



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, September 7, 2010
6:30 p.m.
AGENDA

Members of the City Council

*Woody Fridae, Mayor
Cecilia Aguiar-Curry, Mayor Pro-Tempore
Harold Anderson
Michael Martin
Tom Stone*

*John W. Donlevy, Jr., City Manager
John Wallace, City Attorney
Nanci Mills, City Clerk*

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 Mayor or Councilmembers. Public comments time may be limited and speakers will be asked to state their name.

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

At this time, any member of the public may address the City Council 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 Council. 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 Council support and may be enacted by the City Council in one motion in the form listed below. There will be no separate discussion of these items. However, before the City Council votes on the motion to adopt, members of the City Council, 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 Regular Meeting of the Winters City Council Held on Tuesday, August 17, 2010 (pp 1-7)
- B. Claim Against the City of Winters – Tomat's California Cuisine (pp 8-12)

DISCUSSION ITEMS

- 1. Appeal of the Planning Commission's Action to Find the Burger King, Arco Gas Station, AM PM Convenience Mart, and Truck Fueling Facility to be exempt from further CEQA review and approve the Conditional Use Permit, Site Plan/Design Review, Sign Permit for the Freeway Information Sign, and Variance to the Sign Ordinance – **REQUEST FOR CONTINUANCE TO THE SEPTEMBER 21, 2010 CITY COUNCIL MEETING** (pp 13)
- 2. Information Item – Update on Putah Creek Bridge Replacement, Project No. 01-05 (pp 14-23)
- 3. Information Item – Update on Putah Creek Bridge Replacement - North Bank Improvements, Project No. 09-01 (pp 24-32)
- 4. Second Reading and Adoption of Ordinance 2010-06, an Ordinance of the City Council of the City of Winters Authorizing an Amendment of the CalPERS Contract (pp 33-34)
- 5. Second Reading and Possible Adoption of Ordinance 2010-09, An Ordinance of the City of Winters, amending Chapter 17.96 (Alcoholic Beverage Establishments) of the Winters Municipal Code (pp 35-39)
- 6. Almondwood Apartments Housing and Loan Agreement and Adoption of Joint Resolution No. 2010-48 (City Council) and Resolution No. 2010-49 (Community Development Agency) authorizing the City Manager/Executive Director to execute subordination agreements in conjunction with a Housing and Loan Agreement with Winters Almondwood, LP (pp 40-194)
- 7. Second Reading and Possible Adoption of Ordinance 2010-08, An Ordinance of the City Council of the City of Winters, Extending the Medical Marijuana Dispensary Moratorium (pp 195-204)

8. Update on Winters History Committee – Final Report – No Backup
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COMMUNITY DEVELOPMENT AGENCY

1. Almondwood Apartments Housing and Loan Agreement and Adoption of Joint Resolution No. 2010-48 (City Council) and Resolution No. 2010-49 (Community Development Agency) authorizing the City Manager/Executive Director to execute subordination agreements in conjunction with a Housing and Loan Agreement with Winters Almondwood, LP. (See City Council Staff report for staff report documentation) (pp 205-209)
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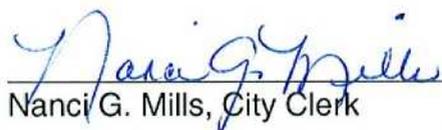
CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the September 7, 2010 regular meeting of the Winters City Council was personally delivered to each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on September 1, 2010, and made available to the public during normal business hours.



Nanci G. Mills, City Clerk

Questions about this agenda – Please call the City Clerk's Office (530) 795-4910 ext. 101. Agendas and staff reports are available on the city web page www.cityofwinters.org/administrative/admin_council.htm

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 City Council. On any item, the Council 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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Winters Library – 708 Railroad Avenue

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

During Council meetings – Right side as you enter the Council Chambers

City Council meetings are televised live on City of Winters Government Channel 20 (available to those who subscribe to cable television) and replayed following the meeting.

Wednesday at 10:00 a.m.

Videotapes of City Council meetings are available for review at the Winters Branch of the Yolo County Library.



Minutes of the Winters City Council Meeting
Held on Tuesday, August 17, 2010

Mayor Fridae called the meeting to order at 6:30 p.m.

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Michael Martin and Mayor Woody Fridae.

Absent: Council Member Tom Stone

Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Director of Financial Management Shelly Gunby, Environmental Services Manager Carol Scianna and Administrative Assistant Tracy Jensen.

Justin Hyer led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy said there were no changes to the agenda. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve the agenda. Motion carried unanimously, with Council Member Stone absent.

COUNCIL/STAFF COMMENTS: Council Member Anderson attended a Yolo County Transportation District meeting on 8/9, where the YCTD Board took a position in favor of Prop. 22. It was suggested this be a future topic on a future Winters City Council agenda. A SACOG Lines Committee meeting was also attended by Council Member Anderson on 8/5.

Council Member Aguiar-Curry will be attending a Water Resource Association Technical committee meeting on 8/5, where new grants will be available soon; met today at Greenwise Sacramento meeting, where the guest speaker was Gavin Newsome speaking about energy issues, the economy, and technology, which was followed by a Greenwise Energy Committee meeting. The Hispanic Chamber of Commerce meeting will be held this Thursday, 8/19; League of California Cities Annual Meeting will be held from 9/15 – 9/17; the Festival de la Comunidad will be held on 9/25, and we're still looking for people to cook carnitas and to participate in the festival. Last week the CEO for Valley Vision was brought to Winters to work on economic development, which was one of

many meetings that we will be having, trying to collectively bring information together for moving our economic development forward. Those in attendance were Council Member Anderson, City Manager Donlevy, Community Development Director Dyer, Grant Writer Van Dyke, and Planning Commissioner Neu. A lot of valuable information was received. Council Member Aguiar-Curry asked City Manager Donlevy to schedule a workshop with the Planning Commission and City Council to talk about our Economic Development vision.

Council Member Martin attended the Yolo Solano Air Quality District meeting last week. Winters should look into applying for clean air grant funds if we have equipment that needs to be replaced.

PUBLIC COMMENTS: Sally Brown, 24 E. Main, read into record a letter addressed to the Winters City Council, requesting Council to direct City staff to launch the Gateway Master Plan planning process without delay, and to put a moratorium on approving any additional franchise food outlets until that process is completed. Ms. Brown also indicated for the record that she is not anti-development, rather she is pro-planning.

Al Vallecillo, 210 Main Street, introduced himself to Council and offered his services and volunteerism representing the Winters Community Roundtable Group of up to eighty members who have been meeting for the past 6 months, and would also like to go on record saying the Winters Community Roundtable Group is not an anti-development group, but is actually a pro-development group who would like to see development that is sustainable, both economically and environmentally. The Winters Community Roundtable Group is offering their services as community members to work with City staff to help move things forward and would like to be part of the solution and not the problem. Collectively, the group contains a lot of talent and experience that could be beneficial in helping City staff move forward with these issues, especially economic issues.

CONSENT CALENDAR

A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, August 3, 2010

A brief overview was given by City Manager Donlevy. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve the Consent Calendar. Motion carried unanimously, with Council Member Stone absent.

PRESENTATIONS

Pool Manager Justin Hyer gave a power point presentation, updating the Council regarding the summer season and the usage of the Bobbie Greenwood Community Swim Center, including publicity efforts, changes that were made throughout the season, and ideas for next year. Justin was commended by the Council for his presentation.

DISCUSSION ITEMS

1. **Public Hearing, Waive First Reading, Read by Title Only and Introduce Ordinance 2010-09, an Ordinance of the City Council of the City of Winters Amending Chapter 17.96 (Alcoholic Beverage Establishments) of the Winters Municipal Code**

Council Member Anderson and Mayor Fridae both indicated a conflict of interest, forcing a draw to bring one member back to form a quorum. After drawing an even number, Mayor Fridae recused himself and Council Member Anderson remained at the dais.

City Attorney Wallace gave an overview, stating this ordinance would remove the 200 feet distance restriction in the downtown area, or central business district. To date, he has received no negative feedback.

Mayor Pro Tem Aguiar-Curry opened the public hearing at 7:20 p.m. and closed the public hearing at 7:20 p.m.

Motion by Council Member Martin, second by Council Member Anderson to waive the first reading, read by title only, and introduce Ordinance 2010-09, amending Chapter 17.96 (Alcoholic Beverage Establishments) of the Winters Municipal Code. Motion carried with the following vote:

AYES: Council Members Aguiar-Curry, Anderson, Martin
NOES: None
ABSENT: Council Member Stone and Mayor Fridae
ABSTAIN: None

Mayor Fridae returned to the dais.

2. **Public Hearing, Waive First Reading, Read by Title Only and Introduce Ordinance 2010-08, an Ordinance of the City Council of the City of Winters Regarding Medical Marijuana Dispensary Moratorium Extension**

City Attorney Wallace gave an overview. If approved, this ordinance would be the final extension, lasting for up to one year. Council Member Martin confirmed the Planning Commission will revisit medical marijuana dispensaries after the election in November, and make their recommendation Council.

Mayor Fridae opened the public hearing at 6:58 p.m. and closed the public hearing at 6:58 p.m. Motion by Council Member Aguiar-Curry, second by Council Member Martin to adopt Ordinance 2010-08, an interim urgency ordinance pursuant to Government Code Section 65858 to extend Interim Urgency Ordinance 2009-15 for an additional one-year period and continue for this period the temporary prohibition against the establishment and operation of medical marijuana dispensaries. Motion carried with the following vote:

AYES: Council Members Aguiar-Curry, Anderson, Martin, Mayor Fridae
NOES: None
ABSENT: Council Member Stone
ABSTAIN: None

Council Member Anderson confirmed the passage of this ordinance would give the Planning Commission time to review and render a decision. It also stops anyone from submitting a business license. He also voiced his concerns regarding the potential trouble, which wouldn't make up for the money earned. Council Member Martin agreed and Council Member Aguiar-Curry reiterated this ordinance puts a moratorium in place. City Attorney Wallace confirmed that police chiefs statewide report criminal activity near dispensaries.

3. Council Liaison Assignments

Council Member Aguiar-Curry recommended deleting some of the non-active committees listed. Council Member Martin said he would like to remain on the City/WJUSD 2x2 and Mayor Fridae relinquished his seat on the City/WJUSD 2x2 to Council Member Stone. Council Member Aguiar-Curry recommended replacing Council Member Stone as the League of California Cities alternate with Council Member Anderson.

Council Member Aguiar-Curry suggested posting on the City website Council Member biographies, along with a current photo. Council Member Anderson said the Planning Commission Vacancy Selection Committee is a revolving ad-hoc committee and asked that it be removed. An updated 2010/2011 Liaison & Committee Assignment list will be distributed to the Council Members.

4. Agreement for Provision of Professional Consulting Services with AK& Company for Preparation of the SB90 State Mandated Cost Reimbursement Claim

City Manager Donlevy gave an overview. Council Member Anderson inquired and Director of Financial Management confirmed the City paid \$3,000 last year and \$3,000 this year. Motion by Council Member Aguiar-Curry, second by Council Member Martin to adopt Resolution 2010-47, approving an agreement for provision of Professional Consulting Services to the City of Winters by AK & Company for SB90 State Mandated Cost Reimbursement Claim. Motion carried with the following vote:

AYES: Council Members Aguiar-Curry, Anderson, Martin, Mayor Fridae
NOES: None
ABSENT: Council Member Stone
ABSTAIN: None

5. Streetlight Cost Savings Options Update

Environmental Services Manager Carol Scianna gave an overview, stating that of the City's 495 streetlights, 471 are owned by PG&E and 24 are City-owned. The City is charged a facility charge for each light, which is approximately 2/3 of the total charge. If the City obtained the PG&E streetlights, there would be an approximate savings of \$3.50 per light, or a total of \$12,000/year. Ms. Scianna said it is not easy to buy the lights from PG&E and they are not happy with the prospect. Ms. Scianna has started the process by speaking with a lawyer to find out what the process would be to pursue a purchase option. Council Member Martin asked how the lights in new developments end up being PG&E-owned? City Manager Donlevy said we will be changing our policy with any new subdivision. Council Member Anderson asked if other cities had purchased their own lights? Ms. Scianna said the lawyer indicated several cities had done so and that it is not unheard of. Council Member Anderson asked Ms. Scianna to keep the Council posted. Council Member Martin asked what the total cost for lighting is. Ms. Scianna replied \$60,000, with approximately 2/3 being the facility charge. These charges represent a flat rate, not a metered rate. Ms. Scianna agreed to look in archives for a PG&E agreement.

COMMUNITY DEVELOPMENT AGENCY

Agency Chairman Aguir-Curry opened the meeting of the Community Development Agency at 7:32 p.m.

- 1. Almondwood Apartments Housing and Loan Agreement and Community Development Agency Consideration of Chase and California Tax Credit Advisory Committee ("TCAC")**

Subordination Agreements Related to the Almondwood Apartments Housing and Loan Agreement

Item #1, the Almondwood Apartments Housing and Loan Agreement, was postponed to the September 7th City Council meeting.

Agency Member Fridae recused himself for the following item due to a possible conflict of interest.

2. Sublease By and Between the City of Winters Community Development Agency and the Winters Chamber of Commerce and the Winters Visitors Center Concept Plan and Performance Expectations

Agency Director Donlevy gave an overview and said the key aspect of a Winters store is to funnel the profits back to benefit the Visitors Center. Al Aldrete, Executive Director for the Winters Chamber of Commerce and Visitor's Center, introduced himself and gave a brief biography including his education and prior experiences. Mr. Aldrete is in the process of putting together tours of the downtown and promoting activities, including the historical aspects of Winters. Agency Member Anderson asked if the Chamber was working with the biking community. Mr. Aldrete said he was working with chamber members to put together a cycling map for the Yolo County Visitor's Bureau, with an overall aspect focused on Winters.

Agency Chairman Aguiar-Curry said she would like to see more area products in the store and commended the Chamber of Commerce board for bringing National and International exposure to Winters in the form of the recent visit of the television series "Diners, Drive-Ins, and Dives" to the Putah Creek Café. Mr. Aldrete said the goal was to work with vendors to offer at least 30 products purchased at wholesale prices. Howard Hupe, Chamber liaison, said he was pleased to have Al on board and expressed his confidence in him.

Motion by Agency Member Anderson, second by Agency Member Martin to approve the sublease by and between the City of Winters Community Development Agency and the Winters Chamber of Commerce, including the approval of the Winters Visitors Center Concept Plan and Performance Expectations. Motion carried unanimously, with two absent.

Agency Chairman Aguiar-Curry adjourned the meeting of the Community Development Agency at 7:45 p.m. Agency Member Fridae returned to the dais at this time.

CITY MANAGER REPORT: City Manager Donlevy said he wanted to emphasize putting together a tech team for a waste discharge permit for the Waste Water Treatment Plant, which is the biggest issue to deal with for Winters. Quite an effort will be put forth, which will include Bob Smith, a wastewater consultant, for a meeting with the Regional Board sometime before November.

Winters residents are doing well at the Yolo County Fair, with two gold medals for Olive Oil won by the Balaseks. Although the economy is tight, 30 Winters High School students will be participating in the FFA auction, some of which may not have buyers. City Manager Donlevy encouraged everyone to go to the Yolo County Fair website to obtain more auction information. Kudos go out to the Putah Creek Café for their Food Network exposure.

Mayor Fridae said the Yolo County Fair Gala Kick-off event will be held tomorrow on opening night and Debra DeAngelo reminded everyone of the Winters Earthquake Festival on August 27th.

INFORMATION ONLY: None

EXECUTIVE SESSION

City Manager Performance Evaluation Pursuant to Section 54957 of the Government Code

Executive Session was adjourned at 9:30 p.m. with no reportable action.

ADJOURNMENT

Mayor Fridae adjourned the regular meeting of the Winters City Council into Executive Session at 7:52 p.m.

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager: 
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk
SUBJECT: Claim Against the City of Winters – Tomat's California Cuisine

RECOMMENDATION:

It is recommended that the City Council deny the claim and refer to Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA).

BACKGROUND:

When the City of Winters receives a Claim for Damages to Person or Property, the claim is denied and referred to YCPARMIA to handle the investigation.

FISCAL IMPACT:

Not to exceed the City's \$1,000 deductible, with any costs in excess to come from funds pooled at the JPA.



**CLAIM FOR DAMAGES
TO PERSON OR PROPERTY**

TO: (Entity) CITY OF Winters Sewer Dept.

1. Claims for death, injury to person or to personal property must be filed out not later than six months after the occurrence. (Gov. Code Sec. 911.2)
2. Claims for damages to real property must be filed not later than 1 year after the occurrence.
3. Read entire claim form, both sides, before filing.
4. See page 2 for diagram upon which to locate place of accident.
5. This claim form must be signed on page 2 at bottom.
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

NAME OF CLAIMANT <u>Tomatis Restaurant Tony or Susan Delao</u>		Date of Birth of Claimant <u>9/4/50</u> 8/11/10
Home Address of Claimant <u>1123 Grant Ave Winters CA 95694</u>		Occupation of Claimant <u>OWNER / CHEF</u>
Business Address of Claimant <u>Same</u>		Home Telephone Number <u>(930) 795-3404</u>
		Business Telephone Number <u>Same</u>
Give address and telephone number to which you desire notices or communications to be sent regarding this claim: <u>1123 grant Ave Winters CA 95694</u>		
When did DAMAGE or INJURY occur? Date <u>8/14/10</u> Time <u>5:00 pm</u>	Section 111 of the Medicare Medicaid & S-CHIP Extension Act requires the entity to report certain claims to the federal government. Please indicate if the claimant is: 65 years of age or older, or is receiving Social Security Disability Insurance Benefits for 24 or more months, or has End Stage Renal Disease. If yes, you may be required to provide additional information to process your claim. YES / <u>NO</u> (circle one)	
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date _____		

Where did DAMAGE or INJURY occur? Describe fully, and locate on diagram on Page 2. Where appropriate, give street names and address and measurements from landmarks.

Tomatis Restaurant 1123 grant Ave.

Describe in detail how the DAMAGE or INJURY occurred:
City sewer line blocked with fencing debris and branches, raw sewage backed up in to restaurant cleanouts, kitchen cleanout and grease trap backed up.

Names of any employees involved in INJURY or DAMAGE: N/A involved.
Why do you claim the Entity is responsible?

witnessed by Tony Delao / Susan Delao
Cesar Valeriano / City Sewer workers

Describe in detail each INJURY or DAMAGE:

The amount claimed, as of the date of presentation of the claim, is computed as follows:

Damage to property.....\$ _____	Estimated prospective damages as far as known.....\$ <u>NIA</u>
Expenses for medical and hospital care...\$ _____	Future expenses for medical and hospital care.....\$ <u>NIA</u>
Loss of earnings.....\$ <u>220.00</u>	Future loss of earnings.....\$ _____
Special damages for.....\$ _____	Other prospective special damages.....\$ _____
<u>Additional Repair</u>\$ <u>118.00 (est)</u>	Total estimate prospective damages.....\$ _____
General Damages.....\$ _____	
Total damages incurred to date.....\$ _____	

Total amount claimed as of date of presentation of the claim: \$ 338.00

Was damage and/or injury investigated by police? NO If so, what city? city personal only
 Were paramedics or ambulance called? NO If so, name city or ambulance _____
 If injured, state date, time, name and address of doctor of your first visit NIA

WITNESSES TO DAMAGE or INJURY. List all person and addresses of persons known to have information:

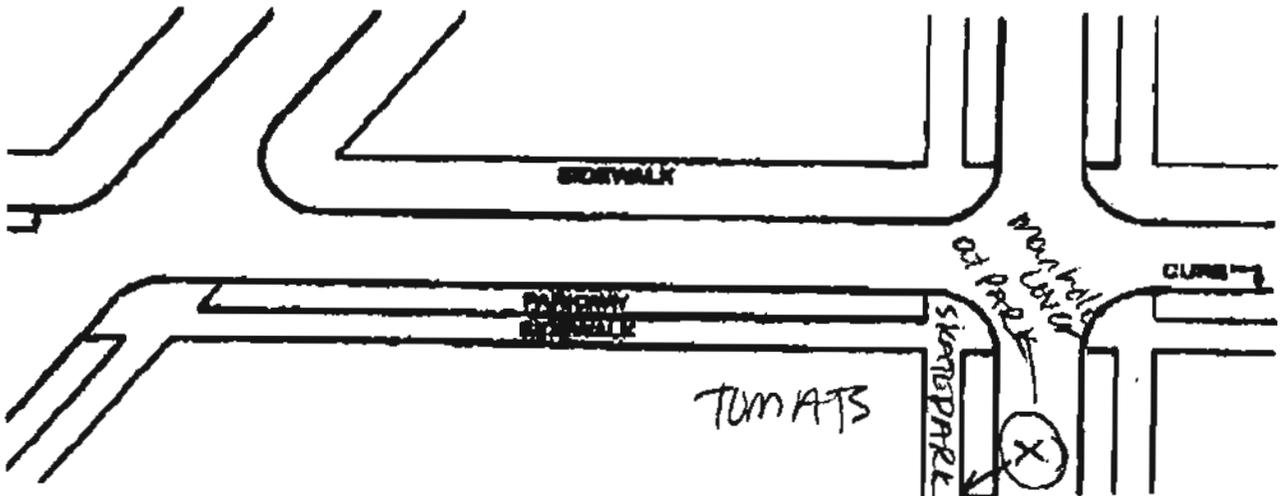
Name <u>MAE McKinney</u>	Address <u>Winters CA</u>	Phone <u>795-2321</u>
Name <u>Cesar Valeriano</u>	Address <u>Winters CA</u>	Phone <u>908-5921</u>
Name <u>City Sewer Workers</u>	Address <u>Winters</u>	Phone <u>795-4910</u>

DOCTORS and HOSPITALS

Hospital <u>NIA</u>	Address _____	Date Hospitalized _____
Doctor _____	Address _____	Date of Treatment _____
Doctor _____	Address _____	Date of Treatment _____

READ CAREFULLY

For all accident claims place on following diagram names of streets, including North, East, South and West. Indicate place of accident by "X" and by showing house numbers or distance to street corners.
 NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Signature of Claimant or person filing on his behalf giving relationship to Claimant: <u>Susan Dela O</u>	PRINT Name: <u>Susan Dela O</u>	Date: <u>8/24/10</u>
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NOTE: CLAIMS MUST BE FILED WITH THE CLERK OR GOVERNING BOARD (Gov. Code Sec. 915a). Presentation of a false claim is a felony (Pen. Code Sec. 72)

◆◆◆ INVOICE

TO: CITY OF WINTERS SEWER DEPT

SHIP TO: CITY OF WINTERS SEWER DEPT

USA

USA

10508	8/14/2010			
INVOICE NO.	DATE SHIPPED	SHIPPED VIA	FON	
F.O. NUMBER	PREPARE/S-ALL	CALIFORNIA	TAX EXEMPT	EXEMPTION NO.

TERMS: UPON RECEIPT				
QTY	ITEM NO.	DESCRIPTION	PRICE	TOTAL
	437480	LOST REVENUE DUE TO BATHROOMS UNAVAILABLE FOR TWO PARTIES		220.00
		REPAIR FOR BACKED UP SEWER		115.00
			GRAND TOTAL	335.00
			TAX RATE	8.25%
			USER IMPOST	0.00
			15% CREDIT	
			TOTAL	335.00

PLEASE MAKE CHECKS PAYABLE TO:
TOMAT'S CA. CUISINE
1123 GRANT AVE
WINTERS, CA 95694

ALSO

MAZ McKINNEY estimate
bill of \$65.00. I have
not actually received
his bill from 4/14/10.

NORTH STATE RENDERING CO., INC.

P.O. BOX 1478
CHICO, CA 95927
(800) 351-4446

NAME		Tomato's	
ADDRESS		1123 W. Grant	
Winters		PH. NO.	DATE
			5-16-10
<input checked="" type="checkbox"/> CASH	<input type="checkbox"/> C.O.D.	<input type="checkbox"/> CHARGE ON ACCT	<input type="checkbox"/> MUST RETN
<input type="checkbox"/> CASH	<input type="checkbox"/> C.O.D.	<input type="checkbox"/> CHARGE ON ACCT	<input type="checkbox"/> MUST RETN
QTY.	DESCRIPTION	PRICE	AMOUNT
	Pumped out		50.00
	20 Gallon Grease		
	Traps Inside		
RECEIVED BY		TAX	
		TOTAL	50.00
No. 023413		ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS BILL.	

GP-1513
PRINTED IN U.S.A.

Thank You

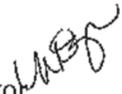


CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: September 7, 2010

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

FROM: Nelia C. Dyer, Community Development Director 
Nick Ponticello, City Engineer
Heidi Tschudin, Contract Planner

SUBJECT: Appeal of the Planning Commission's Action to Find the Burger King, Arco Gas Station, AM PM Convenience Mart, and Truck Fueling Facility to be exempt from further CEQA review and approve the Conditional Use Permit, Site Plan/Design Review, Sign Permit for the Freeway Information Sign, and Approve the Variance to Sign Ordinance

RECOMMENDATION: CONTINUE the above-referenced item to the September 21, 2010 City Council Meeting. Staff is requesting a continuance to September 21, 2010 to allow additional time to respond to the appeal.



TO: Honorable Mayor and Council Members
DATE: September 7, 2010
THROUGH: John W. Dontevy, Jr., City Manager 
FROM: Nicholas J. Ponticello, City Engineer
SUBJECT: Information Item – Update on Putah Creek Bridge Replacement, Project No. 01-05

RECOMMENDATION: No action requested- informational item only.

BACKGROUND: The Putah Creek Bridge (Bridge No. 23C-234) on the south end of Railroad Avenue was put on the State's list of bridges eligible for replacement or upgrade. The City and County entered into an Agreement to implement a project, which includes replacement of the existing structurally deficient and functionally obsolete structure. MGE Engineering out of Sacramento was selected to perform design and environmental services associated with the project. An alignment for the new bridge was approved in 2006, and MGE and the County have been coordinating with City staff on refining the design elements and working on the lengthy environmental process. A couple months ago, the NEPA environmental Categorical Exclusion was approved and the CEQA Notice of Determination was filed on July 8, 2010. With NEPA and CEQA completed the County will seek the required permits from the regulatory agencies.

Right of Way

The County has received Caltrans approval to move forward with the right of way phase. Attached is an Exhibit showing the land-takes and temporary construction easements required for the project. Within the City Limits, only one parcel-acquisition is required, on the southwest corner of Wolfskil and Railroad. Temporary construction easements are also required, to allow the contractor access to construct the improvements.

Design

The design is nearly 50% completed. Civil Plans for the north and south approaches have been reviewed with the City staff and Council Members Fridae and Anderson. The following key concerns were expressed and the design engineers will address them in the final design:

1. The sidewalk adjacent to Biasi's, along Russell, be salvaged to preserve the tools (horseshoe, hammer, file, etc.) stamped into the concrete.
2. Incorporate CL 2 Bike Lanes into the new Putah Creek Road cross-section, to tie into the Trestle Bridge.
3. Save the existing large trees adjacent to the retaining walls in back of the Community Center, near the proposed detour bridge roadway.
4. Avoid directing the temporary pedestrian and bike access to the Trestle Bridge through the Community Center Patio Area.
5. Temporary relocation of electric, gas, telephone, and water facilities will be required. The utility companies may request from the City permission to use the Trestle Bridge for

temporary relocations. The City will ask for assurances that if the Trestle Bridge is used to temporarily relocate existing utilities, these utilities will be permanently moved back to the new bridge.

6. Speeds coming northbound into town could be high so traffic-calming elements should be incorporated.
7. Incorporate the faux railroad rail into the new sidewalk along the Community Center.

Schedule

Final design should be completed in the summer of 2011 and it's anticipated that all right of way will be acquired by the fall of 2011. Once these are completed, Caltrans District 4 will receive a Request for Construction Authorization, which should be approved in late-fall/winter of 2011, which will allow the project to go to bid for an early 2012 start. The new bridge will take up to 24 months to complete.

ALTERNATIVES: None recommended by staff.

FISCAL IMPACT: The project is funded through the Federal Highway Bridge Program (HBP). HBP funds cover 80% of the total project costs for environmental and design. The City of Winters and Solano County are responsible for the remaining 20%, and both have agreed to split the cost 50-50. The estimated cost for environmental and design is \$1,000,000. The estimated cost to the City is \$100,000.

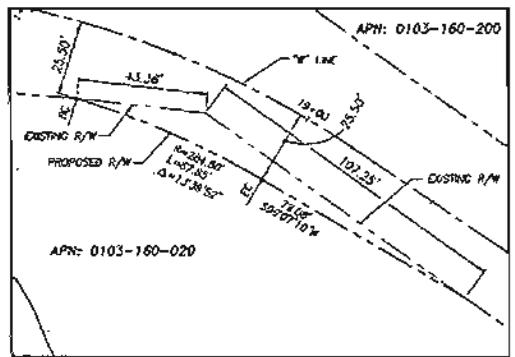
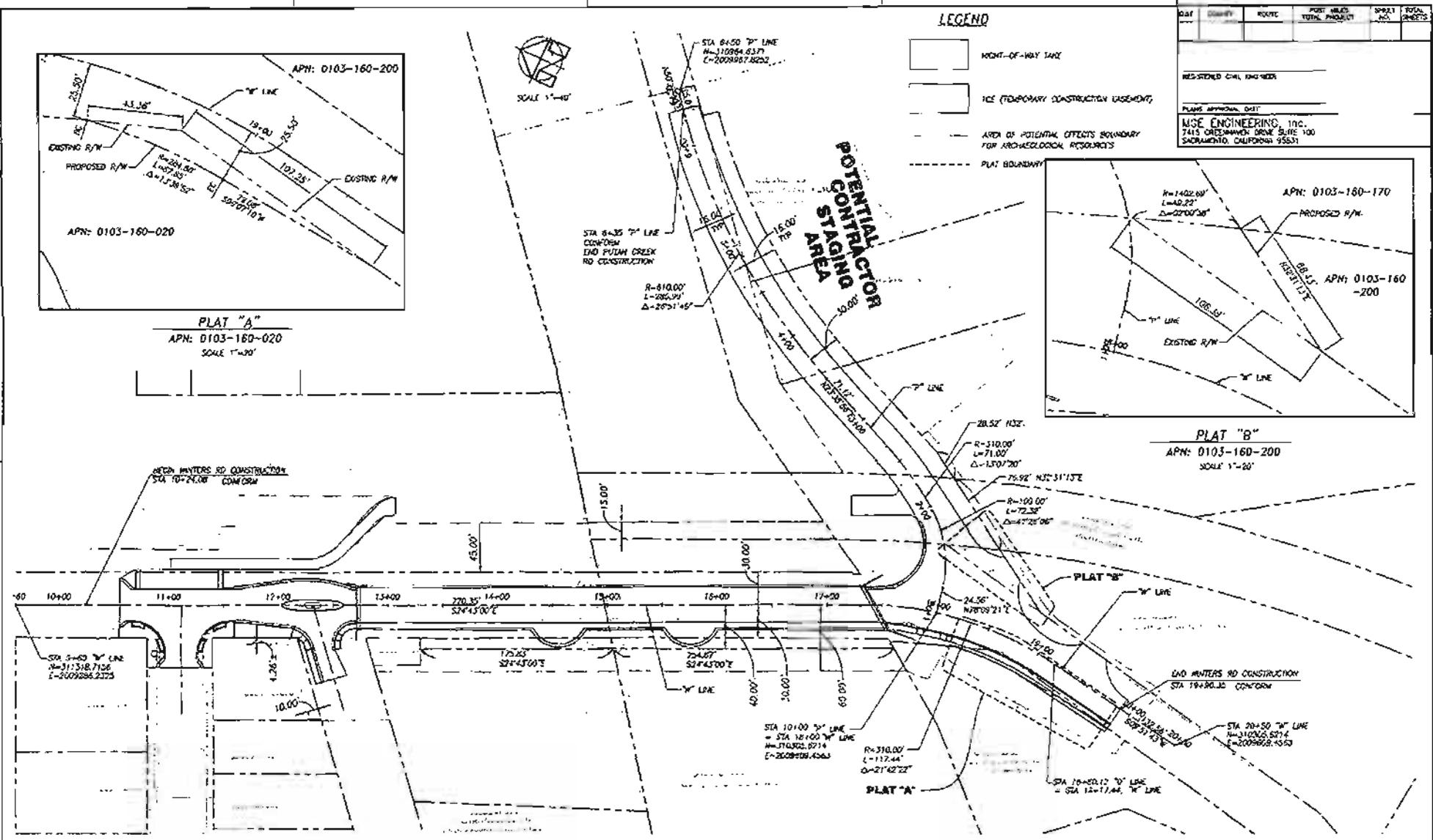
Previously the HBP-funded percentage for right-of-way and construction was 88.53%, and the City and County were responsible for the remaining 11.47%. However, in July, Solano County was notified that the project is eligible to receive toll funds as the matching 11.47% portion of project making the project eligible for 100% reimbursement for right of way and construction costs, which equates to approximately \$470,000 in savings to the City. The current right of way and construction estimates are \$200,000 and \$8,000,000 respectively.

