City Manager, but not to require that such actions be taken by the City Manager including, without limitation, any extension(s) granted pursuant to Section 4.9, without consideration by the Seller's governing body.

6.19 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

6.20 Counterparts. This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes twenty-six (26) pages and two (2) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

6.21 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic mail shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures on following page]

**SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Portion of Grant Avenue Commercial Property)**

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

SELLER:

BUYER:

CITY OF WINTERS, a California municipal corporation, acting as SUCCESSOR AGENCY TO THE DISOLVED COMMUNITY DEVELOPMENT AGENCY

DOMUS DEVELOPMENT, LLC, a California limited liability company

By: 
John W. Donlevy, Jr.
Executive Director

By: 
Name: Meea Kang
Its: Member

ACKNOWLEDGMENT

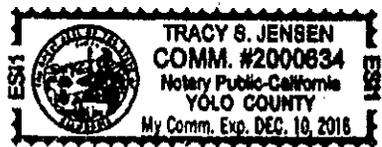
State of California
County of Yolo

On June 30, 2014 before me, Tracy S. Jensen, Notary Public
(Insert name and title of the officer)

personally appeared John W. Donlevy Jr.
who proved to me on the basis of satisfactory evidence to be the pers on(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
(his)her/their authorized capacity(ies), and that by (his)her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the pers on(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tracy S. Jensen (Seal)

**EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Portion of Grant Avenue Commercial Property)**

Map of the Site

EXHIBIT A

EXHIBIT A

The land referred to is situated in the County of Yolo, City of Winters, State of California, and is described as follows:

PARCEL ONE:

Parcels 2, 3 and 4 as shown upon that certain Parcel Map No. 4164 for Richard A. and Suzanne M. Cordes, filed February 28, 1994 in Book 11 of Parcels Maps, Page 30, Yolo County Records.

Assessor's Parcel Number: 003-370-028, 029, 030

PARCEL TWO:

A Non-Exclusive Easement on and across a portion of Parcel 1 (The "Parcel 1 Utility Easement") for the installation, maintenance and repair of utilities within the area shown as "Private Utility Easement" on the Map, as described in Easement Agreement Recorded March 3, 1994 in Book 2616 of Official Records, Page 435, Yolo County Records.

PARCEL THREE:

An Easement for ingress and egress, but not parking, for Parcel 1 of Parcel Map No. 4164:

A portion of projected Section 22, T. 8 N. , R 1 W., M.D.M., Rancho Rio De Los Putos, in the City of Winters, Yolo County, California, and being also a portion of Parcel 1, as said Parcel appears on Parcel Map No. 4164 for Richard A. and Suzanne M. Cordes, filed February 28, 1994 in Book 11 of Parcel Maps, Page 30, Yolo County Records and being more particularly described as follows:

Beginning at a point on the West boundary line of said Parcel 1 that is distant South 25° 00' 00" East 126.87 feet from the Northwest corner of said Parcel 1; thence, from said point of beginning, leaving said West boundary line, North 65° 00' 00" East 164.79 feet to a point on the East boundary line of said Parcel 1; thence, along said East boundary line South 14° 58' 00" East 45.00 feet; thence, leaving said East boundary line, South 87° 51' 13" West 42.00 feet; thence South 65° 00' 00" West 118.25 feet to a point on the West boundary line of said Parcel 1; thence, along said West boundary line, North 25° 00' 00" West 28.00 feet to the point of beginning, as described in Easement Agreement recorded March 3, 1994 in Book 2616 of Official Records, Page 444, Yolo County Records.

**EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(Portion of Grant Avenue Commercial Property)**

Seller Deed

[Attached behind this cover page]

EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

SPACE ABOVE FOR RECORDER'S USE ONLY
EXEMPT FROM RECORDING FEES - GOVT. CODE § 27383

APN: _____

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF WINTERS, a California municipal corporation ("**Transferor**"), does hereby grant to **DOMUS DEVELOPMENT, LLC**, a California limited liability company ("**Transferee**"), all right, title and interest of Transferor in that certain real property in the City of Winters, County of Yolo, State of California, specifically described in Exhibit "1" attached to this Grant Deed ("**Site**") and made a part of this Grant Deed by this reference.

Transferee covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Site, that there shall be no discrimination against or segregation of any person, or group of persons, on account of gender, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall Transferee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of purchasers, tenants, lessees, sub-tenants, sub-lessees or vendees of the Site. The covenant shall be a covenant running with the land and binding on successive owners of all or any portion of the Site, in perpetuity

The covenants contained herein shall run with the land and shall inure to the benefit of and be binding upon the Transferor and Transferee and their respective assigns, heirs and voluntary and involuntary successors in interest.

Dated: _____

CITY OF WINTERS, a California municipal corporation

By: _____

John W. Donlevy, Jr.
City Manager

**EXHIBIT "1"
TO
GRANT DEED**

Site Legal Description

That certain property situated in the City of Winters, County of Yolo, State of California described as follows:

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by the foregoing Grant Deed from the CITY OF WINTERS, a California municipal corporation, to DOMUS DEVELOPMENT LLC, a California limited liability company, is hereby accepted by the undersigned officer on behalf of Grantee, through his signature below, and Grantee consents to recordation thereof by its duly authorized officer.

DOMUS DEVELOPMENT, LLC,
a California limited liability company

By: _____
Its: _____

ESCROW AGENT CONSENT

PLACER TITLE COMPANY accepts that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Portion of Grant Avenue Commercial Property) dated _____, 2014, by and between the City of Winters, a California municipal corporation, acting as Successor Agency to the Dissolved Community Development Agency, and Domus Development, LLC, a California limited liability company, and agrees to act as "Escrow Agent" pursuant to such agreement and agrees to be bound by all provisions of such agreement applicable to it as the Escrow Agent.

ESCROW AGENT:

PLACER TITLE COMPANY

By: _____

Name: _____

Its: _____

Dated: _____