Attachments: Presentation Exhibits

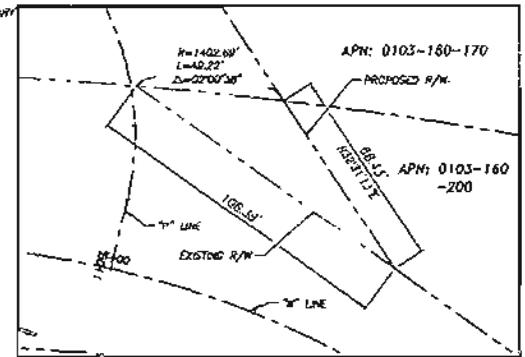


Council Update
Putah Creek Bridge Replacement PN 01-05
September 7, 2010





PLAT "A"
APN: 0103-160-020
SCALE 1"=30'



PLAT "B"
APN: 0103-160-200
SCALE 1"=30'

LEGEND

- RIGHT-OF-WAY LINE
- TCE (TEMPORARY CONSTRUCTION EASEMENT)
- AREA OF POTENTIAL EFFECTS BOUNDARY FOR ARCHAEOLOGICAL RESOURCES
- PLAT BOUNDARY

DATE	COUNTY	ROUTE	POST MILES	TOTAL PROJECT	SHEET NO.	TOTAL SHEETS

REGISTERED CIVIL ENGINEER

PLANS APPROVAL DATE

WSE ENGINEERING, INC.
7415 GREENHAVEN DRIVE SUITE 100
SACRAMENTO, CALIFORNIA 95831

PLAN SCALE: SEE PLAN	DESIGN: BY K. U.	LOAD FACTOR DESIGN: BY K. U.	PREPARED FOR THE COUNTY OF SOLANO DEPARTMENT OF RESOURCE MANAGEMENT	Jeffrey Crowtz	BRIDGE NO. 736-0245	WINTERS ROAD BRIDGE REPLACEMENT
PROFILE SCALE:	DETAILS: BY K. U.	LAYOUT: BY	DEPARTMENT OF RESOURCE MANAGEMENT		POST: ALL	RIGHT-OF-WAY & TCE EXHIBIT
HORIZ:	QUANTITIES: BY	REVISIONS: BY			N/A	
VERT:						

BY 020 7130 (CAD) 4/98

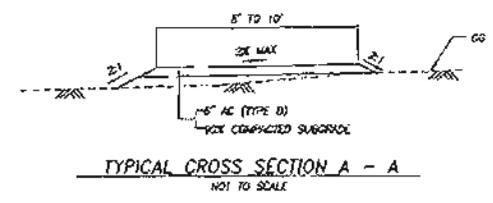
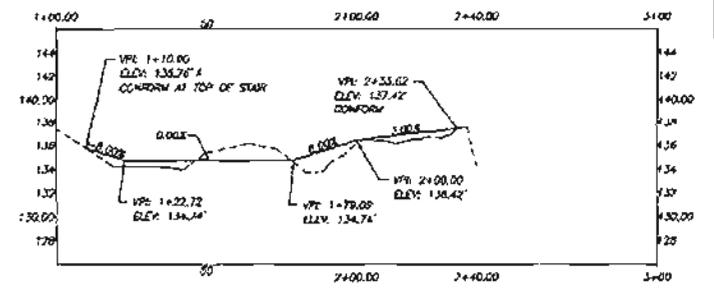
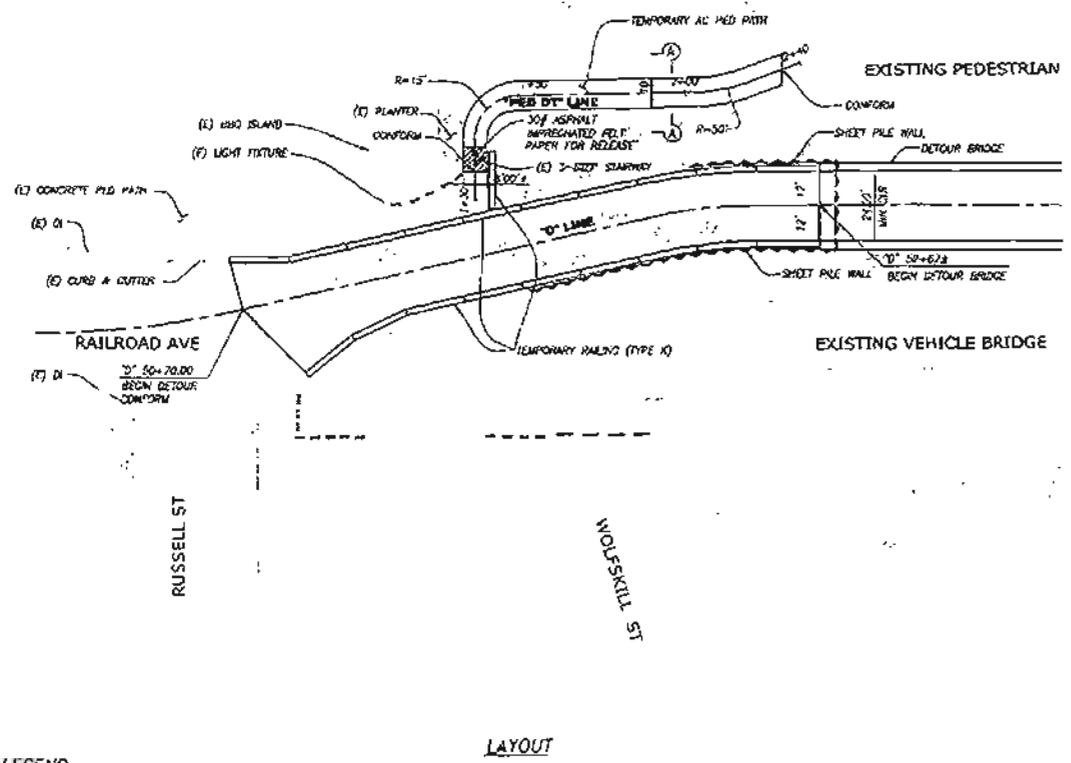
ORIGINAL SCALE IN NOTES FOR ASSOCIATED PLANS

DATE: 02/01/00

REVISION: 02/01/00

SCALE: 1"=30'

DIST.	COUNTY	ROUTE	POST MILE	POST MILE	SHEET NO.	TOTAL SHEETS
REGISTERED CIVIL ENGINEER						
FILING APPROVAL DATE						
MCE ENGINEERING, Inc. 7443 GREENHAWK DRIVE, SUITE 100 SACRAMENTO, CALIFORNIA 95831						



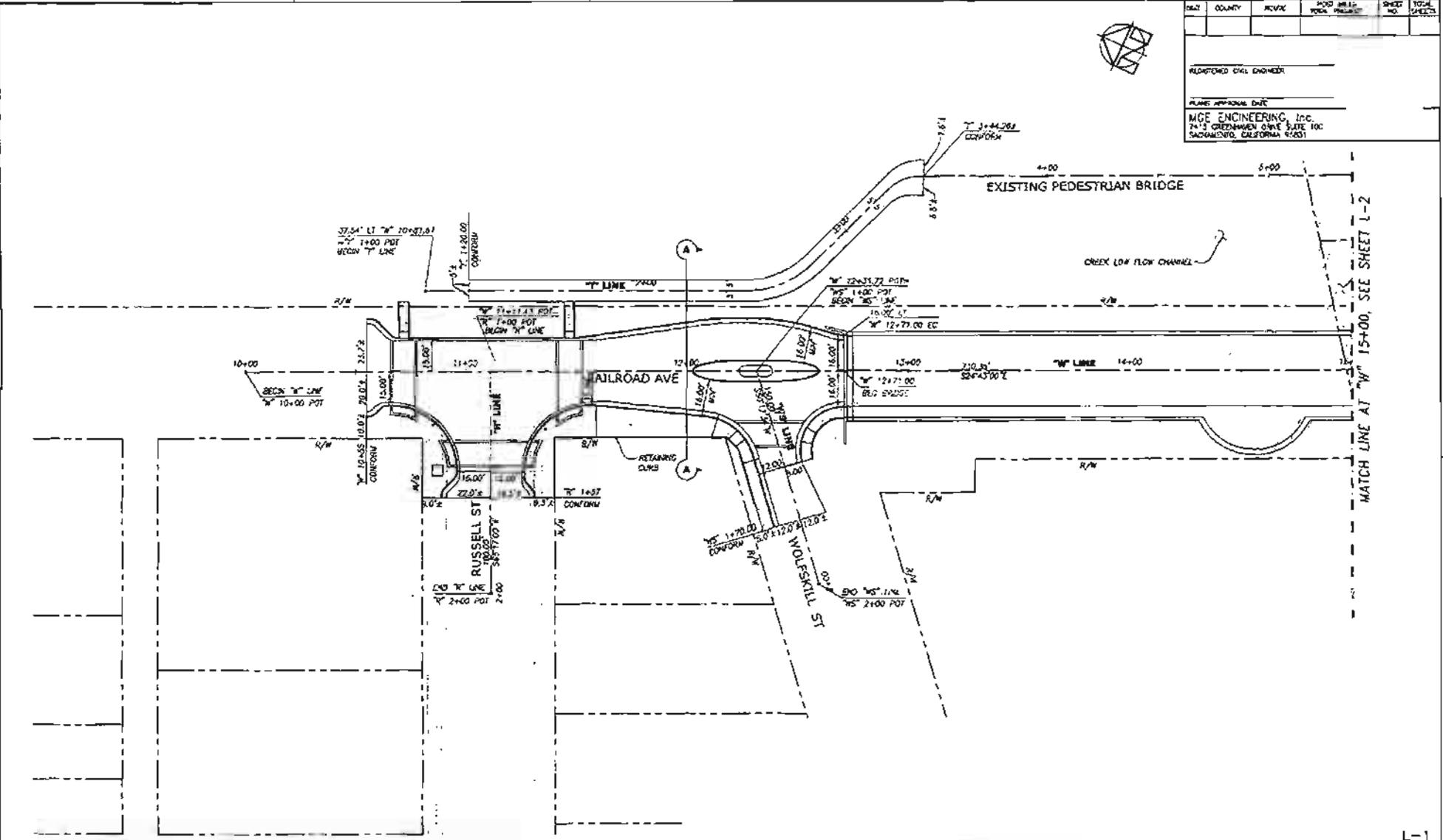
LEGEND

- TEMPORARY RAILING (TYPE 1)
- SHEET PILING
- TYPE 2 BARRICADE
- TYPE 3 BARRICADE

LAYOUT

DT-EXH-3

PLAN SCALE: 1"=20'	DESIGN BY: K, U	CHECKED BY: J. CRONITZ	LOAD FACTOR DESIGN	LIVE LOADS: HS-20 AND ALTERNATE PERMISSIVE TRUCK LOAD	PREPARED FOR THE COUNTY OF SOLANO DEPARTMENT OF RESOURCE MANAGEMENT	DRAWN BY: Jeffrey Cronitz	REVISION NO.: 230-0243	WINTERS ROAD BRIDGE REPLACEMENT	
PROFILE SCALE: 1"=20'	DETAILS BY: K, U	CHECKED BY: J. CRONITZ	LAYOUT	BY:		POST MILE: N/A	DETOUR DETAILS 1		
HORIZ: 1"=20'	QUANTITIES BY: K, U	CHECKED BY: J. CRONITZ	SPEED CATIONS	BY:		SCALE AND SHEET DIMENSIONS			
VERT: 1"=2'						SCOUR AND SPILL PROTECTION			
CS AND 1130 (2ND 1/2)						REVISION DATE (PRELIMINARY DATE ONLY)			
			DESIGN SCALE BY NOTES FOR REDUCED PLANS						

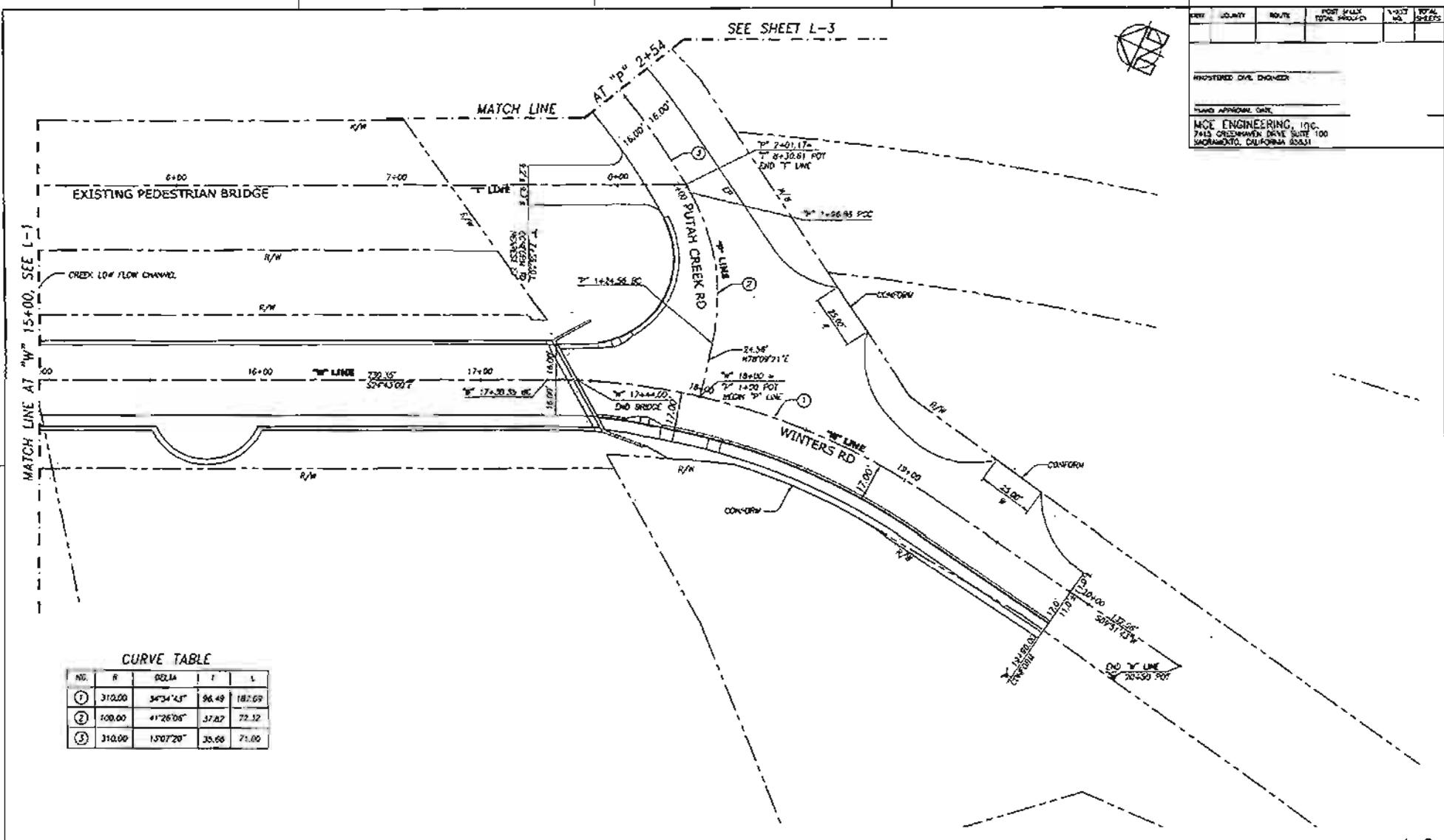


DATE	COUNTY	ROUTE	POST MILE TOTAL	PROJECT	SHEET NO.	TOTAL SHEETS
REGISTERED CIVIL ENGINEER						
PLANS APPROVAL DATE						
MGE ENGINEERING, INC. 7413 GREENHAVEN DRIVE, SUITE 100 SACRAMENTO, CALIFORNIA 95831						

MATCH LINE AT "W" 15+00, SEE SHEET L-2

PLAN SCALE: 1"=20' PROFILE SCALE: HORIZ: _____ VERT: _____	DESIGN BY: K. U. CHECKED BY: _____	DRAWN BY: _____ CHECKED BY: _____	LOAD FACTOR: _____ DESIGN: _____	LAYOUT BY: _____ CHECKED BY: _____	PREPARED FOR THE COUNTY OF SOLANO DEPARTMENT OF RESOURCE MANAGEMENT	DESIGNER: Jeffrey Croyle DATE: _____	DESIGN NO.: 237-0242 PROJECT: _____ DATE: _____	WINTERS ROAD BRIDGE REPLACEMENT LAYOUT 1	SHEET OF _____
	QUANTITIES BY: _____ CHECKED BY: _____	SPECIFICATIONS BY: _____ CHECKED BY: _____	ORIGINAL SCALE IN INCHES FOR REPRODUCED PLANS	DESIGN AND PRINTING BEARING EARLIER REVISION DATES	REVISION DATE: _____ PRELIMINARY STAGE: _____	SHEET OF _____			

L-1



SEE SHEET L-3



DATE	JOINT	ROUTE	POST MILE TOTAL PROPOSED	SHEET NO.	TOTAL SHEETS

REGISTERED CIVIL ENGINEER

PLANS APPROVAL DATE

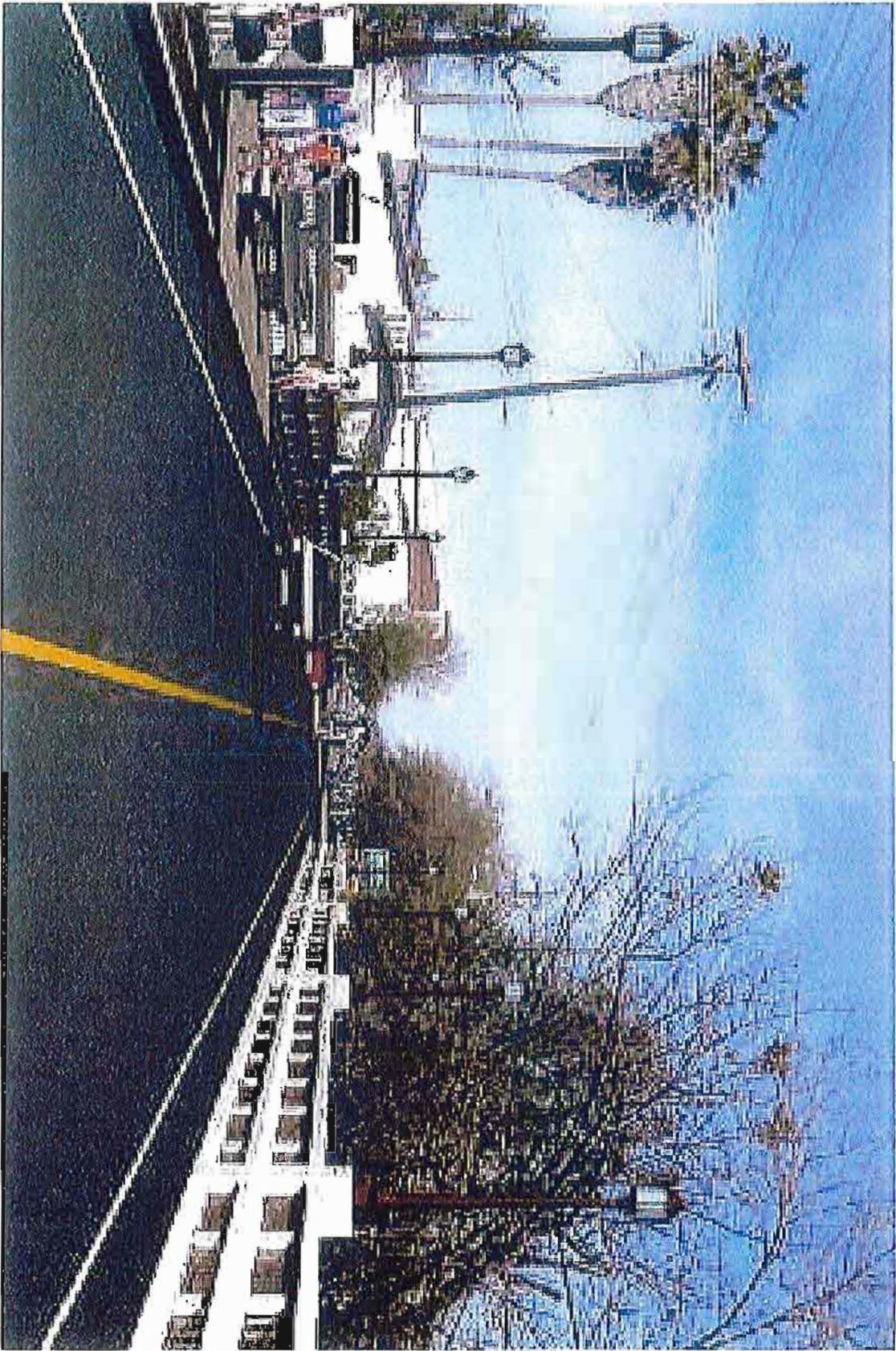
MCE ENGINEERING, INC.
7413 GREENHAVEN DRIVE SUITE 100
SACRAMENTO, CALIFORNIA 95831

CURVE TABLE

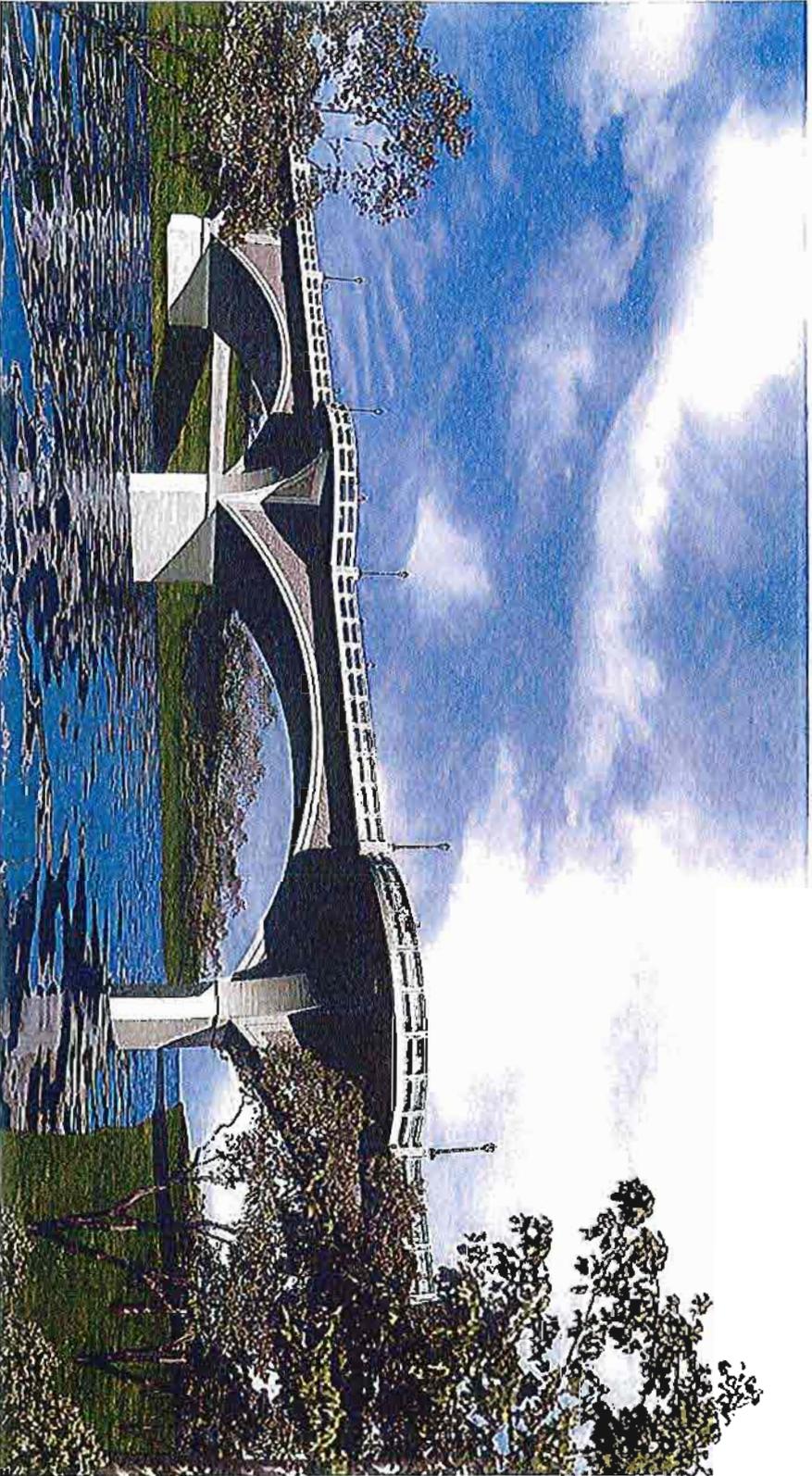
NO.	R	DELTA	T	L
①	310.00	34°34'45"	96.49	182.69
②	500.00	41°26'08"	37.87	72.12
③	310.00	150°7'20"	35.66	71.00

L-2

PLAN SCALE: 1"=20'	DESIGN: K, U	LOAD FACTOR: DESIGN	PREPARED FOR THE COUNTY OF SOLANO DEPARTMENT OF RESOURCE MANAGEMENT	DESIGNER: Jeffrey Covitz	SHEET NO.: 230-024J	PROJECT TITLE: WINTERS ROAD BRIDGE REPLACEMENT
PROFILE SCALE:	DETAILS: K, U	LAYOUT	DEPARTMENT OF RESOURCE MANAGEMENT	DATE: 11/19/07	POST DATE: N/A	LAYOUT 2
HORIZ.:	QUANTITIES:	SPECIFICATIONS:	PLANS AND SPEC. APPROVED:	DESIGNED BY: Jeffrey Covitz	CHECKED BY: N/A	DATE: 11/19/07
VERT.:			ORIGINAL SCALE IN INCHES FOR REDUCED PLANS			

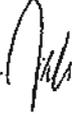


Architectural Rendering





STAFF REPORT

TO: Honorable Mayor and Council Members
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Nick Ponticello, City Engineer
SUBJECT: Information Item – Update on Putah Creek Bridge Replacement - North Bank Improvements, Project No. 09-01

RECOMMENDATION: No action requested- informational item only.

BACKGROUND: In 2006, the City received approval of SAFETEA-LU High Priority/Demonstration funds in the amount of \$2,000,000, which were sponsored through Congressman Thompson's office. The federal funds are identified to implement a project that is tied to the bridge replacement project and will compliment those improvements. In January, 2009 the City received authorization to proceed with the environmental and design tasks for the Putah Creek Bridge Replacement – North Bank Improvements, Project No. 09-01.

On March 3, 2009, Council approved a design contract with Callander Associates, for preparation of schematic design layout, construction documents, and environmental studies. On August 18, 2009, Council approved the schematic design and directed staff to proceed with final design and environmental analysis. The design was completed in early 2010 and staff has been working with Callander's team since then to finalize the environmental studies through Caltrans (State) and Fish and Wildlife Service (Federal).

DISCUSSION:

Design

The construction documents have been completed. Proposed improvements are best described in two categories, base project improvements and add-alternative project improvements. The base project improvements are fully funded and will be constructed as soon as possible. The add-alternative project improvements are not fully funded and may or may not be constructed with the base project improvements. The City will decide to build or not build the add-alternative project improvements after the project bids are received from contractors.

The base project improvements includes a 10-foot wide ac trail, benches, trash/recycling receptacles, picnic tables, signage for interpretive and educational purposes, mitigation and restoration planting and associated irrigation system. These improvements will provide improved emergency and public access, and mitigation maintenance access.

The add-alternative project improvements include a pre-fabricated pedestrian bridge that will connect the base project improvements trails to the south side of Putah Creek.

This project will prepare a conservation easement for portions of the site to handle anticipated mitigation plantings of elderberries and associated native plants.

Environmental

The biggest challenges associated with this project have been biological environmental issues related to impacts to existing Elderberry shrubs and federally-listed Valley Elderberry Longhorn Beetle (VELB), and establishing a conservation easement for mitigation-plantings. Staff and Callander have been working with Caltrans (State) and Fish and Wildlife Service (Federal) to establish the impacts and compile the detailed biological assessment for field review and formal consultation. Due to the sensitivity of the project along a waterway, and the federal funds tied to the project, the environmental process has extended well beyond what was originally anticipated by staff. Also, establishing an on-site conservation easement is unique, but will allow project funds to mitigation/native plantings to stay on-site and not be relegated to a mitigation bank or off-site easement.

Schedule One of the VELB Conservation Measures stipulates that construction within 100 ft of an Elderberry Plant must be completed between June 16th and March 14th, thus we cannot start construction until March 14, 2011, or be subject to additional mitigation costs. The intent was to be under construction this summer but the project has been delayed due to the process required by Caltrans for direct oversight of the environmental process. The project needs to be out to bid in January 2011 in order to award a contract, and start construction on March 14th. Bidding at that time should result in a favorable bid climate as contractors are still hungry for work.

ALTERNATIVES: None recommended by staff.

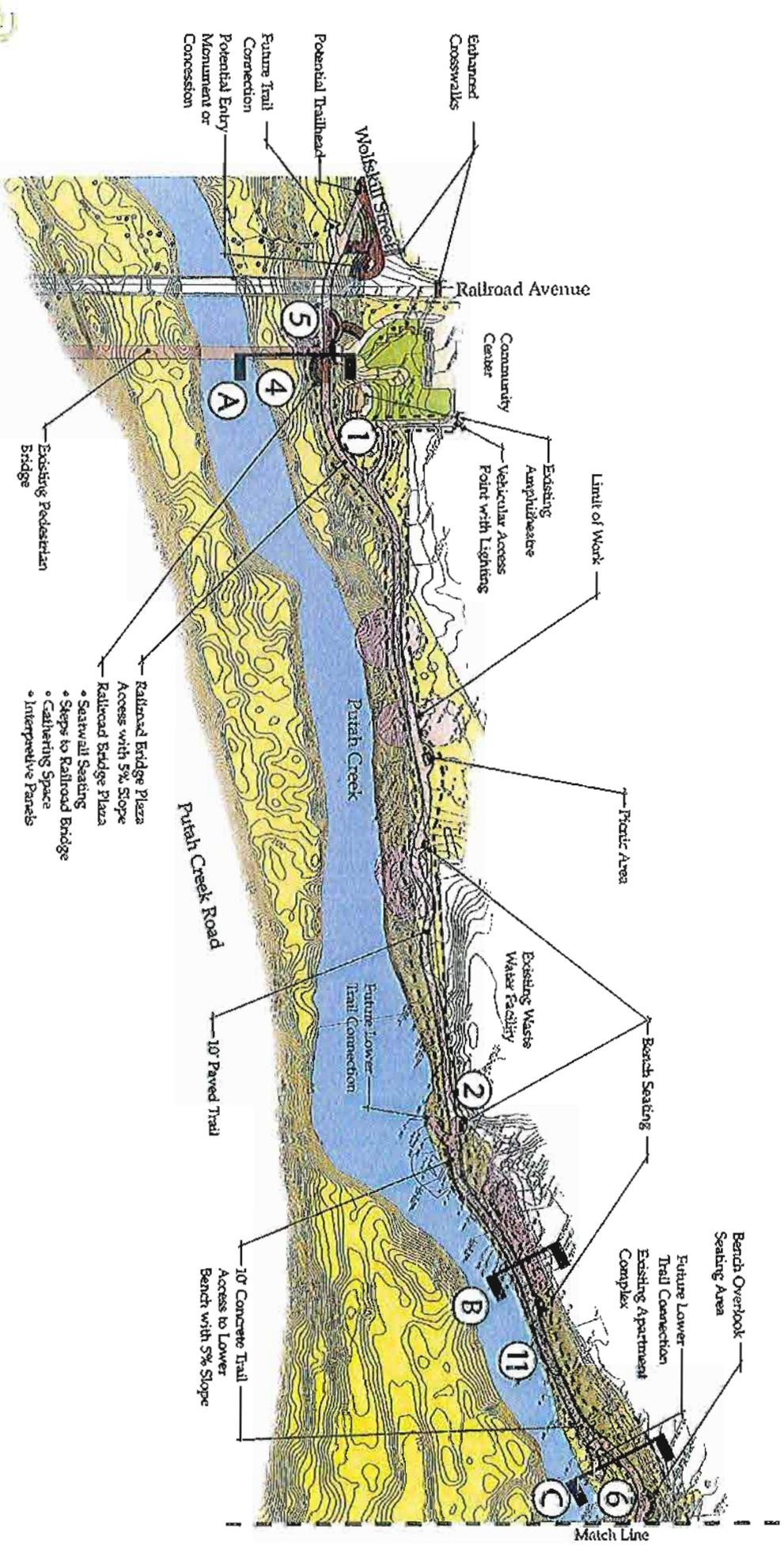
FISCAL IMPACT: The project is funded by 11.47% City (Park Impact) and 88.53% Federal Funds (SAFETEA-LU). The Landscape Architect's construction cost estimate is \$1,453,000, for the base bid with a 10% contingency and required environmental mitigation and monitoring costs. The approved budget is \$1,497,000. The estimate for the ped/bike bridge is \$1,348,000, which includes 10% contingency and required mitigation and monitoring costs.

Attachments: Presentation Exhibits

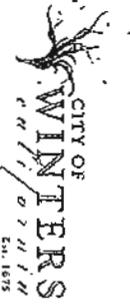


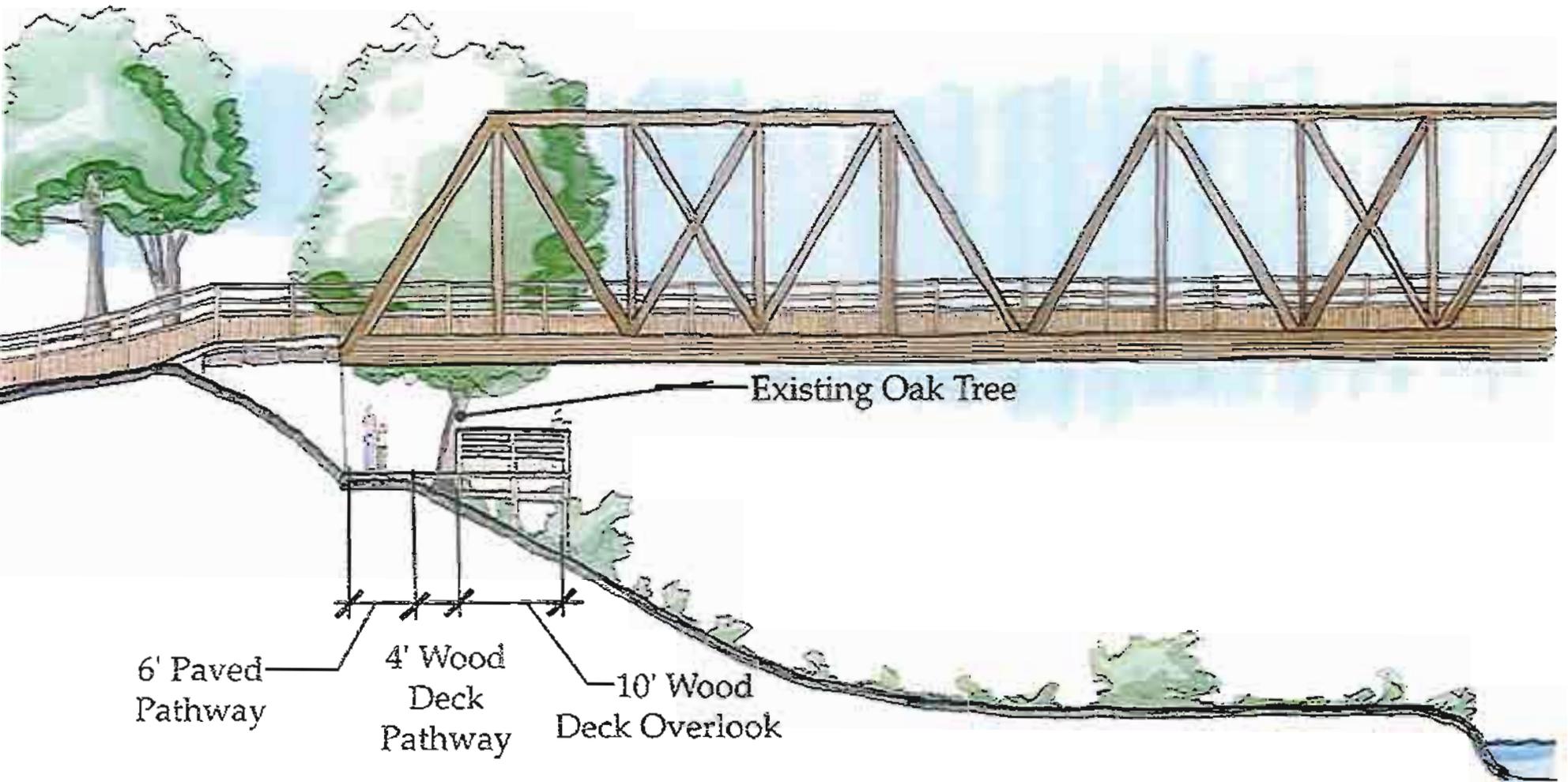
Council Update
Putah Creek Bridge Replacement, North Bank Improvements
September 7, 2010



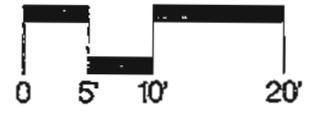


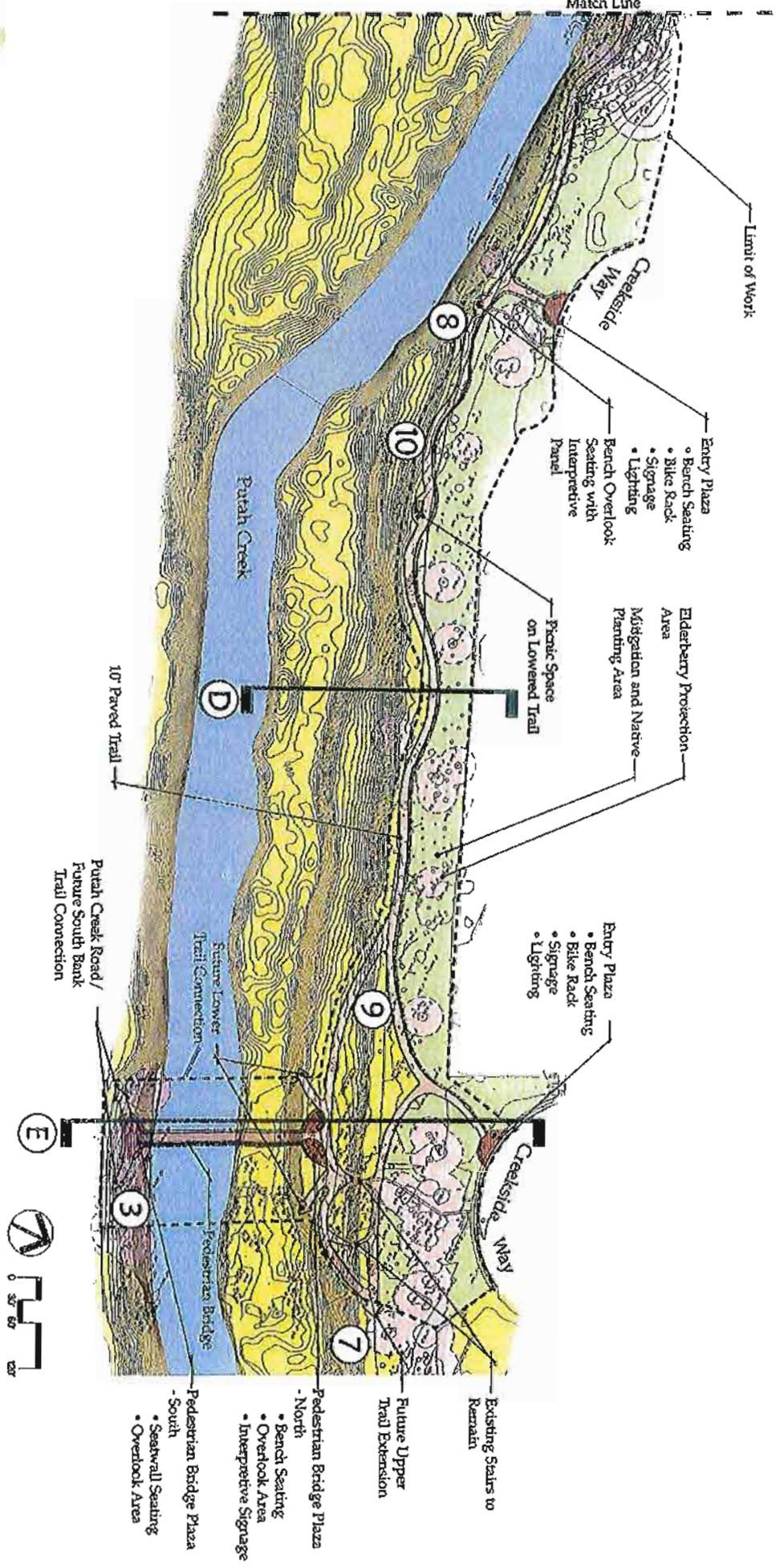
**Putah Creek Bridge Replacement -
 North Bank Improvements**





Section A



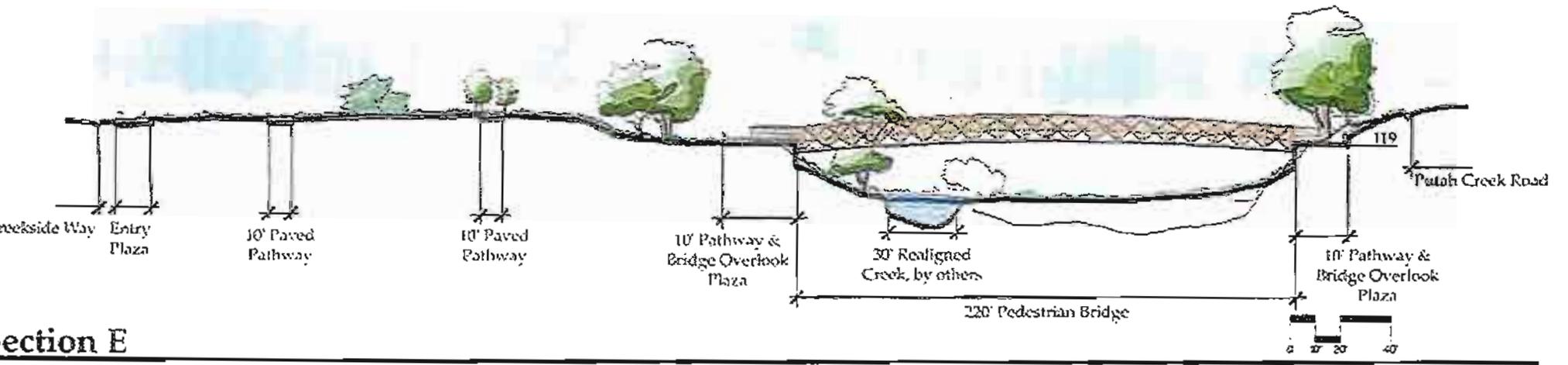


**Putah Creek Bridge Replacement -
North Bank Improvements**

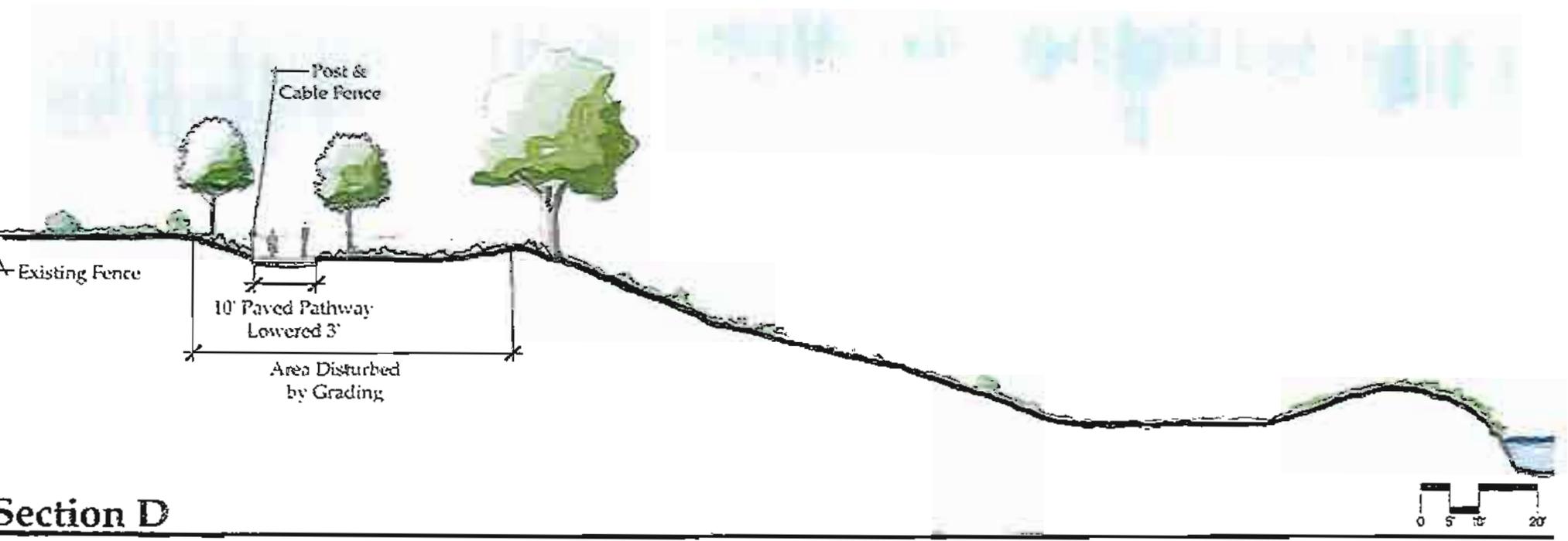
Callander Associates
Landscape Architecture
Trail Planning

CITY OF
WINTERS
EST. 1975

©2007 Putah Creek - Callander Associates, a subsidiary of Callander Associates, Inc.

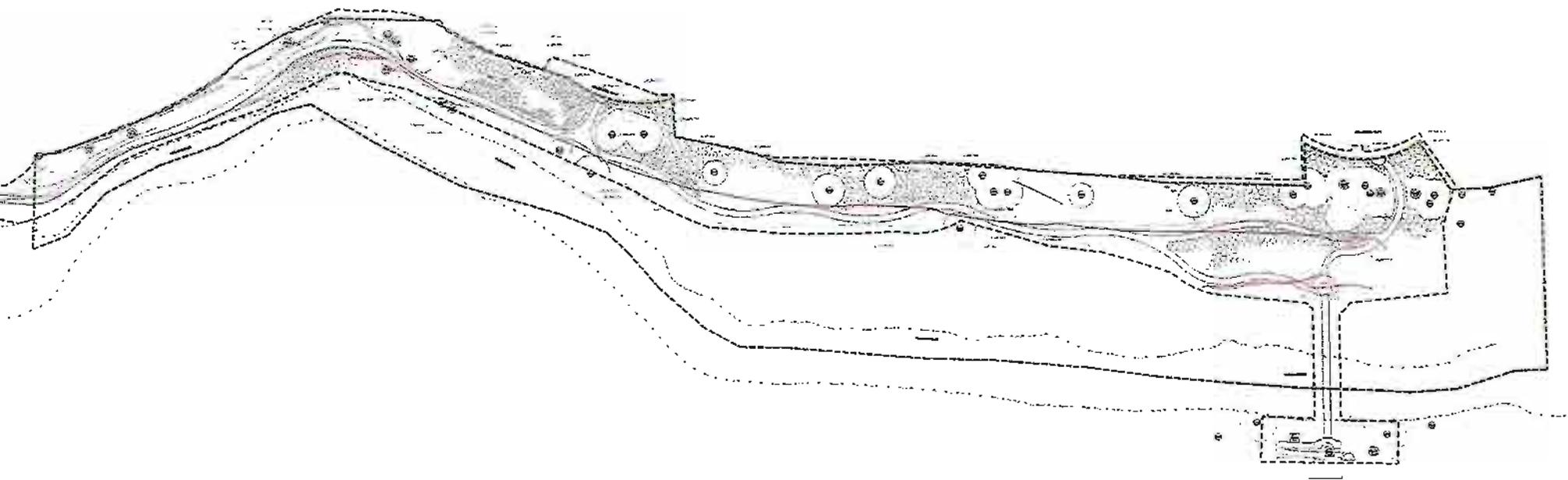


Section E



Section D







EST. 1876

TO: Honorable Mayor and Council Members
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk *Nanci*
SUBJECT: Adoption of Ordinance 2010-06 Authorizing Amendment of the CalPERS Contract

RECOMMENDATION:

That the Council adopt Ordinance 2010-06 authorizing an amendment to the contract between the City Council of the City of Winters and the Board of Administration of the California Public Employees Retirement System.

BACKGROUND:

Council waived the first reading of this Ordinance and adopted the Resolution of Intention at the August 3, 2010 meeting. This initiated the process to amend the City's contract with the California Public Employees' Retirement System to provide the 2% at 50 full formula for local fire members effective January 1, 2010, as part of the process that is necessary in order to facilitate the consolidation of the Winters Fire Department.

FISCAL IMPACT:

The employer contribution will be less for the City of Winters versus the employer contribution that was paid by the Winter Fire Protection District

ORDINANCE 2010-06

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE
CITY OF WINTERS AND THE BOARD OF ADMINISTRATION OF THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, THE City Council of the City of Winters does ordain as follows:

That an amendment to the contract between the City of Winters and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part thereof as though herein set out in full.

WHEREAS, the City Manager of the City of Winters is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

WHEREAS, this Ordinance shall take effect thirty (30) days after the date of its adoption and shall be published at least one (1) time in the Winters Express, a newspaper of general circulation, published and circulated in Winters and thenceforth and thereafter the same shall be in full force and effect.

This Ordinance was introduced at a regular meeting of the City Council of the City of Winters on Tuesday, August 3, 2010 and adopted at a regular meeting of the City Council of the City of Winters on _____, 2010 by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

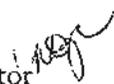
Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Nelia C. Dyer, Community Development Director 
SUBJECT: Second Reading and Possible Adoption of Ordinance 2010-09 amending Chapter 17.96 (Alcoholic Beverage Establishments) of the Winters Municipal Code

RECOMMENDATION: Staff recommends that the City Council: 1) Receive the staff report; and 2) Waive second reading, read by title only, and adopt Ordinance 2010-09 amending Chapter 17.96 (Alcoholic Beverage Establishments) of the Winters Municipal Code.

BACKGROUND: Staff has received inquiries from potential business owners concerning the City's regulations governing alcoholic beverage establishments in the central business district, which is also known as the Downtown Form Based Code area as defined in Chapter 17.58 of the Winters Municipal Code. Presently, the Chapter 17.96 of the Winters Municipal Code states that no on-sale liquor establishments shall be authorized or maintained within 200 feet of sensitive uses in the central business district. Sensitive uses include schools (public and private); established churches or places of worship; hospitals, clinics, or other health care facilities; public parks, playgrounds, or other recreational uses; or other on-sale liquor establishments. With the current businesses/uses in the downtown in combination with the current municipal code, it is difficult for additional on-sale liquor establishments, such as wine tasting rooms, to locate in the downtown.

Based upon this, City staff is of the opinion that the Winters Municipal Code should be amended to offer appropriate regulations for these businesses that wish to locate in the downtown. Below are the proposed amendments.

PROPOSED AMENDMENTS:

17.96.020 On-sale liquor establishments defined.

An "on-sale liquor establishment" means any establishment wherein alcoholic beverages are sold, served or given away for consumption on the premises including but not limited to any facility which has obtained a California Department of Alcoholic Beverages Control license. Typical on-sale uses include, but are not limited to, the following establishments: ~~bathrooms; dance halls; bars, taverns, piano bars, billiard and/or game parlors,~~ night clubs, wineries, wine tasting rooms, breweries or other private clubs. This definition shall not include restaurants as defined in Chapter 17.08, veterans' clubs, or the following fraternal organizations: Elks Club, Moose club, or Eagle Club, Lions Club, or Rotary

Club. Fraternal organizations not listed may be exempt upon planning commission approval. (Ord. 97-03 § 2 (part): prior code § 8-1.6009(B))

17.96.030 Requirements for on-sale liquor establishments.

A. No on-sale liquor establishments shall be authorized or maintained within five hundred (500) feet of sensitive uses. Sensitive uses include schools (public and private); established churches or places of worship; hospitals, clinics, or other health care facilities; public parks, or playgrounds or other park or recreational uses; or another on-sale liquor establishment. ~~The separation requirement between on-sale liquor establishments and a sensitive use shall be reduced to two hundred (200) feet within the central business district.~~ *There shall be no separation requirement between on-sale liquor establishments and a sensitive use within the Regulating Plan Area for the Form Based Code for Downtown as defined in Chapter 17.58.* For the purposes of this section, distance shall be measured from the nearest entrance used by patrons of such establishments along the shortest route intended and available for public passage to the entrance of other such establishments, or to the nearest property line of any of the other sensitive use. Veterans' clubs, fraternal organizations and restaurants are excluded from the separation requirement of this section. ~~The separation requirement shall not be applicable to Rotary Park and Rotary Park is expressly excluded from the definition of a sensitive use.~~

The proposed Ordinance was introduced to the City Council on August 17, 2010. A public hearing was also held. The City Council waived the first reading, read by title only, and introduced the proposed Ordinance.

PLANNING COMMISSION RECOMMENDATION: The Ordinance was presented to the Planning Commission in a special meeting on July 13, 2010. A public hearing was held, and no comments were made from the public. After some deliberation, the Planning Commission unanimously recommended approval of the Ordinance to City Council.

PROJECT NOTIFICATION: Public notice for the public hearing on this project was prepared by the City Clerk accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, August 5, 2010. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Friday, August 13, 2010. At the August 17, 2010 City Council meeting, the City Council scheduled the second reading of the Ordinance for the regularly scheduled City Council meeting on September 7, 2010.

ENVIRONMENTAL ASSESSMENT: The proposed Ordinance is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3).

RECOMMENDATION: Staff recommends that the City Council approve Ordinance 2010-09 by making the affirmative motion as follows:

I MOVE THAT THE WINTERS CITY COUNCIL WAIVE THE SECOND READING, READ BY TITLE ONLY, AND ADOPT ORDINANCE 2010-09 AMENDING CHAPTER 17.96 OF THE WINTERS MUNICIPAL CODE PERTAINING TO ALCOHOLIC BEVERAGE ESTABLISHMENTS.

ALTERNATIVES: The City Council may modify the Ordinance or the City Council may choose to not adopt the Ordinance.

~~and/or game parlors, night clubs, wineries, winetasting rooms, breweries or other private clubs. This definition shall not include restaurants as defined in Chapter 17.08, veterans' clubs, or the following fraternal organizations: Elks Club, Moose club, or Eagle Club, Lions Club, or Rotary Club. Fraternal organizations not listed may be exempt upon planning commission approval. (Ord. 97-03 § 2 (part): prior code § 8-1.6009(B))~~

B. Chapter 17.96, Section 17.96.030 (A) is amended to read as follows:

A. No on-sale liquor establishments shall be authorized or maintained within five hundred (500) feet of sensitive uses. Sensitive uses include schools (public and private); established churches or places of worship; hospitals, clinics, or other health care facilities; public parks, or playgrounds or other park or recreational uses; or another on-sale liquor establishment. ~~The separation requirement between on-sale liquor establishments and a sensitive use shall be reduced to two hundred (200) feet within the central business district. There shall be no separation requirement between on-sale liquor establishments and a sensitive use within the Regulating Plan Area for the Form Based Code for Downtown as defined in Chapter 17.58.~~ For the purposes of this section, distance shall be measured from the nearest entrance used by patrons of such establishments along the shortest route intended and available for public passage to the entrance of other such establishments, or to the nearest property line of any of the other sensitive use. Veterans' clubs, fraternal organizations and restaurants are excluded from the separation requirement of this section. ~~The separation requirement shall not be applicable to Rotary Park and Rotary Park is expressly excluded from the definition of a sensitive use.~~

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption it shall be posted in two (2) public places within the City of Winters and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Winters prior to the effective date.

INTRODUCED on the 17th day of August, 2010.

PASSED AND ADOPTED as an ordinance of the City of Winters at a regular meeting of said Council on the 7th day of September, 2010, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager. *[Signature]*
FROM: Nelia Dyer, Community Development Director
Dan Maguire, Housing Programs Manager
SUBJECT: Almondwood Housing and Loan Agreement

RECOMMENDATION:

Staff recommends the City Council 1) receive a report on the Housing and Loan Agreement with Winters Almondwood, LP, a California limited partnership for the acquisition and rehabilitation of the Almondwood Apartments, and 2) adopt Joint Resolution 2010-48 and 2010-49 (CDA) authorizing the City Manager / Executive Director to execute subordination agreements in conjunction with a Housing and Loan Agreement with Winters Almondwood, LP for the acquisition and rehabilitation of the Almondwood Apartments .

BACKGROUND:

The Almondwood apartment complex located on Dutton Street was constructed in 1983 under the Section 515 U.S. Department of Agriculture (USDA) loan program. Of the 39 units, 22 are subsidized by USDA rental assistance, 12 units are subsidized by RHCP (State) program, and the remaining 5 units are not covered by rental assistance. The complex's affordability is jeopardized by expiring affordability restrictions and is considered to be at risk of going to market rate. The previous owners, Bill Brown and Betty Brickey decided to sell the facility and wanted the new owner to continue to operate the facility for affordable housing. Mike Condry, a private real estate investor from Sanger, is under contract to purchase the Almondwood Apartments. He has purchased ten Section 515 projects in the last five years leading into this acquisition.

In conjunction with the acquisition, the developer understands that City participation (through the CDA) would require a 55-year affordability restriction. Condry has prepared a rehabilitation budget report that details the rehabilitation work and costs. Funding for Condry's acquisition and rehabilitation in order of lien position is (1) Chase, (2) assumption of existing USDA Rural Development loan (assuming an existing USDA RD 515 Loan, (3) TCAC, and (4) City/Agency. At conversion from construction lending to permanent financing, the Chase loan will be replaced by a USDA 538 Loan, with the

subordination order as follows: (1) USDA 538 Loan, (2) USDA 515 Loan, (3) TCAC, and (4) City/Agency.

The City has conditionally committed to providing \$600,000 to the project, adopting Resolution 2009-08 (March 17, 2009) committing \$300,000 in CDBG Program Income to the Almondwood Apartment Acquisition and Rehabilitation Project. The overall funding level of \$600,000 for the project was authorized with the adoption of Resolution 2009-21 (April 21, 2009), which also authorized the Executive Director to execute a Housing and Loan Agreement with Winters Almondwood, LP.

FISCAL IMPACT:

\$300,000 Program Income ("PI") from CDBG Housing Rehabilitation Revolving Loan Fund ("RFL"), with an additional \$300,000 to be granted (2007 Tax Exempt bond proceeds) at the close of escrow.

ATTACHMENTS:

Almondwood Housing and Loan Agreement
Housing and Loan Agreement Attachments
Resolution 2009-08
Resolution 2009-21
Joint Resolution 2010-48 and 2010-49

HOUSING AND LOAN AGREEMENT

by and between

CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY

a public body corporate and politic

and

CITY OF WINTERS,

a California municipal corporation

and

WINTERS ALMONDWOOD, LP,

a California limited partnership

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LIST OF ATTACHMENTS

- Attachment No. 1 – Site Legal Description
- Attachment No. 2 – Affordable Housing and Maintenance Covenant
- Attachment No. 3 – Proforma
- Attachment No. 4 – Scope of Work
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- Attachment No. 10 – Joint Escrow Instructions
- Attachment No. 11 – Memorandum of Housing and Loan Agreement
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- Attachment No. 13 – Subordination Agreement -- Bank
- Attachment No. 14 – Subordination Agreement -- TCAC

HOUSING AND LOAN AGREEMENT

THIS HOUSING AND LOAN AGREEMENT, including all Attachments hereto ("**Agreement**"), is entered into by and among the CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body, corporate and politic ("**Agency**"), the CITY OF WINTERS, a municipal corporation ("**City**"), and Winters Almondwood, LP, a California limited partnership ("**Developer**"), dated as of this ____ day of _____, 2010, the date of execution of this Agreement by Agency and City indicated on the signature page hereof ("**Date of Agreement**").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Redevelopment Project by providing funds to assist in the substantial rehabilitation of a project consisting of a 12-building, 39-unit permanent affordable housing rental complex as set forth in Section 301 hereof and in the Covenant ("**Project**"). The Project does not fall within the purview of Article XXXIV of the California Constitution, which provides an exception for rehabilitation, reconstruction or replacement of existing low rent housing projects, or a project previously or currently occupied by lower-income households.

B. At Closing, Developer will acquire and own the Site in fee and qualify as "**Owner Participant**" as that term is defined in the Community Redevelopment Law. Developer's acquisition of the Site in fee is a condition precedent to the effectiveness of this Agreement (including any City or Agency obligations contained herein).

C. Agency desires to enter into this Agreement because, pursuant to the Community Redevelopment Law and the Redevelopment Plan, it will provide affordable housing in the community, help to eliminate blight in the Redevelopment Project area, increase the employment opportunities within the Redevelopment Project area, and assist in providing an environment for the social, psychological and economic growth and well-being of the citizens of City.

D. Agency is authorized and empowered under the Community Redevelopment Law and the Redevelopment Plan to enter into agreements to assist in the redevelopment of real property within the Redevelopment Project area in conformity with the Redevelopment Plan; to receive consideration for the provision by Agency of redevelopment assistance; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to incur indebtedness to finance or refinance the Redevelopment Project.

E. Agency and City desire to extend to Developer financial assistance of up to \$600,000 as further set forth in Section 402, anticipated to consist of a non-recourse loan in an amount no greater than \$300,000 from City of Winters' revolving loan fund and a grant of up to \$300,000 in tax exempt bonds from the Community Development Agency.

F. To further provide financing for the Project, City desires to make a loan to Developer for use in order to perform the Agency Work. City intends to provide such loan funds through its revolving loan fund.

G. City, Agency and Developer desire to enter into this Agreement in order to set forth the terms and conditions relating to: (i) the substantial rehabilitation of the Project by performance of the Agency Work; (ii) the provision of the Financial Assistance to Developer for performance of the Agency Work; and (iii) the provision of covenants to ensure the Affordable Units on the Site shall remain affordable at the levels set forth in the Covenant, or such other more restrictive terms as may apply and for the longest feasible time.

H. The fulfillment of this Agreement is in the vital and best interests of City and the health, safety and welfare of its residents and in accord with the provisions of all Applicable Laws.

A G R E E M E N T

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency, City and Developer hereby agree that the Recitals above are incorporated by reference and further agree as follows:

100. DEFINITIONS; REPRESENTATIONS AND WARRANTIES

101. Definitions.

"Affordability Restrictions" means those affordability limits and restrictions in this Agreement (including Section 301.1) and in the Covenant.

"Agency" means the City of Winters Community Development Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"Agency Documents" means this Agreement (including all Attachments hereto).

"Applicable Laws" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Yolo, City of Winters, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, City, Developer, the Site or the Project, including all applicable California Public Contracts Code requirements, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City of Winters Municipal Code, Relocation Requirements, Prevailing Wage Laws, Environmental Laws, all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, et seq., Government Code section 4450, et seq., Government Code section 11135, et seq., and the Unruh Civil Rights Act, Civil Code section 51, et seq., and any amendments of or successors to any of the foregoing.

"Attachments" means Attachment No. 1 – Property Legal Description, Attachment No. 2 – Affordable Housing and Maintenance Covenant, Attachment No. 3 – Proforma, Attachment No. 4 – Scope of Work, Attachment No. 5 – Agreement for Payment in

Lieu of Taxes, Attachment No. 6 – Certificate of Completion, Attachment No. 7 – Addendum to Performance Deed of Trust, Attachment No. 8 – Promissory Note, Attachment No. 9 – Addendum to City Deed of Trust, Attachment No. 10 – Joint Escrow Instructions, Attachment No. 11 – Memorandum of Housing and Loan Agreement, Attachment 12 – AB 987 Notice, Attachment 13 – Subordination Agreement – Bank, and Attachment 14 – Subordination Agreement – TCAC, including stand-alone, executed versions thereof.

"Certificate of Completion" means the document which evidences Developer's satisfactory completion of all of the Agency Work, as set forth in Section 209 hereof, in the form attached hereto as Attachment No. 6 and incorporated herein.

"City" means the City of Winters, a California municipal corporation.

"City Council" means the City Council of the City of Winters.

"City Deed of Trust" means Title Company's standard form deed of trust together with the Addendum to City Deed of Trust in substantially the form attached hereto as Attachment No. 9.

"Closing" means the time and day the Memorandum, the Covenant, the Performance Deed of Trust, the City Deed of Trust, and the AB 987 Notice are recorded with the Yolo County Recorder.

"Community Redevelopment Law" means the Community Redevelopment Law of the State of California (Health and Safety Code section 33000, *et seq.*).

"Covenant" means the Affordable Housing and Maintenance Covenant to be recorded against the Site, as provided in Section 301.1 in the form attached hereto as Attachment No. 2.

"Developer" means Winters Almondwood, LP, or its permitted assignees or transferees.

"Developer Financing" means third party loans up a total of \$4,818,512, comprised of the following: a United States Department of Agriculture Section 538 in an amount not to exceed \$920,000 ("USDA 538 Loan"); an existing United States Department of Agriculture Rural Development Section 515 Rural Rental Housing loan in the amount of \$720,000 to be assumed by Developer at Closing ("USDA 515 Loan"); and an California Tax Credit Allocation Committee American Recovery and Reinvestment Act loan not to exceed \$3,718,512 ("ARRA Loan").

"Developer's Obligations" means all of Developer's obligations under the Agency Documents.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under sections 25117, 25115 or 25122.7 of the California Health and Safety Code, or listed pursuant to California Health and Safety Code section 25140; (ii) defined as a "hazardous substance" under California Health and

Safety Code section 25316 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under California Health and Safety Code section 25501 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under California Health and Safety Code section 25281 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "toxic pollutants" pursuant to section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. section 6903; or (xi) defined as "hazardous substances" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended. All of the foregoing are collectively referred to herein as "**Environmental Laws**".

"Loan Documents" means Section 400 of this Agreement, the Promissory Note and the City Deed of Trust.

"Low and Moderate Income Housing Fund" means Agency's low and moderate income housing fund, as established pursuant to Health and Safety Code section 33334.3.

"Lower Income Person" or **"Lower Income Household"** means a person or household whose gross income is 80% or less of area median income or such other standard as set from time to time pursuant to California Health and Safety Code section 50079.5, as amended, or any successor statute thereto.

"Partnership Agreement" means the Partnership Agreement of Developer, as the same may be amended from time to time, subject to Agency and/or City approval. In the event of an approved transfer or assignment, the term "Partnership Agreement" shall be deemed to refer to the bylaws, operating agreement, partnership agreement or other organizational documents, as applicable, of the approved successor in interest.

"Performance Deed of Trust" means Title Company's standard form deed of trust together with the Addendum to Performance Deed of Trust in substantially the form attached hereto as Attachment No. 7.

"Performance Documents" means this Agreement (but expressly excluding Section 400 of this Agreement and any other Loan Documents), the Memorandum, the Covenant, the Performance Deed of Trust, and all other agreements contemplated therein or evidencing or securing those Affordability Restrictions set forth in this Agreement and in the Covenant.

"Redevelopment Plan" means the Redevelopment Plan for the Redevelopment Project, adopted by Ordinance No. 92-08 of City Council of City on July 20, 1992, as amended, and incorporated herein by reference.

"Redevelopment Project" means the Winters Community Development Project, adopted by City pursuant to the Redevelopment Plan.

"*Site*" means that certain real property as legally described in Attachment No. 1 (Memorandum of Housing and Loan Agreement) at 801 Dutton Street, Winters, California, 94694, to be owned by Developer as of Closing.

"*Subordination Agreement -- Bank*" means that certain Subordination and Intercreditor Agreement entered by and among Winters Almondwood, LP, a California limited partnership as "Borrower" thereunder, the City of Winters Community Development Agency, a public body, corporate and politic as "Agency" thereunder, the City of Winters, a municipal corporation as "City" thereunder, and JPMorgan Chase Bank, N.A., a national banking association as "Bank" thereunder, in substantially the form attached hereto as Attachment No. 13.

"*Subordination Agreement -- TCAC*" means that means that certain Subordination Agreement and Estoppel Certificate entered into by and among the City of Winters Community Development Agency, a public body, corporate and politic as "Agency" thereunder, the City of Winters, a municipal corporation as "City" thereunder (the "City" and collectively with the Agency the "Junior Lienholders" thereunder), Winters Almondwood, LP, a California limited partnership as "Borrower" thereunder, and the California Tax Credit Allocation Committee, a public agency of the State of California as "Senior Lender" thereunder, in substantially the form attached hereto as Attachment No. 14.

"*Very Low Income Person*" or "*Very Low Income Household*" means a person or household whose gross income is 50% or less of area median income or such other standard as set from time to time pursuant to California Health and Safety Code section 50105, as amended, or any successor statute thereto.

102. Representations and Warranties.

102.1 Agency Representations. The following representations and warranties are made to the actual knowledge of Agency, which represents and warrants to Developer those items set forth in this Section 102.1; the phrase "**actual knowledge of Agency**" shall mean the actual knowledge of John W. Donlevy Jr., its Executive Director, with no duty of inquiry.

a. **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health & Safety Code section 33000, *et seq.*), which has been authorized to transact business pursuant to action of City. Agency has full right, power and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

b. **No Conflict.** Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

102.2 City Representations. The following representations and warranties are made to the actual knowledge of City, which represents and warrants to Developer those items set forth in this Section 102.2; the phrase "**actual knowledge of City**" shall mean the actual knowledge of John W. Donlevy Jr., its City Manager, with no duty of inquiry.

a. **Authority.** City is a municipal corporation, which has been authorized to transact business in California. City has full right, power and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City.

b. **No Conflict.** City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

102.3 Developer's Representations. The following representations and warranties are made to the best knowledge of Developer, which represents and warrants to Agency and City as follows:

a. **Authority.** Developer is a limited partnership duly organized within and in good standing under the laws of the State of California. Developer consists of the Central Valley Coalition for Affordable Housing, a duly organized and valid California non-profit organization pursuant to Internal Revenue Code section 501(c)(3), as the managing general partner, and Winters Almondwood, LLC (of which Michael L. Condry as an individual is sole member and manager), a California limited liability company, as general partner. True and complete copies of the originals of the documents evidencing the organization of each of the foregoing shall be delivered to Agency and City as of the date of this Agreement. Developer has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer.

b. **No Conflict.** Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

c. **No Developer Bankruptcy.** Developer is not the subject of a bankruptcy proceeding.

d. **No Litigation.** There are no present or future liabilities, rights, obligations, orders, claims, damages, fines, penalties, deficiencies, costs, expenses, causes of action, suits, litigation or proceedings (including attorneys' fees and costs), whether in law or equity pending, or to Developer's best knowledge, threatened against Developer, or any affiliate thereof, that would affect Developer's ability to undertake and satisfy all of its obligations pursuant to this Agreement.

e. **Broker's Commission.** Neither Developer nor any Developer Parties has engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the transaction. Developer shall be solely responsible for any commissions or fees payable to its broker, if any. Developer hereby indemnifies and holds each Agency and City harmless from and against any and all Claims which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

f. **Developer Sophistication.** Developer and its members are sophisticated owners, builders, and developers of real property (including affordable housing), familiar and experienced with requirements for the development, rehabilitation, and operation of the Project, the Agency Work, and all portions thereof.

g. **Financial Status.** Developer has secured necessary and sufficient funding to complete the Agency Work and operate and maintain the Project in accordance with this Agreement, can meet all of its debt service, and is able to perform all of its obligations thereunder and under this Agreement. Developer's financial information provided to Agency, and Developer's proforma dated June 3, 2010, attached hereto and incorporated by reference as Attachment No. 3 ("Proforma"), are complete, updated, and accurate. The Project is "in balance" and there are no defaults in connection with any debt or loans associated with the Project, the Developer Financing, or under Developer's financing documents (as that term is generally used in any subordination agreement.)

103. **Title Insurance.** Concurrent with Closing, there shall be issued to Agency and City a 1992 Standard Alta Loan Policy of Title Insurance ("**Title Policy**"), together with such endorsements as are requested by Agency and City, issued by Placer Title Company, 455 Watt Avenue, Sacramento, California 95864 ("**Title Company**") insuring that the title to the Project is vested in Developer in the condition required in this Agreement. The Title Policy shall be in the amount of the Financial Assistance provided by each Agency and City (projected amounts as set forth in Section 402), and may be issued to Agency and City as two separate policies. Developer shall bear all costs associated with the Title Policy.

104. **Review of Title.** Developer has caused Title Company to deliver to Developer, to Agency and City a standard preliminary title report dated June 9, 2010, Order No. 404-7491 ("**Report**") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions set forth in the Report ("**Exceptions**"), and Agency and City hereby approve the Report and the Exceptions. Agency and/or City shall have the right to approve or disapprove any other material title exceptions not created by Agency and City at any time after Agency and City have approved the Report and the Exceptions.

200. SUBSTANTIAL REHABILITATION

201. **Scope of Work.** Developer shall complete the "Agency Work" consisting of the substantial rehabilitation work outlined in the "**Scope of Work**" attached hereto as Attachment No. 4. The Agency Work shall be performed by a licensed contractor(s) duly licensed and in good standing under the laws of the State of California. If Developer desires to propose any material revisions to the Agency Work, Developer shall submit such proposed changes to Agency and City, and shall also proceed in accordance with any and all federal, state and local laws and regulations regarding such revisions. Developer shall include any and all changes or revisions required by City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other Applicable Laws in the Agency Work.

202. **Permits and Approvals.** Before commencement of construction of any portion of the Project, or other work on or about the Site, Developer shall, at its expense, secure or cause

to be secured any and all land use and other entitlements, permits and approvals timely which may be required by City (including all approvals required by the Planning Commission and Agency, and any other governmental agency affected by the Agency Work). Agency and City staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any required land use permits, entitlements or approvals required by Agency or City.

203. Compliance With Laws.

203.1 Generally. Developer shall construct and perform all of the Agency Work in conformity with all Applicable Laws. Developer, for itself, and its successors and assigns, agrees that in the construction of the Agency Work, Developer shall not (and shall ensure that its contractors and subcontractors do not) discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

203.2 Prevailing Wages. All of the Agency Work (as defined in Section 201), will constitute construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds under California Labor Code section 1720 *et seq.* Developer shall comply, and shall ensure that its contractors and subcontractors comply, with all state and federal labor code requirements applicable to public works and payment of prevailing wages (including implementing regulations of the Department of Industrial Relations), all applicable federal prevailing wage laws (including the Davis-Bacon Act of 1931, as amended), such prevailing wage policies, if any, as set forth in the Winters Municipal Code, and implementing regulations for any of the foregoing (collectively, "Prevailing Wage Laws") in connection with construction and development of the Project. Except to the extent Developer obtains a ruling to the contrary from the Department of Industrial Relations, Developer shall comply with Prevailing Wage Laws, shall require the general contractor for the Project to comply with Prevailing Wage Laws, and, upon written request by Agency or City, submit certified copies of payroll records to Agency and/or City (as applicable) and to maintain and make records available to Agency and City and its and their designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Developer shall also include in its general contractor agreement and in all of its leases and other contracts, a provision, in form acceptable to Agency and/or City (as applicable), obligating the general contractor, lessee, or others as applicable, to require their respective contractors and/or subcontractors to comply with Prevailing Wage Laws, and to submit, upon request by Agency and/or City (as applicable), certified copies of payroll records to Agency and/or City and to maintain and make such payroll records available to Agency and/or City (as applicable) and its and their designees for inspection and copying during regular business hours at the Site or at another location within the City of Winters.

203.3 Relocation. Developer shall submit to Agency and City a complete relocation plan for all tenants and other persons or entities occupying the Project when the Project is acquired by Developer for Agency's and City's review and approval. Developer shall also comply with all applicable local, state, and federal statutes and regulations and Relocation Assistance Law (as defined in Section 607.1a.ii, below) with respect to relocation planning-

advisory assistance and payment of monetary benefits (collectively, "**Relocation Requirements**").

204. Schedule of Performance. Developer shall commence and complete the Agency Work and satisfy all other applicable obligations and conditions of this Agreement within one year of the Date of Agreement ("**Completion Date**"), which Completion Date may be extended by Agency and City in their sole discretion.

204.1 Consultation and Coordination. Staff of Agency, City and Developer shall hold progress meetings on an as-needed basis to coordinate the preparation, submission, and review of the Agency Work. The staff of Agency, City and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to Agency and/or City can receive timely and thorough consideration.

204.2 Defects in Plans. Neither Agency nor City shall be responsible either to Developer, or to any third parties in any way for any defects in the Agency Work, for any structural or other defects in any work done according to the approved Agency Work, for any defects in the Agency Work, nor for any delays caused by review and approval processes. Developer shall hold harmless, indemnify, pay for and defend Indemnitees from and against any and all present and future Claims together with any damage to property or injury to or death of any persons, arising out of or in any way relating to defects in any of the Agency Work, including the violation of any Applicable Laws, or for defects in any work done according to the approved Agency Work.

204.3 Quality; Applicable Codes. The Agency Work shall be of high quality, and shall be effectively and aesthetically designed and shall be constructed in accordance with the Uniform Building Code (with City's modifications) and City's Municipal Code and any other Applicable Laws.

204.4 Cost of Construction. All the costs of Site preparation, and of planning, designing and constructing the Agency Work and the Project shall be borne solely by Developer, except as otherwise expressly set forth herein.

204.5 Rights of Access. Prior to the issuance of a Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of Agency and City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the Project and the Agency Work, so long as Agency, City or their representatives comply with all safety rules. Agency and City (or their representatives) shall, except in emergency situations, notify Developer prior to exercising their rights pursuant to this Section 204.5. Nothing herein shall be deemed to limit the ability of City to conduct code enforcement and other administrative inspections of the Site in accordance with Applicable Laws.

205. Insurance Requirements. Developer shall take out and maintain, or shall cause its contractor to take out and maintain, throughout the term of this Agreement, insurance coverage as follows:

205.1 Comprehensive or Commercial General Liability Insurance.

Comprehensive or Commercial General Liability Insurance, at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence, or such other policy limit as Agency and City may approve at their discretion, including contractual liability, as shall protect Developer, Agency and City from claims for such damages. Such policy or policies shall be written on an occurrence form, and shall include a vandalism and malicious mischief endorsement and such other endorsements as Agency and/or City may reasonably require. If work involves explosive, underground or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

a. Agency and City, and their respective officers, agents, employees, volunteers, and representatives, are covered as additional insureds, to the extent of Developer's negligence, for liability arising out of the operations performed by or on behalf of Developer. The coverage shall contain no special limitations on the scope of protection afforded to City, Agency, and their respective officials, officers, agents, employees, volunteers, and representatives.

b. The policy shall not be canceled or materially reduced in coverage without 30 days' prior written notice (10 days for non-payment of premium) to Agency and City by certified mail.

c. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

d. For Claims related to the Project, Developer's insurance is primary coverage to Agency and City, and any insurance or self-insurance programs maintained by Agency or City is excess to Developer's insurance, as the case may be, and will not be called upon to contribute with it.

e. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to City, Agency, and their respective officers, agents, employees, volunteers, and representatives.

205.2 Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than One Million Dollars (\$1,000,000.00) per accident combined single limit (CSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without 30 days' prior written notice (10 days for non-payment of premium) to Agency and City by certified mail.

205.3 Combined Single-Limit, Builder's All-Risk Insurance. Combined single-limit, and builder's all-risk insurance in an amount not less than the full insurable value of the Agency Work on a replacement cost basis together with vandalism and malicious mischief endorsements and such other endorsements as Agency and/or City may reasonably require, and shall furnish, or cause to be furnished to Agency and City evidence satisfactory to Agency and City that Developer (as the case may be) and any contractor with whom Developer has contracted for the performance of work contemplated under this Agreement, whether on or off the Site, or otherwise pursuant to this Agreement, carries Workers' Compensation insurance as required by law.

205.4 Workers' Compensation Insurance. Workers' Compensation insurance meeting statutory limits of applicable Labor Code provisions, which policy shall contain or be endorsed to contain a waiver of subrogation against City, Agency, and their respective officers, agents, employees, volunteers, and representatives, and provide for 30 days' prior written notice to Agency and City by certified mail in the event of cancellation. If Developer, or its or their contractor (as the case may be), has no employees, then Developer, or its or their contractor (as the case may be), shall sign and file the following certification in lieu of insurance:

I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of the contract.

205.5 Certificate of Insurance. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form reasonably approved by Agency and City setting forth the general provisions of the insurance coverage. The countersigned certificate shall name City, Agency, and their respective officers, agents, employees, volunteers, and representatives as additionally insured parties under the policies required hereunder, and any certificates shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsements by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify Agency and City of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination (10 days for non-payment of premium). Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance, if any, maintained by Agency or City in each of their sole discretion, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of Agency and City. Developer shall, or shall cause its contractor to, furnish the required certificate to Agency and City before commencing performance of the Agency Work.

206. Taxes and Assessments.

206.1 Payment of Taxes. Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Project or any portion thereof, subject to Developer's right to contest in good faith any such taxes. Developer shall remove or have removed any such levy or attachment, or assure the satisfaction thereof within 30 days following the date of attachment or levy. Developer, on behalf of itself and its operators and lessees and its and their successors and assigns, covenants and agrees (a) that the Project, the Site and all improvements, equipment and contents located therein and thereon shall be and remain subject to the assessment and payment of real and personal property taxes, including possessory interest taxes and (b) that it shall not apply for or otherwise accept any exemption from the payment of any real or personal property taxes, including possessory interest taxes, except as expressly provided in Section 206.2.

206.2 Welfare Exemption. Notwithstanding Section 206.1, the parties acknowledge and understand that inclusion of a non-profit organization in Developer's partnership may qualify the Project to receive the welfare exemption under section 214(g) of the California Revenue and Tax Code. City and Developer desire to ensure, to the extent legally permissible, that the City will not suffer any loss of its share of property tax revenues. In the event Developer, or its operators or lessees or its and their successors or assigns, applies for and receives a Welfare Exemption pursuant to section 214(g) of the California Revenue and Taxation Code, Developer agrees that, so long as it elects to maintain such exemption, Developer shall pay annually to Agency and City a payment in lieu of taxes in accordance with the terms and in substantially the form of that certain Agreement for Payment In Lieu of Taxes attached hereto as Attachment No. 5.

207. Project Sign. At Agency's sole discretion, Agency may require Developer to place and maintain on the Site, during construction, a sign indicating the respective roles of Developer, Agency and City in the Project.

208. Liens and Stop Notices. Developer shall not allow to be placed on the Site, or any Agency or City property, or any part thereof, any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall, within 30 days of such recording or service: (a) pay and discharge the same; or (b) affect the release thereof by recording and delivering to Agency or City, as applicable, a surety bond in sufficient form and amount; or (c) provide Agency or City, as applicable, with other assurance which such entity deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for full and continuous protection from the effect of such lien or bonded stop notice. After Developer has had written notice and has failed after a reasonable time, but in any event not after more than 60 days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances which are not otherwise permitted under this Agreement, Agency and/or City shall have the right, but not the obligation, to satisfy any such liens or encumbrances without further notice to Developer. In such event, Developer shall be liable for, and Agency and/or City (as applicable), shall be entitled to reimbursement from Developer for, any such paid lien or encumbrance.

209. Certificate of Completion. Following completion of all the Project including of the Agency Work in accordance with this Agreement within the time periods and in the manner provided herein, Agency shall furnish Developer with a "**Certificate of Completion**" substantially in the form of Attachment No. 6 attached hereto. Agency shall not unreasonably withhold, condition or delay such Certificate of Completion. The Certificate of Completion shall be, and shall state that it is conclusive determination of satisfactory completion of all of the Agency Work required by this Agreement. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Agency Work, the Project, or any part thereof. The Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.

210. Mortgage, Deed of Trust, Sale and Lease-Back Financing.

210.1 No Encumbrances Except Developer Financing. Mortgages and deeds of trust are permitted, but only for the purpose of securing the Developer Financing. Developer covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance or other financing arrangement, increase the principal amount of the Developer Financing, or allow other liens or encumbrances against the Project or any portion thereof, without the prior written approval of Agency's Executive Director and City's City Manager, which approvals shall not be unreasonably withheld, conditioned or delayed. Developer shall notify Agency and City in advance of any proposed mortgage or deed of trust. The words "mortgage" and "deed of trust" as used hereinafter shall include sale and lease-back financing.

210.2 Holder Not Obligated to Construct Agency Work. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Agency Work or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or the Agency Work provided for or authorized by this Agreement.

210.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Agency or City, as applicable, shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Agency or City, as applicable, shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and superior to the Performance Documents or the Loan Documents ("**Mortgagee**"), a copy of such notice or demand, provided that Developer has given Agency and City prior written notice of the name and notice address of such holders of record. No notice of default shall be effective as to the holder unless such notice is given. Each such holder shall (insofar as the rights of Agency and/or City (as applicable) are concerned) have the right, at its option, within 60 days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Agency Work (beyond the extent necessary to conserve or protect the Agency Work or construction already made) without first having

expressly assumed Developer's Obligations to Agency and City by written agreement satisfactory to Agency and City.

210.4 Right of Agency to Cure Mortgage or Deed of Trust Default.

Agency and City, as applicable, shall have the right to record a request for notice of default in a form satisfactory to Agency and City, as applicable, in its and their sole discretion. If a mortgage or deed of trust default or breach by Developer prior to the completion of the Project, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to Developer. In such event, Developer shall be liable for, and Agency shall be entitled to reimbursement from Developer of, all costs and expenses associated with and attributable to the curing of the mortgage or deed of trust default or breach of this Agreement by Developer and incurred by Agency in curing such default. Agency shall also be entitled to record a lien against the Site and/or Project to the extent of such incurred costs and disbursements. Any such lien shall be subject to prior encumbrances and deeds of trust. If the ownership of the Project or any portion thereof has vested in the holder, Agency, if it so desires, may elect to purchase the Project from the holder upon such terms as are mutually acceptable to Agency and the holder. Developer shall ensure that any mortgage or deed of trust granted by Developer contains provisions reflecting the terms and conditions of this Section 210.4.

211. Records and Reporting Obligations. Developer covenants and agrees, on behalf of itself, Developer, and its and their successors and assigns, that, in connection with the construction, ownership and operation of the Project, it shall keep full and accurate books of account and records, and comply with reporting requirements, as required by and described in the Covenant.

212. Greenhouse Gas Credits. Any and all emissions credits, greenhouse gas credits, carbon credits, pollution credits, green tags, environmental credits, renewable energy certificates, and other similar credits and allowances (including but not limited to those governed by California's AB-32, the Regional Greenhouse Gas Initiative, the Kyoto Protocol, the Montreal Protocol, and similar programs) generated or receivable by or allocable to the Agency Work or Project (individually and collectively, "Credits") shall belong to City. As such, Developer for itself and on behalf of its officers, directors, agents, contractors, managers, employees, parents, affiliates, partners, members, subsidiaries, successors, assigns, tenants, grantees, and licensees (individually and collectively, "Developer Parties"), hereby assigns the Credits to City, and City accepts each such assignment. Developer Parties shall cooperate with City in the licensing, sale, trading and/or other transfer or use of such Credits, at no cost to City, and in accordance with Section 718.

300. COVENANTS, RESTRICTIONS AND AGREEMENTS

301. Use Covenants. Developer covenants and agrees for itself, its members, its partners, and each of their successors, assigns and every successor in interest, that the development, use maintenance, and operation of the Project shall all be in accordance with the terms and in substantially the form of the Covenant, the uses specified in the Redevelopment Plan, and this Agreement for the periods of time specified therein, which Covenant shall run with the land. The Covenant, together with the Performance Deed of Trust, shall be recorded against

the Site upon Closing; each shall occupy a lien priority acceptable to Agency and City in their sole discretion.

301.1 Rent and Income Restrictions. All of the residential units (other than the Manager's Unit, if any) of the Project shall be rent restricted ("Affordable Unit" or "Affordable Units") as follows: four (4) of the Affordable Units (three (3) 2-bedroom units and one (1) 3-bedroom unit) shall be occupied by Very Low Income Households at an affordable rent level pursuant to California Health and Safety Code section 50105, as amended, or any successor statute thereto, and thirty-four (34) of the Affordable Units (twenty-nine (29) 2-bedroom units and five (5) 3-bedroom units) shall be occupied by Lower Income Households at an affordable rent level pursuant to California Health and Safety Code section 50079.3, as amended, or any successor statute thereto. Rent for the Affordable Units shall be no greater than that considered as "affordable rent" for Very Low Income Households or Lower Income Households, as applicable, adjusted for family size appropriate to the unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto ("Affordable Rent"). "Area Median Income" means the median household income (adjusted for family size appropriate to the unit) of the Metropolitan Statistical Area in which Yolo County is located, as established by California Health and Safety Code section 50093, as amended or any successor statute thereto. "Adjusted for family size appropriate to the unit" shall have the meaning set forth in California Health and Safety Code section 50053, as amended, or any successor statute thereto. To the extent other regulatory covenants are in effect with respect to the Project (in addition to the Covenant), the most stringent income and rent requirements shall control.

400. FINANCIAL PROVISIONS

401. Evidence of Financing and Loan Closings. Before Closing, Developer shall obtain and submit to Agency and City evidence, in a form acceptable to Agency and City, that it has obtained firm commitments for debt and equity financing necessary to undertake the design, development, construction, and operation of the Project in accordance with this Agreement. City's City Manager and Agency's Executive Director shall have the right to approve or disapprove such evidence of financing commitments. City's and Agency's approval shall not be unreasonably withheld. If the City Attorney or Agency's Executive Director shall reasonably disapprove any such evidence of financing, the City Manager or Executive Director shall do so by written notice to Developer stating the reasons for such disapproval and, thereafter, Developer shall utilize good faith, diligent efforts to promptly obtain and submit to Agency and City new evidence of financing. City's City Manager and Agency's Executive Director shall approve or disapprove such new evidence of financing in the same manner and within the same times established in the Schedule of Performance for the approval or disapproval of the evidence of financing as initially submitted to Agency and City. In the event Agency or City disapproves Developer's evidence of financing commitments or Developer fails to obtain and deliver the evidence of financing commitments to Agency and City as provided above, then either party may terminate this Agreement as provided herein by notice to the other party and, thereafter, neither party shall have any rights or obligations hereunder. Prior to or simultaneous with Closing, Developer's construction loan(s) shall have closed.

402. Financial Assistance. The "Financial Assistance" of \$600,000 in total is anticipated to consist of a non-recourse loan in an amount no greater than \$300,000 from City of

Winters' revolving loan fund ("Loan"), together with a grant no greater than \$300,000 in tax exempt bonds from the Community Development Agency ("Grant"); provided, however, that Agency and City may reallocate Loan and Grant amounts to the extent necessary or desirable in their reasonable discretion so long as the Financial Assistance remains constant at \$600,000. No portion of Financial Assistance shall be utilized for ineligible costs as set forth in California Health & Safety Code section 33334.2(e). All disbursements shall be held by Developer in trust and applied by Developer solely for the purposes for which the funds have been disbursed. Neither Agency nor City is obligated to monitor or determine Developer's use or application of the disbursements. The Loan shall be evidenced by a non-recourse promissory note reflecting the amount of Financial Assistance ("**Promissory Note**"). The Promissory Note shall be executed and delivered by Developer to City in substantially the form attached hereto as Attachment No. 8. As security for the Promissory Note and Developer's obligations under this Agreement, Developer shall grant to City the City Deed of Trust, which shall be recorded against the Site at Closing and shall occupy a lien priority acceptable to City in its sole discretion, creating a valid lien upon the Site. In consideration of Developer's Obligations hereunder, including Developer's obligation to substantially rehabilitate the Project and provide Affordable Units on the Site, Agency and City agree to disburse to Developer the Financial Assistance subject to the terms and conditions of the Promissory Note and this Agreement, including Developer's fulfillment of the Conditions Precedent, as set forth below. If any of the Conditions Precedent or applicable Governmental Requirements (whether applicable to Developer, Agency, or City) are not satisfied or expressly waived by June 1, 2012 ("**Outside Date**"), this Agreement shall automatically terminate with no liability to or remaining obligations of either Agency or City.

402.1 Conditions Precedent. The conditions precedent set forth in Sections 402.2 and 402.3 below, are conditions precedent (individually and collectively, "**Conditions Precedent**") to both Closing and disbursement of the Financial Assistance, or any portion thereof. In no event shall Agency or City be required to disburse any Financial Assistance before Closing and satisfaction or waiver of all Conditions Precedent. Notwithstanding the foregoing, or satisfaction of the Conditions Precedent, or any prior disbursements of any Financial Assistance, neither Agency nor City shall be required to make any or further disbursements of Developer Financial Assistance, or close the transaction contemplated by this Agreement, if Developer:

a. Without the prior written consent of Agency and/or City, as applicable, except as expressly permitted by the Covenant, directly or indirectly, voluntarily or involuntarily sells, assigns, transfers, disposes of or further encumbers or agrees to sell, assign, transfer, dispose of or further encumber or suffers to exist any other lien against all or any portion of or any interest in the Site, except for any sale or transfer which is expressly permitted by the terms of this Agreement. For the purpose of this Section, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law.

b. Subject to extensions pursuant to Section 702 of this Agreement, fails to commence or complete construction of the Agency Work or any portion thereof within the time set forth in this Agreement; or

c. Once construction has been commenced, fails to diligently prosecute construction of the Agency Work through completion of the Project, where such failure has not been cured within three (3) months after Developer's receipt of written notice thereof from Agency or City, as applicable; or

d. Abandons or substantially suspends construction of the Agency Work for a period of three (3) months after Developer's receipt of written notice of such abandonment or suspension from Agency or City.

402.2 Conditions Precedent to Grant by Agency. Agency's obligation to provide any component of the Grant is conditioned upon the satisfaction or waiver by Agency of each and all of the conditions precedent described below, which are solely for the benefit of Agency and City, and which shall be fulfilled or waived by the time periods provided for herein:

a. **No Default.** Subject to the expiration of any applicable cure period, Developer shall not (a) be in Default of any of its obligations under the terms of this Agreement; nor (b) be in Default under any of the Loan Documents or Performance Documents; and (c) all representations and warranties of Developer contained in this Agreement, the Loan Documents, and the Performance Documents shall be true and correct.

b. **Site Ownership.** Developer shall own the Site at or before Closing.

c. **Execution of Documents.** Developer shall have executed the Promissory Note and this Agreement, and executed and acknowledged in recordable form the Memorandum of Agreement, the Covenant, the City Deed of Trust, the Performance Deed of Trust and any other documents required hereunder or necessary to Closing, and delivered such documents into escrow with Placer Title Company (Escrow No. 404-7491).

d. **Insurance.** Developer shall have provided proof of insurance to the extent required by this Agreement.

e. **Financial Statements and Reports.** With respect to the rental of the Affordable Units, upon Agency's request, Developer shall have delivered to Agency the financial statements and written annual statements required under this Agreement, and Agency shall have approved the same.

f. **Disbursement Requests for Grant by Agency, Documentation.** Disbursements of the Grant shall only be made upon prior written request by Developer to Agency specifying the amount of the requested disbursement and the eligible use therefor, together with supporting invoices and other documentation as Agency may require. Agency shall have a period of fifteen (15) business days in which to either request additional documentation or release the requested disbursement as an advance of the Loan. Any and all Loan disbursements shall be added to the principal balance of indebtedness and shall accrue interest as provided under the Promissory Note.

g. **By-Laws.** Developer shall have delivered to Agency, and Agency shall have approved, Developer's operating and partnership agreements, by-laws, or similar applicable documents, together with all amendments thereto.

h. **Payment of Property Taxes.** No ad valorem property taxes or assessments assessed with respect to the Project shall be delinquent.

i. **Evidence of Financing and Loan Closings.** To the extent not previously delivered, Developer shall deliver to Agency evidence that Developer has obtained all approvals necessary for Developer Financing and commitments for the Project as acceptable to and approved by Agency, and which shall have closed or be ready to close concurrent with Closing and Agency and City shall have approved the same.

j. **Project Feasibility.** Developer shall have demonstrated to Agency's and City's reasonable satisfaction, that the Developer Financing, Financial Assistance, and Project equity are in balance with Actual Costs, and that the Project is financially and otherwise feasible.

k. **Permits and Land Use Approvals.** Developer shall have duly submitted an application for the Project and obtained all permits, land use approvals required for the Project (whether pursuant to this Agreement or Applicable Laws), and all other Project entitlements, and the period for administrative and legal challenge to such permits, land use approvals, and entitlements shall have expired and City shall be ready to issue building permits for the construction of the Agency Work upon the payment of the applicable fees by Developer.

l. **Payment of Development Fees.** Developer shall have paid to City, when due, all development fees required in connection with the Project.

m. **Construction Contract.** Developer shall have secured a guaranteed maximum price contract for the Project in a form reasonably satisfactory to Agency and City.

n. **Escrow Instructions.** The parties will execute Joint Escrow Instructions in substantially the form attached hereto as Attachment No. 10 and incorporated by reference. The parties may execute supplemental escrow instructions as set forth therein.

o. **Environmental Compliance.** The following items (i), (ii) and (iii) are collectively referred to herein as "**Environmental Compliance.**"

i. **CEQA Compliance.** Developer shall have complied with (a) all applicable requirements of the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.* ("**CEQA**"), CEQA guidelines, and implementing regulations (all as amended from time to time); (b) any necessary properly noticed public hearings shall have taken place; (c) City Council and Planning Agency shall have adopted resolutions certifying the CEQA documents; and (d) applicable statutes of limitations shall have expired.

ii. **NEPA Compliance.** Developer shall have complied with (a) all applicable requirements of the National Environmental Protection Act of 1969, 42 U.S.C. section 4321, *et seq.*, NEPA guidelines, and implementing regulations (all as amended from time to time); (b) any necessary properly noticed public hearings shall have taken place; (c) all necessary documents shall have been approved or certified by responsible agencies, whether by resolution or as otherwise allowed; and (d) any applicable statute of limitations has expired. Such compliance shall include full and final satisfaction of applicable requirements relating to the California Tiger Salamander ("CTS") of (a) the U.S. Fish and Wildlife Service, (b) the Federal Endangered Species Act, 16 U.S.C. section 1531, *et seq.* ("FESA"), FESA guidelines, and implementing regulations (all as amended from time to time), together with securing a final finding of no significant impact letter from appropriate authorities ("FONSI") and providing a copy thereof to Agency.

iii. **Indemnity.** Developer shall defend, indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising out of or in any way connected with Environmental Compliance or City's or Agency's termination of this Agreement for any reason, including those related to this Section 402.

p. **Agreement Public Review and Approval.** A properly-noticed public hearing on this Agreement shall have taken place and Agency and City, as applicable, shall have adopted resolutions approving this Agreement, subject to non-substantive modifications and amendments hereof. Neither Agency nor City is, or shall be, considered to be obligated by this Agreement, or otherwise, to approve this Agreement or any other agreement.

q. **Relocation Requirements.** Satisfaction of any and all Relocation Requirements, as defined in Section 203.3 above.

402.3 Conditions Precedent to Loan by City. City's obligation to provide any component of the Loan is conditioned upon the satisfaction or waiver by City of each and all of the conditions precedent described below, which are solely for the benefit of Agency and City, and which shall be fulfilled or waived by the time periods provided for herein.

a. **Satisfaction of Conditions Precedent to Loan.** Developer shall have satisfied and continued to fulfill all Conditions Precedent to Grant by Agency, as provided in Section 402.2.

b. **Disbursement Requests for Loan by City, Documentation.** Disbursements of the Loan shall only be made upon prior written request by Developer to City specifying the amount of the requested disbursement and the eligible use therefor, together with supporting invoices and other documentation as City may require. City shall have a period of fifteen (15) business days in which to either request additional documentation or release the requested disbursement as an advance of the Loan. Any and all Loan disbursements shall be added to the principal balance of indebtedness and shall accrue interest as provided under the Promissory Note.

402.4 Reimbursement of Surplus Funds.

a. The purpose of Financial Assistance under this Agreement is to provide financial assistance to Developer in an amount equal to the difference between the amount of third-party financing that Developer is able to secure and actual Project costs ("**Funding Gap**"), with such Financial Assistance not to exceed a maximum amount of Six Hundred Thousand Dollars (\$600,000). Such figure is based on the Proforma. If the actual Project costs ("**Actual Costs**") are less than those indicated on the final, approved Proforma, the Funding Gap and thus Financial Assistance will be reduced by an amount equal to the difference between such Proforma and Actual Costs ("**Cost Underruns**"), on a dollar for dollar basis as set forth in subsection (b) below.

b. Upon issuance of the Certificate of Completion, and completion of the Project, Developer shall provide Agency with a cost certification in the format used by the California Tax Credit Allocation Committee ("**Cost Certification**") showing a detailed itemization of Actual Costs and expenses, including external and internal payments, allocations, disbursements, and any and all sums received or expended by Developer in connection with the Project, and supporting Documentation (as defined below). Agency and City, as applicable, may (but are not obligated to) review the Cost Certification and Documentation, and may request that Developer provide such and other Documentation as Agency or City, as applicable, deems necessary to support Developer's request for payment. In the event there are Cost Underruns, Developer shall pay such sums to Agency and City on a prorate basis according to the amount of Financial Assistance disbursed by each, upon the first to occur of (a) the tax credit investor's final capital contribution; or (b) one hundred eighty (180) days from the date the Cost Certification is executed.

c. "**Documentation**" as used in this Agreement, collectively, change orders, requests for clarifications, contracts with contractors, subcontractors and suppliers, inspector notes, testing, correspondence, submittals, samples, shop drawings, materials lists, invoices, receipts, reimbursable expenses, vouchers, purchase orders, books of account, records, financial information notes, daily logs, detailed list of daily labor, equipment used and related costs including rental costs, time cards and payrolls, and memoranda, pledges, hypothecations, promissory notes or similar agreements, and any and all other data or financial information and Developer's books and records related to the Project (including Actual Costs and the Cost Certification).

d. Each of Agency and City shall have the right, upon written notice to Developer, and during normal business hours, to inspect, examine and audit the Documentation. Developer shall pay all costs associated with such audit if Agency or City determines that the Cost Certification, Funding Gap, and/or Actual Costs were overstated and/or the Documentation provided to Agency or City, as applicable, was materially incomplete, false, or misleading.

403. Developer's Additional Financing. In addition to the Financial Assistance, Developer shall seek approval of one or more loans for construction and long term financing of the Project, in such amounts and extended by one or more reputable financial institution(s) approved by Agency (collectively, "**Developer's Additional Financing**"). Developer shall

complete all actions necessary to secure all approvals and commitments in an amount satisfactory to undertake and complete the substantial rehabilitation of the Project. Agency and City shall have the right to record a request that Agency and City receive notice of any default by Developer under Developer's Additional Financing or other financing obtained by Developer with respect to the Project.

404. Distribution of Foreclosure Proceeds. The proceeds generated by any Foreclosure (defined below) of the Project or any portion thereof ("**Proceeds**") shall be distributed as follows: (i) first, all senior liens and encumbrances on the Project shall be fully paid from the Proceeds; (ii) second, Agency shall be paid the difference between the appraised value of the completed Project (or applicable portion thereof) as restricted by the Affordability Restrictions ("**Restricted Value**") and the Proceeds ("**Differential**"); (iii) third, any remaining Proceeds shall be distributed in accordance with California Civil Code section 2924k(3). The Differential shall be deposited in Agency's housing trust fund. Developer expressly acknowledges and agrees that each of this Agreement, the City Deed of Trust, and the Performance Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code section 2872 and 2924 to 2924h, inclusive ("**Differential Lien**"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(3). Developer hereby irrevocably instructs any holder of the Differential or similar proceeds generated by a Foreclosure to immediately disburse the Differential to Agency, and agrees to defend, indemnify and hold Agency and such holder harmless from any and all claims related to such distribution. As used herein, "**Foreclosure**" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

500. SUBORDINATION.

501. Conditions to Subordination.

501.1 Agency and City Consideration of Subordination. Agency and City, as applicable, shall consider subordination of the Loan Documents or Performance Documents, as applicable, if required by Approved Lenders extending Developer Financing or under an Extended Use Agreement, subject to requirements set forth herein and otherwise in the Loan Documents or Performance Documents, as applicable, upon written request by Developer, and upon terms and conditions reasonably approved by Agency and/or City, as applicable. "**Extended Use Agreement**" means any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) recorded against the Project.

501.2 Pre-Conditions to Subordination. Any subordination of the Affordability Restrictions shall be in accordance with the Community Redevelopment Law, including the requirements of California Health and Safety Code section 33334.14. In addition, as a precondition to any subordination of any or all of the Performance Documents or the Loan Documents, each senior lender shall include in its subordination agreement conditions substantially similar to the following conditions, and shall include in its deed of trust (whether

directly or incorporated by cross-reference to its compliant subordination agreement) conditions substantially similar to the following conditions:

- a. Any senior lender, concurrent with its issuance of any notice of default to Developer, shall issue to Agency and City copies of such notice(s) of default;
- b. Agency and City shall have the right (but not the obligation) to cure any default by Developer within forty-five (45) days after a notice of default and the senior lender shall accept cure of said default as though such cure had been tendered by Developer;
- c. if Agency or City takes title to the Project and offers to assume the obligations of Developer under the senior loan documents, the senior lender shall apply its normal underwriting process to evaluation of the proposed assumption and if, following the conclusion of such underwriting process, such senior lender accepts Agency or City, as applicable, as a successor to Developer as obligor under the senior loan document, then such senior lender shall not exercise its rights to accelerate its loan by reason of transfer to Agency or City, as applicable, of title to the Project, or any portion thereof; and
- d. if, pursuant to City's or Agency's exercise of their rights under the foregoing item (c), either City, Agency, or both, takes title to the Project and assume the obligations of Developer under the senior loan documents, either City, Agency, or both, shall have the right, subject to the consent of the senior lender, to transfer the Project to a nonprofit corporation that is in good standing under the laws of the State of California and acceptable to such senior lender after application of such senior lender's normal underwriting process. The consent of the senior lender shall not be withheld unreasonably. If a senior lender consents to transfer of the Development to a nonprofit corporation, then the senior lender shall not exercise any rights it may have to acceleration of its loan by reason of transfer to such nonprofit corporation, of title to the Project, or any portion thereof.

501.3 Agency and City Right to Approve. Agency and City shall have the right to review and approve the terms and conditions of any senior financing and subordination agreements, which approval shall not be unreasonably withheld. Agency and City shall have the right to record a request that Agency and City each receive notice of any default by Developer under any liens or agreements superior to any of the Performance Documents or Loan Documents. In no event shall Agency or City, as applicable, have any obligation to subordinate any of the Performance Documents or Loan Documents other than to an Approved Lender. An "Approved Lender" is a reputable financial institution or similar lender extending Developer Financing and approved by Agency and City, in their reasonable discretion.

501.4 Implementation of Subordination. To implement any such subordination, Agency and City each agrees to cooperate with Developer and execute such subordination agreements and/or intercreditor agreements that may be reasonably required, in form and content approved by Agency and City counsel. Notwithstanding anything to the contrary in this Agreement, or in any subordination or intercreditor agreement, the terms and conditions of both the Performance Documents and Loan Documents shall remain in a lien position acceptable to City and Agency, and only the modifications thereof agreed to by Agency

and City, as applicable, in writing can be (but are not intended to be) construed to be more junior obligations, liens or encumbrances.

502. Agency Subordination of Performance Documents.

502.1 To Extended Use Agreements. Subject to the provisions set forth in Section 501, Agency shall consider subordinating the Performance Documents and all other agreements contemplated therein or evidencing or securing Developer's obligations under the Performance Documents to those Extended Use Agreements recorded against the Project; provided, however, that any such Extended Use Agreement, by its terms, must terminate upon foreclosure under the Performance Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in Section 42(h)(6)(E) of the Internal Revenue Code. Agency hereby agrees to subordinate the Performance Documents as expressly provided in the Subordination Agreement – TCAC.

502.2 To Developer Financing. Subject to the provisions set forth in Section 501, Agency shall consider subordinating the Performance Documents to the Developer Financing in accordance with Community Redevelopment Law. Agency hereby agrees to subordinate the Performance Documents as expressly provided in the Subordination Agreement – Bank.

503. City Subordination of Loan Documents.

503.1 To Extended Use Agreements. Subject to the provisions set forth in Section 501, City shall consider subordinating the Loan Documents and all other agreements contemplated therein or evidencing or securing Developer's financial obligations under the Loan Documents to those Extended Use Agreements recorded against the Project; provided, however, that any such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in Section 42(h)(6)(E) of the Internal Revenue Code. City hereby agrees to subordinate Loan Documents as expressly provided in the Subordination Agreement – TCAC.

503.2 To Developer Financing. Subject to the provisions set forth in Section 501, City shall consider subordinating the Loan Documents to the Developer Financing, provided the total aggregate amount of the Developer Financing which is secured by the Project or is recourse together with Agency Loan is in an amount acceptable to City in its discretion and otherwise in accordance with the Community Redevelopment Law. City hereby agrees to subordinate Loan Documents as expressly provided in the Subordination Agreement – Bank.

600. DEFAULTS AND REMEDIES

601. Default. Subject to the permitted extensions of time as provided in Section 602 of this Agreement, (a) failure by either party to perform any action or covenant required by the Performance Documents within the time periods provided herein following written notice and

expiration of any applicable cure periods, shall constitute a "Default" under the Performance Documents only, and (b) failure by either party to perform an action or covenant under the Loan Documents within the time periods provided herein and following written notice and expiration of any applicable cure periods, shall constitute a "Default" under the Loan Documents only. Any and all rights and remedies of City in respect to a breach under Section 400 of this Agreement shall be governed by the terms and conditions of the Promissory Note and the City Deed of Trust. Notwithstanding anything in this Agreement, the Performance Documents, or the Loan Documents to the contrary, no Default or breach of Developer's obligations under the Loan Documents shall be considered a Default under the Performance, and no Default or breach of Developer's obligations under the Performance Documents shall be considered a Default under the Loan Documents. A party claiming a Default under any of the Performance Documents shall give written notice to the other party identifying the Default complained of, to the extent required therein. A party claiming a Default under any of the Loan Documents shall give written notice to the other party identifying the Default complained of, to the extent required therein.

601.1 General Remedies. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party, within thirty (30) days following receipt of such notice of Default, immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence. If a Default occurs under the Performance Documents or the Loan Documents, then Agency and/or City, as applicable, may exercise any right or remedy which it has thereunder, or which is otherwise available at law or in equity or by statute, and all of their rights and remedies shall be cumulative.

601.2 Specific Performance; Disbursement Cessation. Upon the occurrence of a Default, each Agency and City may, at their sole option, require specific performance of Developer's obligations and/or cease disbursement of the Financial Assistance.

602. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Yolo, State of California. Notwithstanding anything herein to the contrary, neither party shall have the right to recover consequential damages from the other party.

603. Termination. This Agreement may be terminated: (i) if there is an uncured Default, by written notice from the party not in Default; (ii) if there is a failure of a condition (which is not waived by the party whom the condition benefits) by notice from the party whom the condition benefits; or (iii) otherwise in accordance with applicable provisions of this Agreement hereof. In the event of termination due to a failure by Developer under such sections, neither Agency, City, nor Developer shall have any further rights against Agency or City, neither Agency nor City shall have any liability to Developer, and neither Agency nor City shall have any obligation to make any further disbursements of the Financial Assistance.

604. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director of Agency or in such other manner as may be provided by Applicable Laws. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Manager of City or in such other manner as may be provided by Applicable Laws. In the event that any legal action is commenced by Agency or City against Developer, service of process on Developer shall be made by personal service upon Michael L. Condry or in such other manner as may be provided by Applicable Laws.

605. Rights and Remedies Are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party, except as otherwise expressly provided herein.

606. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

607. Waivers, Releases, Indemnities.

607.1 Waivers and Releases.

a. **Statement of Waiver and Release.** Developer on behalf of itself, and each of the Developer Parties hereby fully releases and discharges Agency and City and its and their officers, officials, employees, volunteers, agents and representatives and each of them (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**") of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, arising out of or in any way connected with or otherwise based upon any or all of the following:

i. Obligations of Developer or Developer Parties to comply with all Applicable Laws with respect to the Agency Work and Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

ii. Relocation of Developer's or Developer Parties' business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located at the Project, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code section 7260, *et seq.* or other Applicable Laws (collectively, "**Relocation Assistance Law**"), notwithstanding that such

relocation benefits, assistance and/or payments may be otherwise required under the Relocation Assistance Law.

iii. Any tenant or subtenant of the Project or any other person or entity claiming a right to use or occupy the Project pursuant to a written or oral agreement with Developer or any Developer Parties, including any claims for leasehold bonus value, furniture fixtures and equipment, loss of business goodwill or assistance or benefits provided for under Relocation Assistance Law.

iv. Obligations of Developer or Developer Parties to comply with all Applicable Laws with respect to the Project including all applicable federal and state labor laws and standards and Public Contracts Code requirements.

v. Release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from, the Project or any portion thereof in violation, or alleged violation, of any Applicable Laws, no matter when occurred, except to the extent caused by indemnitees; including any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, trespass, contamination, leak, spill, release or other adverse effect on the environment.

vi. Any Default or breach by Developer or any Developer Parties of any provision of this Agreement.

vii. The subject matter of this Agreement, including the development, operating, maintenance or management of the Site or Project, or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any activities, errors, or omissions of Developer or Developer Parties under this Agreement or otherwise, including whether such activities or performance thereof be by Developer, any Developer Parties, or by anyone directly or indirectly employed or contracted with by Developer or any Developer Parties and whether such damage shall accrue or be discovered before or after termination of this Agreement.

viii. Any Default or breach by Agency or City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

b. California Civil Code Section 1542. It is hereby intended that the releases contained in Section 607.1 relates to both known and unknown Claims that either Developer or any Developer Parties may have, or claim to have, against Indemnitees with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging Claims both known and unknown which are related to or which arise under or in connection with the items set out above, Developer on behalf of itself and all Developer Parties expressly waives any rights under California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

As such relates to the matters set forth in Section 607.1, Developer, for itself and all Developer Parties, hereby waives and relinquishes all rights and benefits which it may have under California Civil Code section 1542.

607.2 Indemnity. Developer shall defend (with counsel reasonably acceptable to Agency and City, as applicable), indemnify, assume all responsibility for, and hold Indemnitees harmless from and against any and all present and future Claims arising out of or in any way connected with or otherwise based upon the matters set forth in this Article 600. All indemnity obligations contained in this Agreement expressly exclude Claims to the extent caused by City's or Agency's sole or active negligence or willful misconduct. The parties each acknowledge and agree that the defense, indemnification, protection and hold harmless obligations of the parties under this Section 607.2 are material elements of the consideration to the respective parties for the performance of their obligations under this Agreement, and that the parties would not have entered this Agreement unless such obligations were as provided for herein.

608. Survival. Developer's obligations under this Article 600 shall survive expiration or other termination of this Agreement, and issuance of any Certificate of Completion.

700. GENERAL PROVISIONS

701. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; (c) by a nationally recognized overnight courier service, marked for next day business delivery; or (d) sent by facsimile (immediately followed by one of the preceding methods). All notices shall be addressed to the party to whom such notice is to be given at the property address stated in this Section or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; (c) upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day as provided hereinabove, and (d) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To Agency: City of Winters Community Development Agency
318 First Street
Winters, CA 95694
Attention: Executive Director
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters Community Development Agency
318 First Street
Winters, CA 95694
Attention: Agency General Counsel
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To City: City of Winters
318 First Street
Winters, CA 95694
Attention: City Manager
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters
318 First Street
Winters, CA 95694
Attention: City Attorney
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To Developer Winters Almondwood, LP
1370 Jensen Avenue, Suite B
Sanger, CA 93657
Telephone: (559) 875-3330
Facsimile: (559) 875-3365

With a copy to: Patrick R. Sabelhaus
Law Offices of Patrick R. Sabelhaus
1006 Fourth Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 444-0286 ext. 267
Facsimile: (916) 444-3408

702. Term of Agreement; Enforced Delay; Extension of Times of Performance.
Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall

be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; force majeure; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of Agency or City or any other public or governmental agency or entity (other than the acts or failures to act of Agency or City, as applicable, which shall not excuse performance by Agency or City, as applicable). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred twenty (120) days, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency's Executive Director, the City's City Manager, and Developer. Developer expressly agrees that adverse changes in economic conditions, either of Developer specifically or the economy generally, changes in market conditions or demand, and/or Developer's inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds of enforced delay pursuant to this Section 702. Developer expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Date of Agreement.

703. Successors and Assigns. Subject to the prohibitions against changes in the ownership, management and control of Developer set forth in the Covenant, all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term "**Developer**" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided. Any assignee pursuant to an assignment consented to by Agency and City shall deliver to Agency and City, before the assignment shall be effective, a written original of the assignment of this Agreement and the party's agreement to be bound by and to perform and observe all terms, covenants and conditions of Developer under this Agreement and to assume all obligations of Developer thereunder, which instrument must be satisfactory in form and content to Agency and City, and their respective counsel.

704. Memorandum of Agreement. A "**Memorandum of Housing and Loan Agreement**" in the form of Attachment No. 11 attached hereto shall be recorded against the Site immediately following execution of the Agreement by the parties.

705. AB 987 Notice. A completed notice as required by California Assembly Bill 987 in substantially the form of Attachment No. 12 attached hereto shall be recorded against the Site immediately following execution of the Agreement by the parties.

706. Relationship Between Agency and Developer, City and Developer. It is hereby acknowledged that the relationship between Agency and Developer, or City and Developer, is not that of a partnership or joint venture and that Agency and Developer, or City and Developer, shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, or the Attachments, neither Agency nor City shall have any rights, powers, duties or obligations with respect to the maintenance or management of the Site or the Project. Developer agrees to indemnify, hold harmless and defend the Indemnitees from any claim made against the Indemnitees arising from

a claimed relationship of partnership or joint venture between Agency and Developer, or City and Developer, or among Agency, City and Developer, with respect to the maintenance or management of the Site or the Project.

707. Scope of Executive Director and City Manager Authority. Whenever a reference is made herein to an action or approval to be undertaken by Agency, Agency's Executive Director or his or her designee is authorized to act on behalf of Agency unless specifically provided otherwise or the context should require otherwise. Whenever a reference is made herein to an action or approval to be undertaken by City, City's City Manager or his or her designee is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise. City's City Manager and Agency's Executive Director shall have the authority to issue waivers and/or enter into amendments to this Agreement on behalf of Agency and City so long as such actions do not materially or substantially change the terms of this Agreement and such waivers and/or amendments may include extensions of time to perform obligations hereunder. Material or substantive waivers of or amendments to this Agreement shall require the consideration, action and written consent of the Agency's Board and City's City Council, as applicable.

708. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

709. Integration. Attachment Nos. 1 through 14 (individually and collectively, "**Attachments**") are incorporated by reference as though fully restated herein. The Attachments constitute a part of the Agreement. This Agreement constitutes the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

710. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

711. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "**including**" shall be construed as if followed by the words "**without limitation.**" All exhibits and attachments to this Agreement are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties.

712. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements,

restrictions or conditions of this Agreement. No waiver by Agency or City of any of the Conditions Precedent or Applicable Laws shall be effective unless in a writing expressly identifying the scope of the waiver and signed by the waiving entity.

713. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

714. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

715. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in California Government Code sections 6700 and 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

716. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective officers, agents, employees, volunteers, and representatives, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

717. Time of Essence. Time is of the essence with respect to the performance by each party hereto of each and every obligation and condition of this Agreement.

718. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including releases or additional agreements.

719. Conflicts of Interest. No member, officer, official or employee of Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his, her or its personal interests or the interests of any corporation, partnership or association in which he, she or it is directly or indirectly interested.

720. Time for Acceptance of Agreement by Agency and City. This Agreement, when executed by Developer and delivered to Agency and City, must be authorized, executed and delivered by each Agency and City on or before forty-five (45) days after signing and

delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

721. Non-liability of Officials and Employees of City, Agency and Developer. No Indemnitees shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by Agency (or City) or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against Indemnitees with respect to any Default or breach by Agency (or the City) or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer makes such release with full knowledge of Civil Code section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

As such relates to this Section 721, Developer hereby waives and relinquishes all rights and benefits that it may have under section 1542 of the California Civil Code.

722. Assignment.

722.1 By Agency or City. Each of Agency or City may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld; provided, however, that City and Agency or City may assign or transfer any of its interests hereunder to the other or any public or private entity controlled by Agency or City at any time without the consent of Developer.

722.2 By Developer. The expertise and experience of Developer and its partners, are of extreme importance to Agency, and are a material inducement for Agency to enter into this Agreement. As such, Developer may not assign or transfer any of its rights or obligations under this Agreement other than to make a loan of the Financial Assistance to the Developer in accordance with the terms hereof, without the express written approval of Agency, which approval may be withheld in Agency's sole discretion; provided, however, that Developer may make those transfers as permitted under the Covenant.

723. California Laws. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

724. Authorization. Each individual or entity executing this Agreement on behalf of Developer represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Developer and that such execution is binding upon Developer.

725. Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the

prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

726. Discretionary Approvals. Each Agency and City shall act independently, reserving full and complete discretion with respect to any approvals without reference to this Agreement. As such, Developer acknowledges that: (a) the execution of this Agreement does not constitute a commitment of either Agency or City to approve this Agreement, the 33433 Report, any general plan amendment, property rezoning, or any other agreement, satisfy Applicable Laws, or make any findings, recommendations or issue approvals in favor of Developer; (b) no such action shall be effective unless and until approved by Agency, the Planning Commission, and the City Council in each of their sole discretion, as applicable; (c) neither Agency nor City will consider approval of the Project unless and until Agency or City (as applicable) has fully reviewed and considered the environmental impacts of the proposed Project in accordance with Environmental Laws as defined above; and (d) regardless of Environmental Compliance review, neither Agency nor City is obligated, by this Agreement or otherwise, to fulfill any Environmental Compliance obligations or to adopt findings of overriding considerations for the approval of the Project or take any other action in support of the proposed Project, nor are they precluded, by this Agreement or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project. Developer further acknowledges that nothing in this Agreement is intended to or shall prejudice or commit to Agency or City regarding the findings and determinations to be made with respect to the subject matter of this Agreement, nor shall either Agency or City be liable, in any respect, to Developer or any third-party beneficiary of this Agreement for their action or inaction in approving this Agreement, granting or denying any discretionary approvals.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below.

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

By: _____
Michael L. Condry, its Sole Member

Dated: _____

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

By: _____
Name: _____
Its: _____

Dated: _____

"DEVELOPER"

{Signatures continue on next page}

CITY OF WINTERS COMMUNITY
DEVELOPMENT AGENCY, a public body
corporate and politic

Dated: _____
"Date of Agreement"

By: _____
Name: _____
Its: Executive Director

"AGENCY"

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency General Counsel

CITY OF WINTERS, a California municipal
corporation

Dated: _____

By: _____
Name: _____
Its: City Manager

"CITY"

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Free recording in accordance
with California Government
Code section 27383

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

California Tax Credit Allocation Committee
915 Capitol Mall, Rm. 487
Sacramento, CA 95814
CA-2009-601

SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE (the "Agreement") is dated as of _____, 2010, for reference purposes only, and is entered into by and among the CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), the CITY OF WINTERS, a California municipal corporation (the "City" and collectively with the Agency the "Junior Lienholders"), WINTERS ALMONDWOOD, LP, a California limited partnership (the "Borrower"), and the CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a public agency of the State of California (the "Senior Lender").

RECITALS

A. Borrower is the owner of the fee simple interest or a leasehold estate in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired and is rehabilitating a 39-unit multifamily residential rental development on the Property (the "Improvements"). The Property and the Improvements are sometimes referred to collectively as the "Development."

B. The Junior Lienholders shall be making a loan and providing a grant to the Borrower in the total amount of SIX HUNDRED THOUSAND and 00/100 Dollars (\$600,000.00) (the "Junior Liens"). The Junior Liens are evidenced by two deeds of trust (the "Junior Lien Deeds of Trust") recorded concurrently herewith, in the Official Records of Yolo County, California (the "Official Records"), on _____, 2010, as Instruments No. _____ and _____. The Agency and Borrower have also entered into an Affordable Housing and Maintenance Covenant affecting the use of the Development, recorded on _____, 2010, as Instrument No. _____ in the Official

Records (the "Agency Covenant"). (The Junior Lien Deeds of Trust, the Agency Covenant and all other documents evidencing or securing the Junior Liens are collectively referred to herein as the "Junior Lienholders' Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed THREE MILLION SEVEN HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED TWELVE and 00/100 Dollars (\$3,718,512.00) (the "ARRA Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Development and the income derived therefrom which shall be dated as of even date herewith and recorded as an encumbrance on the Property in the Official Records (the California Tax Credit Allocation Committee (TCAC) Regulatory Agreement"), and (ii) other loan documents. The ARRA Loan will be evidenced by a promissory note (the "ARRA Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded as an encumbrance on the Property in the Official Records (the "ARRA Deed of Trust") and by such other security as is identified in other loan documents.

D. The Senior Lender is willing to make the ARRA Loan provided the ARRA Deed of Trust and the TCAC Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Junior Lienholders' Documents, and provided that the Junior Lienholders specifically and unconditionally subordinate and subject the Junior Lienholders' Documents to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its ARRA Loan, it is hereby declared, understood and agreed as follows:

1. The TCAC Regulatory Agreement and the ARRA Deed of Trust securing the ARRA Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Junior Lienholders' Documents, and to all rights and privileges of the Junior Lienholders thereunder; and the Junior Lienholders' Documents, together with all rights and privileges of the Junior Lienholders thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholders' Documents, together with all rights and privileges of the Junior Lienholders thereunder, to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement, and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholders' Documents to the ARRA Deed of Trust and the TCAC Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Junior Lienholders' Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Improvements.

3. As conditions to the Junior Lienholders entering into this Agreement, the Senior Lender agrees as follows:

(a) Concurrent with the issuance of any notice of default by the Senior Lender to the Borrower copies of said notice of default shall be issued to Agency and City at the following addresses:

To Agency: City of Winters Community Development
Agency
318 First Street
Winters, CA 95694
Attention: Executive Director
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters Community Development
Agency
318 First Street
Winters, CA 95694
Attention: Agency General Counsel
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To City: City of Winters
318 First Street
Winters CA 95694
Attention: City Manager
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters
318 First Street
Winters, CA 95694
Attention: City Attorney
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

(b) The Junior Lienholders shall have the right, but not the obligation, to cure any default under the Senior Loan Documents within forty-five (45) days of receipt of a notice of default pursuant to Section 3(b) of this Agreement. Senior Lender shall accept cure of said default from either or both of the Junior Lienholders as though such cure had been tendered by Borrower;

(c) If, pursuant to exercise of their rights under the Junior Lienholders' Documents, either or both of the Junior Lienholders take title to the Development and offer to assume the obligations of Borrower under the Senior Loan Documents, the Senior Lender shall apply its normal underwriting process to evaluation of the proposed assumption and if, following the conclusion of such underwriting process, the Senior Lender accepts either or both of the Junior Lienholders as successor(s) to the Borrower as obligor under the Senior Loan Documents, then the Senior Lender shall not exercise any rights it may have to acceleration of the Senior Loan by reason of transfer to either or both of the Junior Lienholders, of title to the Development, or any portion thereof; and

(d) If, pursuant to exercise of their rights under the Junior Lienholders' Documents and as described in Section 3(c) of this Agreement, either or both of the Junior Lienholders take title to the Development and assume the obligations of Borrower under the Senior Loan Documents, either or both of the Junior Lienholders shall have the right, subject to the consent of the Senior Lender, to transfer the Property and Improvements to a nonprofit corporation that is in good standing under the laws of the State of California and acceptable to Senior Lender after application of Senior Lender's normal underwriting process. The consent of the Senior Lender shall not be withheld unreasonably. If Senior Lender consents to transfer of the Development to a nonprofit corporation pursuant to this Section 3(d), then the Senior Lender shall not exercise any rights it may have to acceleration of the Senior Loan by reason of transfer to such nonprofit corporation, of title to the Development, or any portion thereof

4. The Junior Lienholders declare, agree and acknowledge that:

(a) The Junior Lienholders consent and approve (i) all provisions of the ARRA Note, the ARRA Deed of Trust and the TCAC Regulatory Agreement, and (ii) all agreements among the Junior Lienholders, Borrower and Senior Lender for the disbursement of the proceeds of the ARRA Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholders for review;

(b) The Senior Lender, in making disbursements of the ARRA Loan pursuant to the ARRA Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) That none of the execution, delivery or recordation of any of the ARRA Note, ARRA Deed of Trust, or TCAC Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholders' Documents; and

(d) The Junior Lienholders intentionally and unconditionally waive, relinquish, subject and subordinate the claims, liens or charges upon the Development of the Junior Lienholders' Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the ARRA Deed of Trust and the TCAC Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the ARRA Loan and advances thereof are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

5. The Senior Lender would not make the ARRA Loan without this Agreement.

6. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

9. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

JUNIOR LIENHOLDERS:

City of Winters Community Development Agency,
a public body corporate and politic

By: _____

City of Winters,
a California municipal corporation

By: _____

BORROWER:

Winters Almondwood, LP,
a California limited partnership

By: Central Valley Coalition for Affordable Housing,
a California nonprofit public benefit corporation
Its: Managing General Partner

By: _____
Christina Alley,
Chief Executive Officer

By: Winters Almondwood, LLC,
a California limited liability company
Its: Administrative General Partner

By: _____
Michael L. Condry,
Manager

SENIOR LENDER:

California Tax Credit Allocation Committee, a public agency of the State of California

By: _____

Name: _____

Its: _____

By: _____

[Signatures must be **ACKNOWLEDGMENT** *acknowledged*]

State of California County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(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 person(s) acted, executed the instrument.

ACKNOWLEDGMENT

State of California County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(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 person(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 _____ (Seal)

ACKNOWLEDGMENT

State of California County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(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 person(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 _____ (Seal)

ACKNOWLEDGMENT

State of California County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(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 person(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 _____ (Seal)

ACKNOWLEDGMENT

State of California County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(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 person(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 _____ (Seal)

EXHIBIT A

Legal Description of the Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVEING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTIN AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OR PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 1

SITE LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 2

AFFORDABLE HOUSING AND MAINTENANCE COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Winters Community
Development Agency
318 First Street
Winters CA 95694
Attention: Executive Director

*This document is exempt from the payment of a recording
fee pursuant to Government Code § 27383.*

AFFORDABLE HOUSING AND MAINTENANCE COVENANT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WINTERS ALMONDWOOD, LP, a California limited partnership ("**Developer**"), and CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY ("**Agency**"), agree as follows with reference to the following facts:

A. Developer owns that certain real property legally described on Exhibit A ("**Site**"). As set forth in the Agreement (defined in Recital B, below), Developer is to undertake and complete substantial rehabilitation of a 12-building, 39-unit affordable housing rental complex, together with common facilities on the Site ("**Project**").

B. Agency is acting to carry out the obligations under the Community Redevelopment Law of the State of California (Health and Safety Code section 33000, *et seq.*) with respect to affordable housing, has entered into that certain Housing and Loan Agreement dated _____, 2010, among Developer, City and Agency including all Attachments thereto ("**Agreement**") with respect to the Project. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

C. As part of its obligations under the Agreement, Developer agreed that four (4) units in the Project will remain affordable to Very Low Income households and thirty-four (34) units will remain affordable to Lower Income Households, in accordance with the Community Redevelopment Law. Thus, a total of 38 units within the Project will remain affordable to households of Very Low to Lower Income.

D. This Project does not fall within the purview of Article XXXIV of the California Constitution, which provides an exception for rehabilitation, reconstruction or replacement of existing low rent housing projects, or a project previously or currently occupied by Lower Income Households.

E. Execution and recordation of this Affordable Housing and Maintenance Covenant ("**Covenant**") against the Project is a condition of City and Agency to approving the Agreement.

1. **USE OF THE SITE.** The foregoing recitals are incorporated by reference into this Covenant. In addition, Developer hereby covenants and agrees that during the term of this Covenant, Developer shall use the Site and the Project in compliance with all of the following:

A. **Substantial Rehabilitation.** Developer is substantially rehabilitating the Site, an affordable housing project with common facilities. As described below in Section 1(B), 38 units within the Project shall be restricted to and occupied by households of Very Low and Lower income ("**Affordable Unit**" or "**Affordable Units**"). There shall be no physical concentration of the Affordable Units in the Project. The Affordable Units shall be dispersed throughout the Project. City and Developer shall agree upon the initial mix and location of the Affordable Units within the Project. The Affordable Units shall not be identifiable from the exterior or the interior, and shall be interchangeable with other units in the Project. Affordable Units and other units in the Project shall be identical in quality, design and materials.

B. **Rent and Income Restrictions.**

(1) Thirty-eight (38) of the residential units of the Project shall be Affordable Units; four (4) of the Affordable Units (three (3) 2-bedroom units and one (1) 3-bedroom unit) shall be occupied by persons or households whose gross income is fifty percent (50%) or less of Area Median Income pursuant to California Health and Safety Code section 50105, as amended, or any successor statute thereto ("**Very Low Income Households**") at an affordable rent level pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, and thirty-four (34) of the Affordable Units (twenty-nine (29) 2-bedroom units and five (5) 3-bedroom units) shall be occupied by persons or households whose gross income is 80% or less of Area Median Income pursuant to California Health and Safety Code section 50079.5, as amended, or any successor statute thereto ("**Lower Income Households**") at an affordable rent level pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto. Rent for the Affordable Units shall be no greater than that considered as affordable rent for Very Low Income Households or Lower Income Households, as applicable, adjusted for family size appropriate to the unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto ("**Affordable Rent**"). "**Area Median Income**" means the median household income (adjusted for family size appropriate to the unit) of the Metropolitan Statistical Area in which Yolo County is located, as established by California Health and Safety Code section 50093, as amended or any successor statute thereto. "**Adjusted for family size appropriate to the unit**" shall have the meaning set forth in California Health and Safety Code section 50053, as amended, or any successor statute thereto. To the extent other regulatory covenants are in effect with respect to the Project (in addition to the Covenant), the most stringent income and rent requirements shall control; to the extent permitted by Community Redevelopment Law, the income and rent requirements shall confirm with California Tax Credit Allocation Committee procedures.

(2) The determination of status as a Very Low Income or Lower Income Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household.

(3) No less than one (1) person per bedroom shall be allowed. No more than one (1) person shall be permitted to occupy a studio Affordable Unit, no more than two (2) persons shall be permitted to occupy a one (1) bedroom Affordable Unit, no more than three (3) persons shall be permitted to occupy a two (2) bedroom Affordable Unit, no more than four (4) persons shall be permitted to occupy a three (3) bedroom Affordable Unit, and no more than five (5) persons shall be permitted to occupy a four (4) bedroom Affordable Unit.

C. **Marketing and Leasing Program; Management Plan.** Developer shall work, and shall ensure that the property manager of the Site (if any) works, with Agency to design a marketing and leasing program, which program shall be subject to the approval of Agency prior to lease-up and related activities, including advertising. Developer shall comply, and shall ensure that the property manager of the Site (if any) complies, with the provisions of such management plan and proposed resident selection substantially similar to the criteria attached hereto as **Exhibit B** in leasing the Affordable Units, including refusing to place a household on the list or remove such household from such list if the agent determines that such household has provided false information in its application, has a history of poor performance in meeting financial obligations, especially rent, disturbance of neighbors, destruction of property, poor housekeeping habits such as damage to the unit or the existence of health and sanitation hazards, poor landlord references, history of criminal activity involving crimes of physical violence to persons or property, unlawful drug activity, or other acts which would adversely affect the health, safety or welfare of other residents, or has, in the five years preceding the application, been evicted by a court of law. Examples of poor financial performance shall include but not be limited to the existence of accounts sent to collection for non-payment, credit accounts of status "3" or more, unpaid judgments, repossessions, outstanding liens, bankruptcy, more than two late rent payments within 12 months (consideration will be given in instances where the tenant's rent was unusually high in proportion to household income) and where the total amount of outstanding credit payments plus the projected rent exceeds 60% of gross income. Developer may not use marital status in determining eligibility. A potential tenant refused a rental unit or a place on a waiting list shall be notified in writing stating the reasons for such determination and the procedure for appeal of such decision.

D. **Reporting Requirements.** Annual reports and annual income certifications or re-certifications must be submitted to Agency in the format and containing the information of the Project Status report, attached hereto as **Exhibit C**, that Developer is required to submit to the California Tax Credit Allocation Committee; provided however that the City shall have the right to, from time to time during the term of this Covenant, request such additional or different information necessary to meet reporting requirements imposed on the City or Agency by the Community Redevelopment laws and other Applicable Laws. The annual reports and annual income certification shall be submitted to Agency on or before January 31st of each year or, provided Developer provides Agency with notice, such other date as Developer may be required to submit its required reports to the California Debt Limit Allocation Committee and/or the California Tax Credit Allocation Committee. In the event that Agency requests additional or different information, Developer shall promptly supply such information in the reports required hereunder. Developer shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by Agency with respect to all matters covered by this Covenant. Developer, at such time and in such forms as Agency may require, shall furnish to Agency, statements, records, reports, data and information pertaining to matters covered by this Covenant. Upon request for examination by Agency, Developer, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Covenant. Developer shall permit Agency to audit, examine and make excerpts or transcripts from such records.

E. **Marketing Reports.** Within ten (10) business days of Agency's request, which shall be sent pursuant to Section 14 below, Developer shall deliver to Agency marketing and

leasing information, schedules and reports for the Affordable Units in form and substance reasonably acceptable to Agency.

F. **Taxes.** Developer, on behalf of itself and its operators and lessees and its and their successors and assigns, covenants and agrees (a) that the Project (including the Site and all improvements, equipment and contents located therein and thereon) shall be and remain subject to the assessment and payment of real and personal property taxes, including possessory interest taxes and (b) that Developer shall not apply for or otherwise accept any exemption from the payment of any real or personal property taxes, including possessory interest taxes. In the event Developer (including its operators or lessees or its and their successors or assigns) is granted any exemption from the payment of real or personal property taxes pursuant to Section 206.2 of the Agreement, Developer shall pay annually to Agency and City a payment in lieu of taxes in accordance with the terms and in substantially the form of that certain Agreement for Payment In Lieu of Taxes attached as Attachment No. 5 of the Agreement.

2. **LIMITATIONS ON TRANSFER.**

A. **Consent Required.**

(1) The qualifications and identity of Developer and its managing member or partner are of particular concern to Agency and City. It is because of the demonstrated qualifications and identity that Agency and City have each entered into the Covenant with Developer, and Developer expressly agrees to the following limitations on transfer. Before entering into any amendment to Developer's operating and partnership agreements, by-laws, or similar applicable documents, Developer shall first submit the proposed amendment to Agency's Executive Director who shall have the right to reasonably disapprove any such amendment which would materially diminish or otherwise impair the ability of Developer to fulfill its duties and obligations under the Agreement and this Covenant. Within thirty (30) days following receipt of the proposed amendment, Agency shall either approve or disapprove the requested amendment. Developer shall not enter into any amendment to Developer's operating and partnership agreements, by-laws, or similar applicable documents that is reasonably disapproved by Agency pursuant to this Section 2.

(2) Developer shall notify Agency of any proposed transfer, assignment or refinancing promptly upon commencement of negotiations in connection with such event. Agency's Executive Director shall approve or disapprove any requested transfer, assignment or refinancing within thirty (30) days after receipt of a written request for approval from Developer, together with such documentation as may be reasonably required by Agency's Executive Director. The documentation to be provided by Developer to Agency's Executive Director shall include, without limitation, all loan documents in connection with any proposed refinancing and all documentation which Agency's Executive Director determines is reasonably necessary to evaluate the proposed transaction and the proposed assignee's/transferee's experience and qualifications. Agency's Executive Director shall not unreasonably withhold its approval of a transfer or assignment to a proposed transferee or assignee who, in the reasonable opinion of Agency's Executive Director, is financially capable and has the development qualifications and experience to perform the duties and obligations of Developer hereunder.

(3) Prior to any proposed assignment being considered for approval by Agency's Executive Director, Developer shall deliver to Agency's Executive Director the form of a proposed written assignment and assumption agreement in which the assignee would expressly agree to assume all rights and obligations of Developer under the Agreement which arise after the effective date of the assignment, and in which the assignee would agree to assume, or Developer would expressly remain responsible for, all performance of Developer which arose prior to the effective date of the assignment. The assignment and assumption agreement shall be in a form reasonably acceptable to Agency's legal counsel. No later than the date the assignment becomes effective, Developer shall deliver to Agency a fully executed counterpart of the assignment and assumption agreement.

B. **Conditions Precedent to Transfer.** Developer shall not assign or transfer the Agreement or the Project (including any portion(s) thereof, component(s) thereof, interest(s) therein, or right(s) thereunder) without the prior written approval of Agency's Executive Director, which approval shall not be unreasonably withheld or delayed, and shall be granted upon each Agency's and City's receipt of evidence acceptable to them that the following conditions have been satisfied:

(1) Developer is not in Default under the Covenant or Agreement or otherwise in violation of the Covenant, or the purchaser or assignee agrees to undertake to cure any such Defaults and violations to the reasonable satisfaction of each City and Agency;

(2) The continued operation of the Project shall comply with the provisions of the Agreement and the Covenant;

(3) Either (i) the purchaser or assignee or its property manager has at least five (5) years' experience in the ownership, operation and management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other Applicable Laws applicable to such projects, or (ii) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subclause (i) above, or (iii) Developer or its management company will continue to manage the Project for at least one year following such transfer and during such period will provide training to the transferee and its manager in the responsibilities relating to the Affordable Units.

(4) The person or entity which is to acquire the Project does not have pending against it, and does not have a history of, significant and material building code violations or complaints concerning the maintenance, upkeep, operation and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; and

(5) The proposed purchaser or assignee enters into a written assignment and assumption agreement in form and content reasonably satisfactory to Agency's legal counsel, and, if requested by Agency, an opinion of such purchaser or assignee's counsel to the effect that the Agreement and this Covenant are valid, binding and enforceable obligations of such purchaser or assignee, subject to bankruptcy and other standard limitations affecting creditor's

rights. Upon such an approved transfer, Developer shall be released of all of its obligations under the Performance Documents arising from and after the date of such approved transfer.

C. **Pre-Approved Transfers.** Notwithstanding any other provision of this Covenant or Agreement to the contrary, Agency approval of a transfer or assignment of this Covenant or Agreement, the Project, the Site, or any interest therein shall not be required in connection with any of the transfers listed below. In the event of an assignment or transfer by Developer not requiring Agency's prior approval, Developer nevertheless agrees that it shall give at least fifteen (15) days' prior written notice to Agency of such assignment or transfer. In addition, Agency shall be entitled to review such documentation as may be reasonably required by Agency's Executive Director for the purpose of determining compliance of such assignment or transfer with the requirements of this Section 2.

(1) Subject to Developer submitting the assignment and assumption agreement referred to above and the approval of such agreement by Agency, which approval shall not be unreasonably withheld, any transfer or assignment of the Project or any interest therein to an entity or entities in which Developer retains more than 50% in the aggregate, directly or indirectly, of the ownership or beneficial interest and retains full management and control of the transferee entity or entities, either directly or indirectly through another entity, subject only to certain major events requiring the consent or approval of the other owners of such entity ("**Affiliate**" or "**Affiliate of Developer**"). The term "**control**" as used herein shall mean the ability to direct the operation and management of such corporation, partnership, limited liability or other entity.

(2) Transfers resulting from the death or mental or physical incapacity of any member or partner of Developer;

(3) The granting of temporary or permanent easements or permits to facilitate development of the Project;

(4) Any assignment for financing purposes (subject to such financing being considered and approved by Agency pursuant to the Agreement), including the documents securing the Developer Financing;

(5) Any transfer by foreclosure or deed in lieu of foreclosure under approved financing or transfers by a lender as described above subsequent to foreclosure or deed in lieu of foreclosure (subject to the requirements of this Covenant and the Agreement);

(6) The transfer of any stock, partnership interest, membership or other beneficial interest of Developer provided such transfer does not cause a material change in the rights to manage and control Developer;

(7) The transfer of any stock, partnership interest, membership or other beneficial interest in any non-managing member or limited partner of Developer or any direct or indirect beneficial owner of any non-managing member or limited partner of Developer;

(8) The admission of any new non-managing member or limited partner to Developer;

(9) The admission of any new co-managing member or limited partner to Developer, so long as the initial managing member limited partner or an Affiliate of Developer remains a co-managing member of Developer and maintains control over the operation and management of Developer;

(10) The transfer of any managing member interest, non-managing member interest, general partner or limited partner interest in Developer to an Affiliate of Developer so long as the initial managing member or general partner (as applicable) or Affiliate of Developer remains a managing or co-managing member or general partner (as applicable) of Developer and maintains control over the operation and management of Developer;

(11) The rental, in the ordinary course of business of the Affordable Units in accordance with the terms of this Covenant;

(12) The transfer of the Project to a limited partnership in which Developer or its wholly-controlled Affiliate is the sole general partner, and any transfer of the Project back to Developer or its Affiliate at the end of the 15-year tax credit compliance period;

(13) The transfer of any limited partnership interests in Developer;

(14) The removal of the general partner of Developer, provided that any successor general partner has been approved by Agency in its reasonable discretion.

D. Nothing in this Covenant shall prohibit (i) sale or transfer of all or any portion of the Site or Project through foreclosure of a mortgage or deed of trust permitted pursuant to the Agreement, (ii) transfer to the holder of such permitted mortgage or deed of trust by deed in lieu of foreclosure or (iii) transfer of the Site or Project by any such holder subsequent to acquisition by foreclosure or deed in lieu, so long as such transfer complies with the Agreement and this Covenant. Agency shall not be obligated to pay Financial Assistance to any transferee of the Site or Project after foreclosure or transfer in lieu of foreclosure unless such transferee assumes all of Developer's obligations under the Agreement and this Covenant (excluding repayment of any portion of the Financial Assistance not actually disbursed to such transferee).

3. NO DISCRIMINATION.

A. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

B. All deeds, leases or contracts made relative to the Project, the Site, the improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

(1) In deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

C. All deeds, leases or contracts made relative to the Project, the Site, the improvements thereon, or any part thereof, shall contain or be subject to substantially the nondiscrimination clauses as set forth in California Health and Safety Code section 33436, as amended, and successor statutes thereto, provided, however, this provision shall not prevent Developer from establishing preferences in accordance with all applicable fair housing laws. The provisions of this Section 3 shall run with the land and shall be contained in each subsequent grant deed conveying title to the Project, the Site, the improvements thereon, or any portion thereof, to any subsequent owner.

4. **MAINTENANCE AND MANAGEMENT.** Developer shall maintain the Project (such maintenance to include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Project and any and all other improvements on the Site and in the public right-of-way to the nearest curblines abutting the Site) in accordance with the Maintenance Standards (as hereinafter defined). To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment,

materials, support facilities, and any and all other items necessary to comply with the requirements of this Covenant. The maintenance covenants and obligations set forth in this Section 4 shall remain in effect for the period of time specified in Section 7, below.

A. The following standards (collectively, "**Maintenance Standards**") shall be complied with by Developer and its maintenance staff, contractors and subcontractors:

(1) Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(2) Clean-up maintenance shall include: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(3) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(4) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all Applicable Laws. Precautionary measures shall be employed recognizing that all areas are open to public access.

(5) The Project shall be maintained in conformance with the Agreement and this Covenant and in accordance with the custom and practice generally applicable to comparable multi-family residential projects located within Yolo County, California. Public right-of-way improvements to the curblin(e)s on and abutting the Site shall be maintained as required by this Subsection 4.A in good condition and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Winters.

B. If Developer does not maintain the Improvements and all other private and public improvements on the Site to the curblin(e)s on and abutting the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency and/or the City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Developer. However, prior to taking any such action, Agency agrees to notify Developer in writing if the condition of said improvements does not conform to the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have 30 days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Developer shall have 24 hours to rectify the problem. In the event Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such

maintenance deficiency after notification and after expiration of any applicable cure periods, including the notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Agreement Section 210, then the City and/or Agency shall have the right to maintain such improvements. Developer agrees to pay Agency upon demand all charges and costs incurred by Agency or the City for such maintenance. Until so paid, Agency shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "**Notice of Claim of Lien**" against the Site. Any lien in favor of Agency created or claimed under this Section 4.B is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates his interest, of record, to such lien. Developer acknowledges and agrees that the City and Agency may also pursue any and all other remedies available in law or equity in the event of a breach of the maintenance obligations and covenants set forth herein, subject to the limitations set forth in Agreement Section 600 and Section 9, below.

5. **REPLACEMENT RESERVE REQUIREMENT.** Developer covenants and agrees that in each Operating Year, Developer shall deposit not less than Two Hundred Fifty Dollars (\$250) per residential unit into a special capital replacement and repair reserve account or such other greater amount as required by Developer's lender. The capital replacement reserve account shall be used exclusively for payment of Project capital replacement expenses.

6. **NO IMPAIRMENT OF LIEN.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor in interest to the Site, the Project, or any portion thereof shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. **DURATION.** The covenants and restrictions set forth in Sections 1, 2, 4, and 5 shall remain in effect until the date which is fifty-five (55) years following the date of recording of the Covenant or the Certificate of Completion, whichever occurs later. The non-discrimination covenants set forth in Section 3 shall remain in effect in perpetuity.

8. **SUCCESSORS AND ASSIGNS.** The provisions of and covenants contained in this Covenant shall inure to the benefit of Agency and its successors and assigns and shall be binding upon Developer and any successor in interest to the Site, the Project, or any portion thereof. The covenants shall run in favor of Agency and the City and its and their successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether Agency or the City are owners of any land or interest therein to which such covenants relate. Agency, the City, and its and their successors and assigns, in the event of any breach of any such covenants, or breach of any of Developer's obligations under the Agreement and this Covenant, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

9. **DEFAULT.**

A. Any failure by Developer to perform any term or provision of this Covenant shall constitute a Default under this Covenant (1) if Developer does not cure such failure within thirty (30) days following written notice of default from Agency, including notice and opportunity to cure pursuant to Agreement Section 210.3 or (2) if such failure is not of a nature which can be cured within such 30-day period, Developer does not within such 30-day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any failure by Developer to perform any term or provision of the balance of the Performance Documents shall also constitute a "**Default**" under this Covenant subject to any applicable notice requirements or cure periods provided in the applicable Performance Documents.

B. Any notice of default given under this Covenant shall identify the nature of the failure in performance which Agency claims constitutes the Default and the manner in which such Default may be satisfactorily cured in accordance with the terms and conditions of this Covenant. During the time periods herein specified for cure of a failure to perform, including the opportunities to cure for any senior lender, Developer shall not be considered to be in Default of this Covenant for any purposes.

C. Any failure or delay by Agency or City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive Agency of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10. **ESTOPPEL CERTIFICATE.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the current, actual knowledge of the certifying party, (a) this Covenant is in full force and effect and a binding obligation of the parties; (b) this Covenant has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting party is not in Default in the performance of its obligations under this Covenant, or if in Default, to describe therein the nature and extent of any such defaults. The party receiving a request hereunder shall execute and return a certificate in reasonable form, or give a written, detailed response explaining why it will not do so, within forty-five (45) business days following the receipt of the request. The Executive Director shall be authorized to execute any certificate requested by Developer hereunder. Developer and Agency acknowledge that a certificate hereunder may be relied upon by those tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees identified therein. The request shall clearly indicate that failure of the receiving party to respond within the 45-day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed an approval of the estoppel certificate. Failure of Developer to execute an estoppel certificate shall not be deemed a default, provided that in the event Developer does not respond within the required 45-day period, Agency may send a second and final request to Developer and failure of Developer to respond within fifteen (15) days from receipt thereof (but only if Agency's request contains a clear statement that failure of Developer to respond within the 15-day period shall constitute an approval) shall be deemed approval by

Developer of the estoppel certificate and may be relied upon as such by Agency, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of Agency to execute an estoppel certificate shall not be deemed a default, provided that in the event Agency fails to respond within the required 45-day period, Developer may send a second and final request to Agency, and failure of Agency to respond within fifteen (15) days from receipt thereof shall be deemed disapproval by Agency of the estoppel certificate, which estoppel certificate may not be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees identified therein.

11. **INDEMNIFICATION LIMITATION FOR APPROVED LENDERS.** Inasmuch as the covenants, reservations, and restrictions of the Agreement and this Covenant run with the land, the indemnification obligations of Developer contained in the Agreement and this Covenant will be deemed applicable to any successor in interest to Developer, but, it is acknowledged and agreed, notwithstanding any other provision of the Agreement and this Covenant to the contrary, that neither an Approved Lender nor its successors in interest will assume or take subject to any liability for the indemnification obligations of Developer for acts or omissions of Developer occurring prior to transfer of title to any Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion; Developer at the time of the act or omission shall remain liable under the indemnification provisions for its acts or omissions occurring prior to any transfer of title to an Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion. An Approved Lender shall indemnify Agency and/or City, as applicable, following its acquisition of the Project or Site or any portion thereof by foreclosure, deed in lieu of foreclosure or comparable conversion during, and only during, any ensuing period that such Approved Lender owns and operates the Project, provided that the liability of any Approved Lender shall be strictly limited to its acts and omissions occurring during the period of its ownership and operation of the Site or Project. An "Approved Lender" is a reputable financial institution or similar lender extending Developer Financing and approved by Agency and City in their reasonable discretion.

12. **SUCCESSORS AND ASSIGNS.** The covenants contained in this Covenant shall be binding for the benefit of Agency and its respective successors and assigns and any successor in interest to the Site and the Project, and such covenants shall run in favor of Agency and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether Agency is or remains an owner of any land or interest therein to which such covenants relate. Agency, and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Covenant shall be for the benefit of and shall be enforceable only by Agency, and its respective successors and such aforementioned parties.

13. **CONVERSION TO FOR SALE PROJECT.** If, following the date of this Covenant, Developer desires to operate the Project, or any part thereof, as a "for-sale" rather than a "rental" project, Developer may request that Agency consider amending this Covenant to address the requirements applicable to for-sale affordable units. Agency may consider, not consider, approve or disapprove such request in its sole and absolute discretion, and the parties hereby acknowledge and agree that Agency is under no obligation to modify or amend this Covenant to accommodate any conversion of the Project to a for-sale project. Should Agency opt to do so, it

With a copy to: City of Winters
318 First Street
Winters, CA 95694
Attention: City Attorney
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To Developer Winters Almondwood, LP
1370 Jensen Avenue, Suite B
Sanger, CA 93657
Telephone: (559) 875-3330
Facsimile: (559) 875-3365

With a copy to: Patrick R. Sabelhaus
Law Offices of Patrick R. Sabelhaus
1006 Fourth Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 444-0286 ext. 267
Facsimile: (916) 444-3408

15. **ATTORNEYS' FEES.** In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

16. **CITY AS THIRD PARTY BENEFICIARY.** Developer agrees and acknowledges that the City and its officers, officials, employees, volunteers, agents, and representatives is a third-party beneficiary of this Covenant, including with respect to the Park Improvements and the releases and indemnities contained in this Covenant which expressly refer to City, such entities or persons.

17. **MISCELLANEOUS.** Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Covenant including releases or additional agreements. This Covenant may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The word "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Covenant shall be interpreted as though prepared jointly by both parties. This Covenant shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Covenant shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement. All waivers by and indemnity obligations of Developer contained in this Covenant shall survive the expiration or other termination of this Covenant. All indemnity obligations contained in this

Covenant expressly exclude Claims to the extent caused by City's or Agency's sole or active negligence or willful misconduct. "Claims" means, collectively, any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties, and expenses (including attorneys' fees and costs). A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by the City or Agency of any of the condition hereof shall be effective unless in a writing expressly identifying the scope of the waiver and signed by the waiving entity. Any alteration, change or modification of or to this Covenant, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto. "Applicable Laws" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Yolo, City of Winters, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, City, Developer, or the Project, including all applicable California Public Contracts Code requirements, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City of Winters Municipal Code, Relocation Requirements, Prevailing Wage Laws, Environmental Laws, all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, et seq., Government Code section 4450, et seq., Government Code section 11135, et seq., and the Unruh Civil Rights Act, Civil Code section 51, et seq., and any amendments of or successors to any of the foregoing.

[Signatures follow on next two pages]

IN WITNESS WHEREOF, Agency, the City and Developer have caused this Covenant to be executed on their behalf by their respective officers thereunto duly authorized.

Dated for reference purposes only as of _____, 2010.

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: _____
Michael L. Condry, its Sole Member

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

Dated: _____

By: _____
Name: _____
Its: _____

"TRUSTOR"

[Signatures must be notarized]

CITY OF WINTERS COMMUNITY
DEVELOPMENT AGENCY, a public body
corporate and politic

Dated: _____
"Date of Agreement"

By: _____
Name: _____
Its: Executive Director

"AGENCY"

APPROVED AS TO FORM:

[Signatures must be notarized]

Agency General Counsel

Exhibit A

LEGAL DESCRIPTION OF SITE

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Exhibit B

RESIDENT SELECTION AND PROTOCOL CRITERIA

GENERAL

Applicants **may not qualify** to rent an Affordable Unit if they do not meet the criteria listed below. Lack of supporting documentation or cooperation during the screening process is also grounds for disqualification. All of the following criteria, including circumstances that occur outside of the applicant's control, will be considered; all references to Property Manager include its staff, employees, independent contractors, and volunteers.

1. Total Household Income: Total household income must be at or below the Area Median Income of the unit for which the applicant is applying.

2. Credit Report: If the credit report reflects more than five negative accounts, applicants may be disqualified. All collection accounts must be addressed by the applicant with proof of payment or payment schedule. Proof of payment of outstanding utility accounts must be submitted prior to approval of the household. Outstanding collection accounts for medical treatment may be excluded.

3. Eviction: If any applicant has been lawfully evicted within the last five (5) years.

4. Criminal History: *See Criminal Background Policy, below.*

5. Rental History: Negative rental history verifications received from previous landlord(s) within the last five years that indicate non-payment of rent, property damage including creating fire hazards, moving in persons that are not on the lease agreement, tenant eviction, vandalism/or damage to unit and/or common areas, interference with the rights and quiet enjoyment of others.

6. Comply: Failure to provide the appropriate information to qualify individual/family for an affordable housing unit, failure to reasonably cooperate with Property Manager.

7. Behavior: Any applicant who acts aggressively towards Property Manager, appears to be impaired by alcohol or drugs, uses obscene or otherwise offensive language, or makes derogatory remarks toward Property Manager may be disqualified.

CRIMINAL BACKGROUND POLICY

As a part of the final eligibility determination, Property Manager will screen each adult applicant to assess suitability for housing. It is the policy of Property Manager to deny admission to applicants whose habits and practices may reasonably be expected to have a detrimental effect on the operations of the Project or on the quality of life for its residents or the community. However, no application will be denied without Property Manager's prior review thereof. Factors to be considered in the screening process include a history of violent or criminal behavior towards people or property and drug related activities, (excluding past drug addictions), criminal gang related activities, physical assault and/or harm to person(s), property destruction, and ANY sexual related offense to another person(s). Property Manager may also take into consideration misdemeanor offenses that show a pattern of repeated, unlawful behavior that may have a detrimental effect on the Project, as previously stated.

EQUAL OPPORTUNITY REQUIREMENTS

Property Manager shall comply, and shall ensure that its staff complies with, Affirmative Fair Housing Marketing procedures, Fair Housing laws, and other Applicable Laws.

APPLICANTS REJECTED

Applicants may be rejected at any time during the screening process if the criteria listed in the herein are not met.

Exhibit C
PROJECT STATUS REPORT

[Attach form of Project Status Report that Developer is required to submit to the California Tax Credit Allocation Committee.]

Attachment No. 3

PROFORMA

PROFORMA FINANCIAL MODEL

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Attachment No. 4

SCOPE OF WORK

**Proposed Rehabilitation Synopsis
Almondwood Apartments
7.26.10**

Legend

Health/Safety/Welfare	
ADA/IEC 504	
Discretionary Rehab	



Item	Quantity	Unit	Unit Cost	Total Cost	Comments/Locations
Site/Plant Items					
Landscaping	1,000	SF	\$6.00	\$6,000.00	Replant barren areas, trim back overgrown landscaping, install additional plantings and upgrade landscaping as needed to improve curb appeal at main entries.
Irrigation	1,000	LF	\$7.00	\$7,000.00	Investigate irrigation lines and replace broken or damaged lines and sprinkler heads as needed. Redirect sprinkler heads to spray away from the buildings. This system is original.
Asphalt Paving	7,300	SF	\$2.50	\$18,250.00	Remove and replace significantly damaged areas, seal minor cracks.
Asphalt Slurry Seal/Striping	30,000	SF	\$0.40	\$12,000.00	Slurry seal and re-stripe paved areas.
Signage	1	LS	\$8,000.00	\$8,000.00	Install new property identification signage, new building address signage and new unit identification signage.
Site Lighting	40	EA	\$400.00	\$16,000.00	Damaged fixtures and poor quality observed; replace immediately.
Site Drainage	1	LS	\$16,000.00	\$16,000.00	On-site management reports "low spots" in the lawns behind Units 6 and 25 that retain rainwater during hard downpours. Drainage modifications may be required.
Tot Lot	1	EA	\$20,000.00	\$20,000.00	Construct accessible compliant tot lot with padded ground cover system.
Trash Enclosure	1	LS	\$1,500.00	\$1,500.00	The existing concrete masonry enclosures have a flat precast concrete cap (without a wash to drain) that was laid on the top course of masonry in a mortar bed. There is no evidence of drift pins having been used to keep the cap units in place. The caps are separating from the mortar bed, and many are loose and missing. There is damage in the jambs from having removed the protection of the gates, and damage the likely result of handling the containers in and out of the enclosure. Repairs are recommended.
Concrete Paving	1,200	SF	\$18.00	\$21,600.00	Isolated trip hazards observed; grind offsets and prune tree root. Areas of settled or heaved pedestrian paving were observed. The paving appears to be heaved by invasive tree roots. Immediate costs are provided to grind any offsets to eliminate trip hazards. Replace any significantly damaged sections of walkway.
Trash Enclosure	1	EA	\$500	\$500	Provide compliant trash panel for accessible unit.
Parking	5	EA	\$3,000	\$3,000	Provide compliant parking stalls with compliant signage, width, and slope and curb cuts for walkway access. One (1) accessible stall should be provided for the leasing office.
Path of Travel	1,600	SF	\$18.00	\$27,000	Install marked path of travel from parking area to accessible entrance to community room. Install truncated domes at transitions from parking areas to walkways. Replace non conforming walkways as needed. Miscellaneous upgrades such as marking path of travel, concrete walkway replacements, and improved slope at ADA unit entries as may be needed.
Ramps/Handrails	200	LF	\$8	\$6,400	Install grooved warnings and truncated domes at all ramps. Replace ramps with non-compliant slopes. Install handrail extensions unless it impedes with the path of travel. In most cases, handrail extensions are necessary.
Signage	1	LS	\$2,000	\$2,000	Install directional signage and other accessibility signage as needed throughout the site.
Building Exterior Items					
Roof Drainage	1,500	LF	\$10.00	\$15,000	Replace galvanized downspouts with aluminum downspouts.
Flashing	12	Bldgs	\$500.00	\$6,000	Replace step flashings at roof eaves.
Exterior Siding/Trim	39	Units	\$1,000.00	\$39,000	Allowance to side bottom of buildings to match existing R & R remainder of siding, trim & fascia as needed.
Exterior Paint	39	Units	\$1,000	\$39,000	Paint siding, trim, doors, exterior walls at stair landings, fencing, etc.
Exterior Windows	39	Units	\$400	\$15,600	Refurbish windows, replace sealants, damaged glazing, hardware.
Sliding Glass Doors	39	Units	\$1,400	\$54,600	Replace original sliding glass doors at all units except accessible units.
Patio Access Doors	2	Units	\$2,400	\$4,800	For accessible units replace sliding door with single swing door and side light.
Exterior Stairs	4	EA	\$5,000	\$20,000	Install handrail extensions and infill blocks at open risers.
Exterior Doors	39	EA	\$450	\$17,550	Replace unit entry doors.
Insulation	39	Units	\$350	\$13,650	Provide improved insulation at all unit attic spaces. Additional blown in R30 or better rated insulation for thermal protection.
Common Area/Building Items					
Carpeting	400	SF	\$4.00	\$1,600	Replace in leasing office.
Laundry Room Flooring	500	SF	\$6.00	\$3,000	Replace laundry room flooring with natural linoleum.
Leasing Office	1	EA	\$500	\$500	Reconfigure office furniture to provide better accessibility for wheelchair access. No charge for this repair. Allow for various switch and hardware alteration for improved compliance.
Laundry Room	1	EA	\$1,500	\$1,500	Provide compliant front loading laundry equipment and replace water counters with new at compliant tables.
Mechanical/Electrical Items					
Wiring	37	EA	\$650	\$24,050	Install GFCI plugs in all kitchens and bathrooms. Install Arc-fault breakers on all bedroom plug circuits. Install new HACR breakers on all HVAC Circuits.
Seismic Restraints	40	EA	\$75.00	3,000	Install galvanized seismic restraints at water heaters.
Central Alarm	1	LS	\$20,000	\$20,000	System is non operational and is in need of replacement.

Proposed Rehabilitation Synopsi
 Almondwood Apartments
 7.26.10

Legend

Health/Safety/Welfare	
ADA/Sec 504	
Discretionary Rehab	



Item	Quantity	Unit	Unit Cost	Total Cost	Comments/Location
Smoke Detectors	39	Units	\$250	\$9,750	Installation of smoke detectors in the unit bedrooms is recommended.
Water Heaters	39	EA	\$500	\$19,500	Replace all unit and laundry room water heaters
Building Mounted Lights	76	EA	\$240	\$18,240	Replace exterior mounted light fixtures.
Interior Lighting	37	Units	\$475	\$17,575	Replace interior light fixtures with compact florescent fixtures in each unit.
HVAC	37	Units	\$4,500	\$166,500	Replace central heating and cooling system for units including duct testing.
Ventilation	37	Units	\$559	\$20,683	Install new ventilation fans in unit bathrooms to provide improved air quality. Original fans noted in several units.
Radon Remediation	1	CS	\$1,663	\$1,663	See Unit Remediation Plans for details. See also by the Gulf Association of W's.

Item	Quantity	Unit	Unit Cost	Total Cost	Comments/Location
Radon Gas Remediation	39	Units	\$500	\$19,500	Previous Phase I Environmental Assessment conducted by consultants identified radon gas elevations above EPA action limits. Remediation is needed. The provided cost is to complete a remediation plan through a qualified radon gas remediation firm. This further investigation should indicate the cost to remediate the radon gas issues.
Cabinetry	26	Units	\$3,500.00	\$91,000	Replace original cabinets in unit kitchens and bathrooms; partial replacement only as some units have newer cabinets.
Countertop	26	Units	\$850.00	\$22,100	Replace original counters in kitchens and bathrooms with solid surface counters.
Carpet	37	Units	\$1,400.00	\$51,800	Replace carpeting in all units
Vinyl Flooring	37	Units	\$500.00	\$18,500	Replace vinyl flooring in all units
Plumbing Fixtures	37	Units	\$2,100.00	\$77,700	Install new tub/surrounds, low flow faucets, sinks & dual flush toilets.
Bathroom Accessories	37	Units	\$150.00	\$5,550	Replace towel bars, mirrors, and other accessories in unit bathrooms
Interior Paint	37	Units	\$500.00	\$18,500	Prepare and paint all unit interiors
Closet Doors	37	Units	\$800.00	\$29,600	Survey and replace damaged closet doors.
Interior Doors	37	EA	\$600.00	\$22,200	Survey and replace damaged interior doors.
Refrigerators	37	Units	\$700.00	\$25,900	Replace refrigerators.
Ranges	37	Units	\$650.00	\$24,050	Replace ranges/ovens.
Small appliances	39	Units	\$375.00	\$14,625	Replace unit range hoods and disposals
Drywall	39	Units	\$275.00	\$10,725	Repair drywall, tape & texture around tubs and SGD's
Access-HC Unit Drywall	2	EA	\$500.00	\$1,000	Install compliant counter and cabinet heights, grab bars, plumbing fixtures, appliances, outlet and switch heights, and interior door widths. Adjust entry door thresholds and replace door hardware with compliant lever knobs.
Access-HC Unit Electrical	2	EA	\$650.00	\$1,300	Install GFCI plugs in all kitchens and bathrooms. Install Arc-fault breakers on all bedroom plug circuits. Install new HACR breakers on all HVAC circuits. Change switches, outlets and thermostat heights as needed.
Access-HC Unit HVAC	2	EA	\$4,500.00	\$9,000	Replace central heating and cooling system for units including duct testing
Access-HC Unit Cabinets/Countertops	2	EA	\$4,350.00	\$8,700	Install ADA Compliant Cabinets & Countertops.
Access-HC unit appliances	2	EA	\$1,725.00	\$3,450	Install ADA Compliant Appliances.
Access-HC Unit Plumbing	2	EA	\$2,100.00	\$4,200	Install ADA Compliant tub/surrounds and plumbing fixtures.
Access-HC Unit Door hardware	2	EA	\$600.00	\$1,200	Install ADA Compliant door hardware & interconnecting entry hardware
Access-HC Unit Bathroom Accessories	2	EA	\$150.00	\$300	Install ADA Compliant bathroom accessories.
Access-HC Unit Interior paint	2	EA	\$500.00	\$1,000	Paint Unit Interiors
Access-HC Unit Flooring	2	EA	\$1,900.00	\$3,800	Install ADA Compliant flooring

Some costs may be higher than those for same line item in CNA due to difference between discretionary budget and immediate needs.

Per Unit	\$29,835
TOTAL:	\$1,163,518

Concept costs estimated based on initial due diligence criteria and are therefore limited in accuracy. Developers contingency provided outside this analysis.

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Attachment No. 5

**AGREEMENT BETWEEN THE CITY OF WINTERS
AND WINTERS ALMONDWOOD, LP, FOR PAYMENT IN LIEU OF TAXES**

**AGREEMENT BETWEEN THE CITY OF WINTERS
AND WINTERS ALMONDWOOD, LP, FOR PAYMENT IN LIEU OF TAXES**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES ("Agreement") is entered into this _____ day of _____, 2010, by and between the CITY OF WINTERS, a municipal corporation organized and existing under the laws of the State of California ("City") and WINTERS ALMONDWOOD, LP, a California limited partnership ("Almondwood") who agree as follows:

Recitals

A. Almondwood is in the process of rehabilitating a rental complex located at 801 Dutton Street, Winters, California, 94694 ("**Property**"). Almondwood intends to substantially rehabilitate 12 buildings consisting of 39 for-rent, multi-family dwelling units for low income households ("**Project**") on the Property.

B. Almondwood is a duly organized limited partnership, consisting of the Central Valley Coalition for Affordable Housing, a duly organized and valid non-profit organization, pursuant to Internal Revenue Code Section 501(c)(3), as the managing general partner, and Winters Almondwood, LLC, as general partner.

C. Inclusion of a non-profit organization in the partnership may qualify the Project to receive the welfare exemption under section 214(g) of the California Revenue and Tax Code. Almondwood desires to ensure, to the extent legally permissible, that the City will not suffer any loss of its share of property tax revenues, and that the payments to be made under this Agreement are intended to reimburse the City for its delivery of services to the Project, including police protection, fire protection and general administrative costs.

Agreements

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties agree as follows:

Section 1. Parties

a. The City is a municipal corporation. The office of the City is located at 318 First Street, Winters, California, 95694.

b. Almondwood is a California limited partnership. Almondwood's offices are located at _____
Wherever the term "Almondwood" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

Section 2. Acquisition and Development of the Property

a. The Property is described in Exhibit A, attached hereto and incorporated herein by this reference.

b. Almondwood owns the Property and intends to develop the Project on the Property. Almondwood agrees that it will be responsible, at its sole cost and expense, for applying for and obtaining all necessary environmental and land use approvals and making any submissions required by the City for the development of the Project.

Section 3. Almondwood Annual Payments

a. In the event Almondwood applies for and receives a Welfare Exemption pursuant to Section 214(g) of the California Revenue and Taxation Code, Almondwood agrees that, so long as it elects to maintain such exemption, it will make payments to the City in an amount equal to what the City would otherwise have received as its share of ad valorem property taxes from the Property and the improvements thereon ("**Annual Payment**") as determined by the Yolo County Tax Collector, and as increased annually by the amount permitted under the provisions of Article XIII A, Section 2, of the California Constitution. Notwithstanding the foregoing, in the event that Almondwood provides evidence reasonably satisfactory to the City that the payments to be made by Almondwood under this Agreement would make Almondwood ineligible for such Welfare Exemption, Almondwood shall have no obligation to make such Annual Payments and this Agreement shall terminate.

b. The first Annual Payment shall be due on December 31 of the first year in which it qualifies for the Welfare Exemption, and shall be paid on each subsequent December 31 for as long as such Welfare Exemption is in effect. The amount of such obligation for the first year will be prorated based upon the number of months that the project is operating during the first year. The "Date of Operation" shall be simultaneous with the City's issuance of a Certificate of Occupancy for the entire project.

Section 4. Indemnification

Almondwood hereby indemnifies and holds the City harmless from all demands, claims, actions and damages to any person or property brought by a third party and arising out of the City's execution of this Agreement.

Section 5. Default

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and the other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement.

Section 6. Termination of this Agreement

This Agreement and the obligations of Almondwood and City hereunder shall terminate if Almondwood does not obtain a Welfare Exemption or determines it no longer will elect to receive such Welfare Exemption under Section 214(g) of the California Revenue and Tax Code. The Agreement may also terminate by the written approval of both the City and Almondwood.

Section 7. Miscellaneous Provisions

a. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

b. **Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

c. **Notices.** Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

To City: City of Winters
318 First Street
Winters, CA 95694
Attention: City Manager
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters
318 First Street
Winters, CA 95694
Attention: City Attorney
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

City of Winters Community Development Agency
318 First Street
Winters, CA 95694
Attention: Agency General Counsel
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To Almondwood: Winters Almondwood, LP
1370 Jensen Avenue, Suite B
Sanger, CA 93657
Telephone: (559) 875-3330
Facsimile: (559) 875-3365

With a copy to: Patrick R. Sabelhaus
Law Offices of Patrick R. Sabelhaus
1006 Fourth Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 444-0286 ext. 267
Facsimile: (916) 444-3408

d. **Headings.** The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. **Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

f. **Further Assurances.** The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

h. **Entire Agreement.** This Agreement and Exhibit A, which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

IN WITNESS WHEREOF, the City and Almondwood have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures. The effective date of this Agreement shall be the date it is signed by the City.

[Signatures follow on next two pages]

CITY OF WINTERS, a California municipal corporation

Dated: _____

By: _____

Name: _____

Its: City Manager

"CITY"

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WINTERS ALMONDWOOD, LP, a California
limited partnership

Winters Almondwood, LLC, a California limited
liability company, its Co-Managing General Partner

_____, its Sole Member

Dated: _____

By: _____

Name: _____

Its: _____

Central Valley Coalition for Affordable Housing, a
California 501(c)(3) nonprofit public benefit
corporation, its Co-Managing General Partner

Dated: _____

By: _____

Name: _____

Its: _____

"ALMONDWOOD"

Exhibit A

Property Description

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

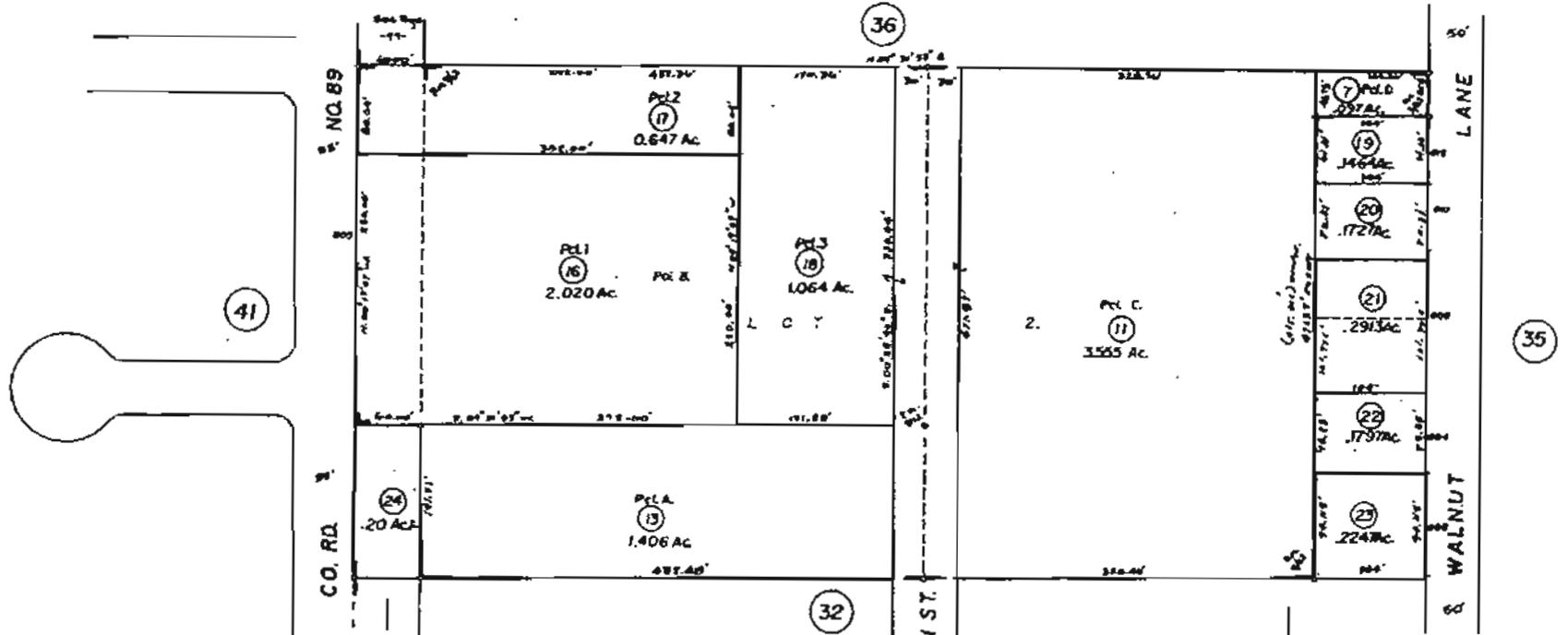
PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.



D.B. Bk.44, Pg.1- J.H. Hills Subd.
 P.M.Bk.5 Pg.63-Campos Property. * 3012
 P.M.Bk.9 Pg.52- John Simmons * 3725

NO. 1700/154	1/21/72
NO. 1700/155	2/7/71
NO. 1700/156	7/16/70
NO. 1700/157	10/20/68
NO. 1700/158	2/21/67
NO. 1700/159	2/28/65
NO. 1700/160	7/16/60
DDP 5048/1	2/16/78
DDP 1679	12/17/73
DDP 253 L	
SPLIT FROM 3-9-79 INTO 100 ACRES AS -	
D.D. PHAM & SONS	
REVISIONS	

(formerly por.3-09). Assessor's Map Bk.3 Pg.33
 County of Yolo, Calif.

NOTE Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

58/59

Map of the portion of Section 22, Township 8 North, Range 1 West, Meridian 8 West, showing the location of the parcels shown on this map. The parcels are shown in accordance with the Assessor's Map Bk. 3, Pg. 33, County of Yolo, California.

Attachment No. 6

CERTIFICATE OF COMPLETION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Winters Community
Development Agency
318 First Street
Winters, CA 95694
Attention: Executive Director

*This document is exempt from the payment of a
recording fee pursuant to Government Code § 27383.*

CERTIFICATE OF COMPLETION OF AGENCY WORK

THIS CERTIFICATE OF COMPLETION OF AGENCY WORK ("Certificate of Completion") is made by the CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body corporate and politic ("Agency"), in favor of WINTERS ALMONDWOOD, LP, a California limited partnership ("Developer"), as of the date set forth below.

RECITALS

A. Agency and Developer have entered into that certain Housing and Loan Agreement dated _____, 2010, including all Attachments thereto ("Agreement") concerning that certain real property and improvements thereon situated in the City of Winters, California, as more fully described in Exhibit "A" attached hereto and made a part hereof ("Site").

B. As referenced in Section 209 of the Agreement, Agency is required to furnish Developer or its successors with a Certificate of Completion upon completion of construction of the Agency Work, which Certificate of Completion is required to be in such form as to permit it to be recorded in the Recorder's Office of Yolo County. This Certificate of Completion is conclusive determination of satisfactory completion of the Agency Work as required by the Agreement.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Developer has fully and satisfactorily completed the Agency Work in conformance with the Agreement.
2. All use, maintenance, operation, nondiscrimination and other covenants contained in the Performance Documents shall remain in effect and enforceable according to their terms.
3. All financial obligations as set forth in the Loan Documents shall remain in effect and enforceable according to their terms.

4. This Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to Developer in connection with the Project or any portion thereof. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.

IN WITNESS WHEREOF, Agency has executed this Certificate of Completion this _____ day of _____, 200____.

CITY OF WINTERS COMMUNITY
DEVELOPMENT AGENCY, a public body
corporate and politic

By: _____

Name: _____

Its: Executive Director

[Signature must be notarized]

"AGENCY"

APPROVED AS TO FORM:

Agency General Counsel

Exhibit A

LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 7

ADDENDUM TO PERFORMANCE DEED OF TRUST

[Note: Standard Form Deed of Trust to be provided by Title Company]

ADDENDUM TO PERFORMANCE DEED OF TRUST

This Addendum to Performance Deed of Trust is part of the Deed of Trust dated _____, 2010 to which it is attached between WINTERS ALMONDWOOD, LP, a California limited partnership, as Trustor, and CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body, corporate and politic, as Beneficiary. Trustor is alternatively referred to as "Developer" and Beneficiary is alternatively referred to as "Agency" herein. The following provisions are made a part of the Performance Deed of Trust:

1. No Discrimination.

a. Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project, the property, the improvements thereon or any part thereof, nor shall the grantee or any person claiming under or through him, her or it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Project, the property, the improvements thereon or any part thereof.

b. All deeds, leases or contracts made relative to the Project, the property, the improvements thereon or any part thereof, shall contain or be subject to, the nondiscrimination clauses set forth in California Health and Safety Code section 33436.

2. Default; Beneficiary Right to Cure.

a. Default. Notwithstanding any other provisions in the Loan Documents or the Performance Documents (as those terms are defined below) to the contrary, the occurrence of any of the following shall constitute a "Default" under the Performance Deed of Trust, and a Default may be declared under the Performance Deed of Trust solely upon the occurrence of any of the following: (i) any default by Trustor under any of the Performance Documents (defined below), subject to any applicable notice requirements or cure periods provided therein; or (ii) if Trustor assigns or delegates any of Trustor's rights or obligations under the Performance Documents except as expressly permitted therein. Upon a Default hereunder, Beneficiary may, at its option, declare that all of Developer's obligations under the Performance Documents are to be immediately performed; Beneficiary may also elect to exercise any right or remedy which it has under any of the Performance Documents or which is otherwise available at law or in equity or by statute, and all of Beneficiary's rights and remedies shall be cumulative.

b. No Cross Default; Secured Documents. Notwithstanding anything in the Agreement, the Performance Documents, or the Loan Documents to the contrary, no Default or breach of Developer's obligations under (i) the Loan Documents shall be considered a Default under the Performance Documents and (ii) under the Performance Documents shall be considered a Default under the Loan Documents. A party claiming a Default under any of the Performance Documents shall give written notice to the other party identifying any of the

Default complained of, to the extent required therein. A party claiming a Default under any of the Loan Documents shall give written notice to the other party identifying the Default complained of, to the extent required therein. Trustor's obligations under the Performance Documents are separately secured by the Performance Deed of Trust, and are not secured by the City Deed of Trust. Trustor's payment and performance of its obligations under the Loan Documents are separately secured by the City Deed of Trust, and are not secured by the Performance Deed of Trust. "**Performance Documents**" means the Agreement (but expressly excluding Section 400 of the Agreement and any other Loan Documents), the Memorandum, the Covenant, the Performance Deed of Trust, and all other agreements contemplated therein or evidencing or securing the Affordability Restrictions. "**Loan Documents**" means Section 400 of the Agreement, the Promissory Note, and the City Deed of Trust only. "**Affordability Restrictions**" means those affordability restrictions as set forth in the Agreement and in the Covenant.

c. Right of Beneficiary to Cure Prior Deeds of Trust or Other Security Interest Default. In the event of a default or breach by Trustor of a mortgage, deed of trust or other security interest with respect to the Project, Beneficiary may cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement from the Trustor of all costs and expenses incurred by the Beneficiary in curing the default, which amounts shall be secured by this Performance Deed of Trust.

3. Subordination.

a. Conditions to Subordination.

(i) Agency shall consider subordination of, or to subordinate, the Performance Documents, if required by Approved Lenders extending Developer Financing or under an Extended Use Agreement, subject to requirements set forth herein and otherwise in the Performance Documents, upon written request by Developer, and upon terms and conditions reasonably approved by Agency. "**Extended Use Agreement**" means any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) recorded against the Project.

(ii) Any subordination of the Affordability Restrictions shall be in accordance with the Community Redevelopment Law including the requirements of California Health and Safety Code section 33334.14. In addition, as a precondition to any subordination of any or all of the Performance Documents, each senior lender shall include in its subordination agreement and deed of trust conditions substantially similar to the following conditions:

(a) Any senior lender, concurrent with its issuance of any notice of default to Trustor, shall issue to Beneficiary copies of such notice(s) of default;

(b) Beneficiary shall have the right (but not the obligation) to cure any default by Trustor within forty-five (45) days after a notice of default and the senior lender shall accept cure of said default as though such cure had been tendered by Trustor;

(c) if Beneficiary takes title to the Project and offers to assume the obligations of Trustor under the senior loan documents, the senior lender shall apply its normal

underwriting process to evaluation of the proposed assumption and if, following the conclusion such underwriting process, such senior lender accepts Beneficiary as a successor to Trustor as obligor under the senior loan documents, then such senior lender shall not exercise its rights to accelerate its loan by reason of transfer to Beneficiary of title to the Project, or any portion thereof; and

(d) if, pursuant to Beneficiary's exercise of its rights under the foregoing item (c), Beneficiary takes title to the Project and assume the obligations of Trustor under the senior loan documents, Beneficiary shall have the right, subject to the consent of the senior lender, to transfer the Project to a nonprofit corporation that is in good standing under the laws of the State of California and acceptable to such senior lender after application of such senior lender's normal underwriting process. The consent of the senior lender shall not be withheld unreasonably. If a senior lender consents to transfer of the Development to a nonprofit corporation, then the senior lender shall not exercise any rights it may have to acceleration of its loan by reason of transfer to such nonprofit corporation, of title to the Project, or any portion thereof.

(iii) Agency shall have the right to review and approve the terms and conditions of any senior financing and subordination agreements, which approval shall not be unreasonably withheld. Agency shall have the right to record a request that Agency receive notice of any default by Developer under Developer under any liens or agreements superior to any of the Performance Documents or Loan Documents. In no event shall Agency have any obligation to subordinate any of the Performance Documents to anyone other than an Approved Lender. An "**Approved Lender**" is a reputable financial institution or similar lender extending Developer Financing and approved by Agency in its reasonable discretion.

(iv) To implement any such subordination, Agency agrees to cooperate with Developer and execute such subordination agreements and/or intercreditor agreements that may be reasonably required, in form and content approved by Agency counsel. Notwithstanding anything to the contrary in any of this Agreement, or in any subordination or intercreditor agreement, the terms and conditions of the Performance Documents shall remain in a lien position acceptable to Agency, and only the modifications thereof agreed to by Agency in writing can be (but are not intended to be) construed to be more junior obligations, liens or encumbrances.

b. Subordination of Performance Documents and Performance Deed of Trust.

(v) To Extended Use Agreements. Subject to the provisions set forth in Agreement Section 501, Agency shall consider subordinating the Performance Documents and all other agreements contemplated therein or evidencing or securing Developer's obligations under the Performance Documents to those Extended Use Agreements recorded against the Project; provided, however, that any such Extended Use Agreement, by its terms, must terminate upon foreclosure under the Performance Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in Section 42(h)(6)(E) of the Internal Revenue

Code. Agency hereby agrees to subordinate the Performance Documents as expressly provided in the Subordination Agreement – TCAC.

(vi) To Developer Financing. Subject to the provisions set forth in Agreement Section 501, Agency shall consider subordinating the Performance Documents to the Developer Financing in accordance with Community Redevelopment Law. Agency hereby agrees to subordinate the Performance Documents as expressly provided in the Subordination Agreement – Bank.

4. Nonrecourse. The obligations of the Trustor hereunder shall be without recourse to any partner, member, officer, employee, agent or manager of the Trustor, and no partner, member, officer, employee, agent or manager of the Trustor shall be personally liable for the payment of any obligation of the Trustor hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Trustor shall be enforced only against the assets of the Trustor and not against any property of any partner, member, officer, employee, agent or manager of the Trustor.

5. Distribution of Foreclosure Proceeds. The proceeds generated by any Foreclosure (defined below) of the Project or any portion thereof ("**Proceeds**") shall be distributed as follows: (a) first, all senior liens and encumbrances on the Project shall be fully paid from the Proceeds; (b) second, Agency shall be paid the difference between the appraised value of the completed Project (or applicable portion thereof) as restricted by the Affordability Restrictions ("**Restricted Value**") and the Proceeds ("**Differential**"); (c) third, any remaining Proceeds shall be distributed in accordance with California Civil Code section 2924k(3). Developer expressly acknowledges and agrees that each of the Agreement and this Performance Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code section 2872 and 2924 to 2924h, inclusive ("**Differential Lien**"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(3). Developer hereby irrevocably instructs any holder of the Differential or similar proceeds generated by a Foreclosure to immediately disburse the Differential to Agency, and agrees to defend, indemnify and hold Agency and such holder harmless from any and all claims related to such distribution. As used herein, "**Foreclosure**" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

6. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Housing and Loan Agreement by and among the Developer, Agency, and City dated _____, 2010 including all Attachments thereto (collectively, "**Agreement**"). The word "**including**" shall be construed as if followed by the words "**without limitation.**"

[Signatures follow on next page]

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: _____
Michael L. Condry, its Sole Member

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

By: _____

Name: _____

Its: _____

"TRUSTOR"

Dated: _____

{Signatures must be notarized}

Attachment No. 8

CITY PROMISSORY NOTE
(Financial Assistance)

CITY PROMISSORY NOTE
(Financial Assistance)

Not to Exceed
\$300,000

_____, 2010
Winters, California

FOR VALUE RECEIVED, WINTERS ALMONDWOOD, LP, a California limited partnership ("**Borrower**"), having an address of 1370 Jensen Avenue, Suite B, Sanger, California 93657, hereby promises to pay the CITY OF WINTERS, a California municipal corporation ("**Lender**"), the principal sum not to exceed Three Hundred Thousand Dollars and 00/100 cents (\$300,000.00), pursuant to the terms and conditions set forth below. All capitalized terms not defined herein shall have the meaning as defined in the Agreement.

1. **Promise to Pay.** This promissory note ("**Promissory Note**") is made pursuant to that certain Housing and Loan Agreement dated _____, 2010, among Developer (Borrower), City (Lender) and Agency, including all Attachments thereto ("**Agreement**"). This is a promissory note for the repayment to Lender of a certain portion of Financial Assistance provided to Borrower in order to enable Developer to perform certain work on that certain real property as described in the Agreement ("**Site**").

2. **Secured by Deed of Trust.** Payment of this Promissory Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing and addendum thereto (collectively "**City Deed of Trust**") from Borrower to Lender and recorded against the Site. This note is non-recourse except as to the Reimbursement of Surplus Funds pursuant to Agreement section 402.4.

3. **Purpose.** Pursuant to the Agreement, Developer will perform certain work and maintain a 39-unit permanent affordable rental housing complex. The Financial Assistance shall be used only for those purposes and subject to the terms and conditions set forth in the Agreement.

4. **Conditions.** Subject to the Conditions Precedent set forth in the Agreement, Agency agrees to loan to Developer a maximum amount of \$300,000 ("**Loan**"). No portion of the Loan shall be utilized for ineligible costs as set forth in California Health & Safety Code section 33334.2(e). All disbursements shall be held by Developer in trust and applied solely for the purposes for which the funds have been disbursed as set forth in the Agreement. Lender is not obligated to monitor or determine Developer's use or application of the disbursements.

5. **Interest.** Simple interest on the unpaid principal balance will accrue at an annual rate equal to three percent (3%). Conditions Precedent to Loan are as set forth in the Agreement. In no event or contingency, whether because of the advancement of the proceeds of this Promissory Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Promissory Note exceed the highest lawful rate permissible under applicable usury laws.

6. **Method of Calculating Interest.** Interest shall be computed based on a 360-day year and the actual number of days elapsed. Interest computed based on a 360-day year is greater than interest computed based on a 365-day year.

7. **Payment of Principal and Interest; Maturity Date.** Simple interest will accrue at the rate of 3% per annum from the date of disbursement, with principal and interest payable in consecutive annual installments due each year beginning on the date which is the fifth anniversary of the initial disbursement of the loan. Such payments shall continue until the entire indebtedness and all accrued and unpaid interest is fully paid, with any unpaid principal and interest due and payable on that date which is thirty (30) years after the date of the initial loan disbursement ("**Maturity Date**"). The parties shall mutually acknowledge the Maturity Date in writing. If Borrower is not in Default under the Loan Documents as of the Maturity Date, then the principal and interest due under the Promissory Note shall be forgiven. Notwithstanding the foregoing, if Borrower is in Default under any of the Loan Documents, Lender may elect to declare the entire indebtedness evidenced by this Promissory Note, including, but not limited to, all accrued but unpaid interest hereunder, be due and payable in full on the Maturity Date. Borrower may prepay this Note at any time without prepayment penalty or premium.

8. **Payment Method and Application.** Payment shall be made in lawful money of the United States to Lender at City of Winters, 318 First Street, Winters, CA 95694, Attention: Director of Financial Management. The place of payment may be changed from time to time as the Lender may from time to time designate in writing. Checks constitute payment only when collected. Each payment under this Promissory Note shall be credited in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of this Promissory Note or the City Deed of Trust, in such order as Lender, in its sole and absolute discretion, elects; (b) interest payable under the Promissory Note; and (c) principal under the Promissory Note. All prepayments of principal under this Promissory Note shall be applied to the most remote principal installment then unpaid.

9. **Default.** The occurrence of any of the following shall at Lender's option constitute a "**Default**" under this Promissory Note: (i) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) any default by Borrower under the Agency Documents, subject to any applicable cure periods provided therein; (iii) any default by Borrower as to any other loan or loans by Lender to Borrower, or (iv) if Borrower assigns this Promissory Note or any proceeds of it, or assigns or delegates any of Borrower's rights or obligations under this Promissory Note, except as provided in the Agreement. If a Default occurs, Lender may exercise any right or remedy which it has under any of the Agency Documents, or which is otherwise available at law or in equity or by statute, and all of Lender's rights and remedies shall be cumulative.

10. **Acceleration.** At the option of Lender and without notice, the entire unpaid principal and interest owing on this Promissory Note shall become immediately due and payable at any time after the following events: (i) if all or any part of the Project, or any interest therein, or any beneficial interest in Borrower is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily or by operational law (collectively, "**Transfer**") to the extent permitted under the terms of the bond issuance from which the Loan was derived; or (ii) if a Default occurs. The acceptance of one or

more installments after any such event shall not constitute a waiver of Lender's option. Lender's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Lender's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof. If any payment for or proceeds of the Transfer are paid to or held by a title company or other third party, Borrower shall instruct such title company or third party to pay Lender directly. Notwithstanding the foregoing, at any particular time the Project may be encumbered by: (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; and (b) liens in favor of or consented to in writing by Lender.

11. **Default Interest.** From and after the Maturity Date (either according to the terms of this Promissory Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Promissory Note), the entire unpaid principal balance shall automatically bear an annual interest rate (instead of the rate specified in Section 5 equal to the lesser of: (a) five percent over the prime interest rate announced by Wells Fargo Bank, NA, or (b) the maximum interest rate allowed by law ("**Default Rate**"). If any interest payment under this Promissory Note is not paid when due, the unpaid interest shall be added to the principal of this Promissory Note, shall become and be treated as principal, and shall thereafter bear like interest.

12. **Attorneys' Fees.** Borrower agrees to pay immediately upon demand all costs and expenses of Lender including reasonable attorneys' fees, (i) if after default this Promissory Note be placed in the hands of an attorney or attorneys for collection; (ii) if after a Default under any of the Loan Documents, Lender finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Promissory Note against Borrower, any guarantor or any other party liable therefor or to the protection of its rights under the Loan Documents; or (iii) if Lender seeks to have the Project, or any portion thereof, abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Promissory Note or prohibiting the enforcement of the City Deed of Trust or any other agreement evidencing or securing this Promissory Note lifted by any bankruptcy or other court.

13. **Defense of Title.** If Lender shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Lender under the City Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Lender shall be reimbursed by Borrower immediately upon demand for all costs, charges and attorneys' fees incurred by Lender in any such case, and the same shall be secured by the City Deed of Trust as a further charge and lien upon the Project.

14. **Waivers; Forbearance.** Borrower and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Promissory Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability. Borrower, endorsers, and all other persons liable or to become liable

on this Promissory Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and all other notices or matters of a like nature. The pleading of any statute of limitations as a defense to the obligations evidenced by this Promissory Note is waived to the fullest extent permissible by law. If Lender delays in exercising or fails to exercise any of its rights under this Promissory Note, that delay or failure shall not constitute a waiver of any Lender rights or of any breach, default, or failure of condition under this Promissory Note. No waiver by Lender of any of its rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in writing signed by Lender.

15. **Notices, Demand, and Communication between the Parties.** Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; (c) by a nationally recognized overnight courier service, marked for next day business delivery; or (d) sent by facsimile (immediately followed by one of the preceding methods). All notices shall be addressed to the party to whom such notice is to be given at the property address stated in this Section or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received (a) immediately if delivered by personal deliver as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; (c) upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day as provided hereinabove, and (d) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To Agency: City of Winters Community Development Agency
318 First Street
Winters, CA 95694
Attention: Executive Director
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters Community Development Agency
318 First Street
Winters, CA 95694
Attention: Agency General Counsel
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To City: City of Winters
318 First Street
Winters, CA 95694
Attention: City Manager
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

With a copy to: City of Winters
318 First Street
Winters, CA 95694
Attention: City Attorney
Telephone: (530) 795-4910
Facsimile: (530) 795-4935

To Developer Winters Almondwood, LP
1370 Jensen Avenue, Suite B
Sanger, CA 93657
Telephone: (559) 875-3330
Facsimile: (559) 875-3365

With a copy to: Patrick R. Sabelhaus
Law Offices of Patrick R. Sabelhaus
1006 Fourth Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 444-0286 ext. 267
Facsimile: (916) 444-3408

16. **Assignment.** This Promissory Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that THIS PROMISSORY NOTE IS PERSONAL TO BORROWER AND IS NOT ASSUMABLE OR ASSIGNABLE, and Borrower may not assign this Promissory Note or any proceeds of it, or assign or delegate any of its rights or obligations except as provided in the Agreement. Any such action on Borrower's part shall constitute a Default under this Promissory Note and the City Deed of Trust. Lender in its sole discretion may transfer this Promissory Note, and may sell or assign participations or other interests in all or any part of this Promissory Note, all without the consent of Borrower but with notice to Borrower.

17. **Miscellaneous.** This Promissory Note shall be binding upon Borrower, its successors and assigns. This Promissory Note shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Promissory Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. Time is of the essence in this Promissory Note. In the event of any conflict between this Promissory Note and the balance of the Agency Documents, the provisions of this Promissory Note shall control. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement. The word "**including**" shall be construed as if followed by the words "**without limitation.**"

18. **Borrower Liability.** The obligations of the Borrower hereunder shall be without recourse to any member, officer, employee, agent or manager of Borrower and no member, officer, employee, agent or manager of the Borrower shall be personally liable for the payment of any obligation of the Borrower hereunder. In the event any legal actions or proceedings are

brought in respect of such obligations, any judgment against the Borrower shall be enforced only against the assets of the Borrower and not against any property of any partner, member, officer, employee, agent or manager of the Borrower.

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: _____
Michael L. Condry, its Sole Member

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

By: _____
Name: _____
Its: _____

Dated: _____

"BORROWER"

Attachment No. 9

ADDENDUM TO CITY DEED OF TRUST

[Note: Standard Form Deed of Trust to be provided by Title Company]

ADDENDUM TO CITY DEED OF TRUST

This Addendum to City Deed of Trust is part of the Deed of Trust dated _____, 2010 to which it is attached between WINTERS ALMONDWOOD, LP, a California limited partnership, as Trustor, and THE CITY OF WINTERS, a California municipal corporation, as Beneficiary. The following provisions are made a part of the City Deed of Trust:

1. No Discrimination.

a. Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project, the property, the improvements thereon or any part thereof, nor shall the grantee or any person claiming under or through him, her or it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Project, the property, the improvements thereon or any part thereof.

b. All deeds, leases or contracts made relative to the Project, the property, the improvements thereon or any part thereof, shall contain or be subject to, the nondiscrimination clauses set forth in California Health and Safety Code section 33436.

2. Default; Beneficiary Right to Cure.

a. Default. Notwithstanding any other provisions in Loan Documents or the Performance Documents (as those terms are defined below) to the contrary, the occurrence of any of the following shall constitute a "Default" under the Promissory Note and the City Deed of Trust, and a Default may be declared under the City Deed of Trust solely upon the occurrence of any of the following: (i) any failure by Trustor to pay any amount due under the Promissory Note within fifteen (15) days of its due date; (ii) any default by Trustor under any of the Loan Documents, subject to any applicable notice requirements or cure periods provided therein; (iii) any default by Trustor as to any other loan or loans by Lender to Trustor, or (iv) if Trustor assigns the Promissory Note or any proceeds of it, or assigns or delegates any of Trustor's rights or obligations under the Promissory Note. Upon a Default hereunder, Beneficiary may, at its option, declare that all of Developer's obligations under the Loan Documents are to be immediately performed; Beneficiary may also elect to may exercise any right or remedy which it has under any of the Loan Documents or which is otherwise available at law or in equity or by statute, and all of Beneficiary's rights and remedies shall be cumulative.

b. No Cross Default; Secured Documents. Notwithstanding anything in the Agreement, the Performance Documents, or the Loan Documents to the contrary, no Default or breach of Developer's obligations under (i) the Loan Documents shall be considered a Default under the Performance Documents and (ii) under the Performance Documents shall be considered a Default under the Loan Documents. A party claiming a Default under any of the Performance Documents shall give written notice to the other party identifying any of the

Default complained of, to the extent required therein. A party claiming a Default under any of the Loan Documents shall give written notice to the other party identifying the Default complained of, to the extent required therein. Trustor's obligations under the Performance Documents are separately secured by the Performance Deed of Trust, and are not secured by the City Deed of Trust. Trustor's payment and performance of its obligations under the Loan Documents are separately secured by the City Deed of Trust, and are not secured by the Performance Deed of Trust. "**Performance Documents**" means the Agreement (but expressly excluding Section 400 of the Agreement and any other Loan Documents), the Memorandum, the Covenant, the Performance Deed of Trust, and all other agreements contemplated therein or evidencing or securing the Affordability Restrictions. "**Loan Documents**" means Section 400 of the Agreement, the Promissory Note, and the City Deed of Trust only. "**Affordability Restrictions**" means those affordability restrictions as set forth in the Agreement and in the Covenant.

c. Right of Beneficiary to Cure Prior Deeds of Trust or Other Security Interest Default. In the event of a default or breach by Trustor of a mortgage, deed of trust or other security interest with respect to the Project, Beneficiary may cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement from the Trustor of all costs and expenses incurred by the Beneficiary in curing the default, which amounts shall be secured by this City Deed of Trust.

3. Subordination.

a. Conditions to Subordination.

(i) City shall consider subordination of, or subordinate, the Loan Documents, if required by Approved Lenders extending Developer Financing or under an Extended Use Agreement, subject to requirements set forth herein and otherwise in the Loan Documents, upon written request by Developer, and upon terms and conditions reasonably approved by City. "**Extended Use Agreement**" means any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) recorded against the Project.

(ii) As a precondition to any subordination of the Loan Documents, or the City Deed of Trust, the senior lender shall include in its subordination agreement and deed of trust conditions substantially similar to the following conditions:

(a) Any senior lender, concurrent with its issuance of any notice of default to Trustor, shall issue to Beneficiary copies of such notice(s) of default;

(b) Beneficiary shall have the right (but not the obligation) to cure any default by Trustor within forty-five (45) days after a notice of default and the senior lender shall accept cure of said default as though such cure had been tendered by Trustor;

(c) if Beneficiary takes title to the Project and offers to assume the obligations of Trustor under the senior loan documents, the senior lender shall apply its normal underwriting process to evaluation of the proposed assumption and if, following the conclusion of such underwriting process, such senior lender accepts Beneficiary as a successor to Trustor as

obligor under the senior loan documents, then such senior lender shall not exercise its rights to accelerate its loan by reason of transfer to Beneficiary of title to the Project, or any portion thereof; and

(d) if, pursuant to Beneficiary's exercise of its rights under the foregoing item (c), Beneficiary takes title to the Project and assume the obligations of Trustor under the senior loan documents, Beneficiary shall have the right, subject to the consent of the senior lender, to transfer the Project to a nonprofit corporation that is in good standing under the laws of the State of California and acceptable to such senior lender after application of such senior lender's normal underwriting process. The consent of the senior lender shall not be withheld unreasonably. If a senior lender consents to transfer of the Development to a nonprofit corporation, then the senior lender shall not exercise any rights it may have to acceleration of its loan by reason of transfer to such nonprofit corporation, of title to the Project, or any portion thereof.

(iii) City shall have the right to review and approve the terms and conditions of any senior financing and subordination agreements, which approval shall not be unreasonably withheld. City shall have the right to record a request that City receive notice of any default by Developer under Developer under any liens or agreements superior to any of the Loan Documents. In no event shall City have any obligation to subordinate any of the Performance Documents or Loan Documents to anyone other than an Approved Lender. An "Approved Lender" is a reputable financial institution or similar lender extending Developer Financing and approved by City in its reasonable discretion.

(iv) To implement any such subordination, City agrees to cooperate with Developer and execute such subordination agreements and/or intercreditor agreements that may be reasonably required, in form and content approved by City counsel. Notwithstanding anything to the contrary in any this Agreement, or in any subordination or intercreditor agreement, the terms and conditions of the Loan Documents shall remain in a lien position acceptable to City, and only the modifications thereof agreed to by City in writing can be (but are not intended to be) construed to be more junior obligations, liens or encumbrances.

b. Subordination of Loan Documents and City Deed of Trust.

(i) To Extended Use Agreements. Subject to the provisions set forth in Agreement Section 501, City shall consider subordinating the Loan Documents and all other agreements contemplated therein or evidencing or securing Developer's financial obligations under the Loan Documents to those Extended Use Agreements recorded against the Project; provided, however, that any such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in Section 42(h)(6)(E) of the Internal Revenue Code. City hereby agrees to subordinate Loan Documents as expressly provided in the Subordination Agreement – TCAC.

(ii) To Developer Financing. Subject to the provisions set forth in Agreement Section 501, City shall consider subordinating the Loan Documents to the Developer Financing, provided the total aggregate amount of the Developer Financing which is secured by the Project or is recourse together with Agency Loan is in an amount acceptable to City in its discretion and otherwise in accordance with the Community Redevelopment Law. City hereby agrees to subordinate Loan Documents as expressly provided in the Subordination Agreement – Bank.

4. Nonrecourse. The obligations of the Trustor hereunder shall be without recourse to any partner, member, officer, employee, agent or manager of the Trustor, and no partner, member, officer, employee, agent or manager of the Trustor shall be personally liable for the payment of any obligation of the Trustor hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Trustor shall be enforced only against the assets of the Trustor and not against any property of any partner, member, officer, employee, agent or manager of the Trustor.

5. Distribution of Foreclosure Proceeds. The proceeds generated by any Foreclosure (defined below) of the Project or any portion thereof ("**Proceeds**") shall be distributed as follows: (a) first, all senior liens and encumbrances on the Project shall be fully paid from the Proceeds; (b) second, City shall be paid the difference between the appraised value of the completed Project (or applicable portion thereof) as restricted by the Affordability Restrictions ("**Restricted Value**") and the Proceeds ("**Differential**"); (c) third, any remaining Proceeds shall be distributed in accordance with California Civil Code section 2924k(3). Developer expressly acknowledges and agrees that each of the Agreement and this City Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code section 2872 and 2924 to 2924h, inclusive ("**Differential Lien**"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(3). Developer hereby irrevocably instructs any holder of the Differential or similar proceeds generated by a Foreclosure to immediately disburse the Differential to City, and agrees to defend, indemnify and hold City and such holder harmless from any and all claims related to such distribution. As used herein, "**Foreclosure**" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

6. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Housing and Loan Agreement by and among the Developer, Agency, and City dated _____, 2010 including all Attachments thereto (collectively, "**Agreement**"). The word "**including**" shall be construed as if followed by the words "**without limitation.**"

{Signatures follow on next page}

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: _____, its Sole Member

By: _____

Name: _____

Its: _____

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

Dated: _____

By: _____

Name: _____

Its: _____

"TRUSTOR"

[Signatures must be notarized]

Attachment No. 10

JOINT ESCROW INSTRUCTIONS

JOINT ESCROW INSTRUCTIONS

These escrow instructions issued by the CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), the CITY OF WINTERS, a municipal corporation ("City"), and Winters Almondwood, LP, a California limited partnership ("Developer"), shall constitute joint escrow instructions ("Instructions") of Developer, the City, and Agency (each a "Party," collectively the "Parties") for the transaction contemplated under that certain Housing and Loan Agreement dated _____, 2010, among the Agency, City, and Developer including all Attachments thereto ("Agreement"). Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

1. **Escrow Instructions.** The parties have opened escrow no. 404-7491 ("Escrow") with Placer Title Company ("Escrow Agent").

a. These Instructions and the Agreement constitute joint escrow instructions of the parties. Escrow Agent, to whom these Instructions are delivered, is hereby empowered to act thereunder. The parties hereto agree to do all acts reasonably necessary to close Escrow in the shortest possible time. All funds received in Escrow shall be deposited with other escrow funds in an interest-bearing account with a state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account. All interest on the escrow funds shall belong, and be disbursed to, Agency.

b. If, in the opinion of either Party, it is necessary or convenient in order to accomplish the Closing of the transaction, such Party may execute supplemental escrow instructions and/or require that the parties sign supplemental joint escrow instructions; provided that if there is any inconsistency between the document, the Agreement, and the supplemental escrow instructions, then the provisions of the Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of the Agreement. Escrow Agent is instructed to release each Party escrow closing statements to the respective parties.

2. **Authority of Escrow Agent.** Escrow Agent is authorized to, and shall:

a. Promptly execute the acknowledgment and receipt of Instructions and return the Receipt to the undersigned by email or facsimile and regular mail.

b. Pay and charge Developer for the premium of each Title Policy as set forth in the Agreement.

c. Pay and charge Developer for all escrow fees, charges, and costs payable.

d. Record the Memorandum of Housing and Loan Agreement ("Memorandum") against the Site.

e. Record the Affordable Housing and Maintenance Covenant ("Covenant") against the Site.

- f. Record the City Deed of Trust (including the Addendum thereto) against the Site.
- g. Record the Performance Deed of Trust (including the Addendum thereto) against the Site.
- h. Record the AB 987 Notice against the Site.
- i. Subject to satisfaction of the Conditions Precedent to Financial Assistance, disburse the Financial Assistance as set forth in the Agreement.
- j. Issue a Title Policy in favor of each City and Agency, subject only to the permitted Exceptions.
- k. Do such other actions as necessary to fulfill Escrow Agent's obligations under the Agreement.
- l. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.
- m. Verify that all documents were properly dated and executed personally, not under power of attorney, by the Party named as the signator as set forth therein, initialed, and where applicable, witnessed and acknowledged, and that all exhibits (including correct property descriptions) were appended.

3. **Closing.** Except as otherwise agreed by the parties in writing, the Closing shall take place after the parties' satisfaction of all of the Conditions Precedent as set forth in the Agreement, but in no event later than the Outside Date of June 1, 2012. The "Closing" shall mean the time and day the Covenant, the City Deed of Trust, the Performance Deed of Trust, and the AB 987 Notice are recorded with the Yolo County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

4. **Closing Procedure.** Escrow Agent shall close Escrow as follows and in the following order:

- a. Record the Memorandum of Agreement with instructions for the Recorder of Yolo County, California to deliver the recorded Memorandum of Agreement to Agency;
- b. Record the Covenant with instructions for the Recorder of Yolo County, California, to deliver the recorded Covenant to Agency;
- c. Record the AB 987 Notice with instructions for the Recorder of Yolo County, California, to deliver a copy of the recorded AB 987 Notice to Agency;
- d. Record the Performance Deed of Trust with instructions for the Recorder of Yolo County, California, to deliver the recorded Performance Deed of Trust to Agency;

- e. Record the City Deed of Trust with instructions for the Recorder of Yolo County, California, to deliver the recorded City Deed of Trust to City;
- f. Deliver the fully executed Promissory Note to City;
- g. Instruct the Title Company to deliver to each Agency and City the Title Policy;
- h. File any informational reports required by Internal Revenue Code section 6045(e), as amended, and any other applicable requirements;
- i. Forward to each Party a separate accounting of all funds received from and disbursed to such Party and conformed copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

5. **Miscellaneous.** These Instructions shall be construed in accordance with and be governed by the laws of the State of California. If any provision of these Instructions shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

6. **Compliance.** If Escrow Officer cannot comply with all of the foregoing terms and conditions or if Escrow Officer received any inconsistent escrow instruction from Agency, City or Developer, Escrow Officer is not authorized to close escrow and in such event should contact the undersigned without delay for further instruction. City and Agency reserve the right to withdraw any and all documents submitted herewith or under separate cover at any time prior to the close of escrow. The delivery of documents into escrow in no way binds City or Agency.

[Signatures follow on next two pages]

IN WITNESS WHEREOF, the parties have executed these Instructions on the respective dates set forth below.

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: _____
Michael L. Condry, its Sole Member

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

By: _____
Name: _____
Its: _____

Dated: _____

"DEVELOPER"

[Signatures must be notarized]

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF WINTERS, a public body corporate
and politic

Dated: _____
"Date of Instructions"

By: _____
Name: _____
Its: Executive Director

[Signature must be notarized]

"AGENCY"

APPROVED AS TO FORM:

Agency General Counsel

CITY OF WINTERS, a California municipal
corporation

Dated: _____

By: _____
Name: _____
Its: City Manager

[Signature must be notarized]

"CITY"

APPROVED AS TO FORM:

City Attorney

Escrow Officer Acknowledgement

I acknowledge receipt of these Instructions and agree to act as escrow agent in this transaction strictly in accordance with the foregoing Instructions.

PLACER TITLE COMPANY

By: _____

Name: _____

Title: _____

Dated: _____, 2010

Attachment No. 11

MEMORANDUM OF
HOUSING AND LOAN AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Winters Community
Development Agency
318 First Street
Winters CA 95694
Attention: Executive Director

*This document is exempt from the payment of a
recording fee pursuant to Government Code § 27383.*

MEMORANDUM OF HOUSING AND LOAN AGREEMENT

THIS MEMORANDUM OF HOUSING AND LOAN AGREEMENT ("Memorandum"), dated for identification purposes as of _____, is entered into by and among the City of Winters Community Development Agency, a public body, corporate and politic ("Agency"), the City of Winters, a municipal corporation ("City"), and Winters Almondwood, LP, a California limited partnership ("Developer").

1. **Housing and Loan Agreement.** Agency, the City and Developer have executed that certain Housing and Loan Agreement dated _____, 2010, including all Attachments thereto ("Agreement") which provides, among other things, for (i) Agency's loan of certain Financial Assistance to Developer under the circumstances and for purposes stated in the Agreement, (ii) Developer to maintain and operate on the Site a 39-unit permanent affordable housing rental complex affordable to households with incomes up to 80% of median area income; (iii) Developer to use, operate and maintain the Project, including the Affordable Units, in accordance with the terms of the Agreement and the Affordable Housing and Maintenance Covenant dated for identification purposes as of _____, 2010 ("Covenant") recorded against the Site which provides, among other things, for affordable housing and maintenance requirements and transfer restrictions. The Agreement is available for public inspection and copying at the office of the City Clerk, City of Winters, 318 First Street, Winters, CA 95694. All of the terms, conditions, provisions and covenants of the Agreement are incorporated in this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Purpose of Memorandum.** This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants of the Agreement. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum and the Agreement, the Agreement shall control.

The parties have executed this Memorandum on the dates specified immediately adjacent to their respective signatures.

[Signatures follow on next two pages]

WINTERS ALMONDWOOD, LP, a California limited partnership

By: Winters Almondwood, LLC, a California limited liability company, its Co-Managing General Partner

Dated: _____

By: Michael L. Condry, its Sole Member

By: Central Valley Coalition for Affordable Housing, a California 501(c)(3) nonprofit public benefit corporation, its Co-Managing General Partner

By: _____

Name: _____

Its: _____

Dated: _____

"DEVELOPER"

[Signatures must be notarized]

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF WINTERS, a public body corporate
and politic

Dated: _____
"Date of Agreement"

By: _____
Name: _____
Its: Executive Director

{Signature must be notarized}

"AGENCY"

APPROVED AS TO FORM:

Agency General Counsel

CITY OF WINTERS, a California municipal
corporation

Dated: _____

By: _____
Name: _____
Its: City Manager

{Signature must be notarized}

"CITY"

APPROVED AS TO FORM:

City Attorney

Exhibit A

LEGAL DESCRIPTION OF SITE

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 12

FORM AB 987 NOTICE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Winters Community
Development Agency
318 First Street
Winters, CA 95694
Attention: Executive Director

*This document is exempt from the payment of a
recording fee pursuant to Government Code § 27383.*

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice of Affordability Restrictions on Transfer of Property ("Notice"): Restrictions have been recorded with respect to the property described below ("**Property**") which restrict the price and terms at which the Property may be sold or rented. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions also limit the income of persons and households who are permitted to purchase and rent the Property.

Title of Document Containing Affordable Housing Restrictions: Affordable Housing and Maintenance Covenant (referred to in this Notice as the "**Affordable Housing Restrictions**").

Parties to Affordable Housing Restrictions: Winters Almondwood, LP ("**Developer**") and City of Winters Community Development Agency ("**Agency**"), and the City of Winters ("**City**").

The Affordable Housing Restrictions are recorded (*check one*)

as Document No. _____, official records of _____ County, on _____; or

concurrently with this Notice, official records of Yolo County.

Legal Description of Property: See Exhibit A, attached hereto and incorporated by reference.

Street Address of Property: 801 Dutton Street, Winters, California, 94694

Assessor's Parcel Number of Property: _____

Summary of Affordable Housing Restrictions (*check as applicable*):

X The Affordable Housing Restrictions restrict the amount of rent which may be charged for the rental housing unit or units on the Property, as follows:
The Affordable Units shall be rented an affordable rent level pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto.

- o The Affordable Housing Restrictions restrict the sales price which may be charged for the sale of the ownership housing unit or units on the Property, as follows: In the event of a foreclosure on the Site, a portion of the proceeds generated thereby must be paid to Agency as set forth in the Affordable Housing Covenant between Developer and Agency dated _____, 2010, separately recorded against the Property.

X The Affordable Housing Restrictions restrict the income level of the tenant of the Property, as follows: four (4) of the Affordable Units (three (3) 2-bedroom units and one (1) 3-bedroom unit) shall be occupied by persons or households whose gross income is 50% or less of Area Median Income pursuant to California Health and Safety Code section 50105, as amended, or any successor statute thereto ("**Very Low Income Households**"), and thirty-four (34) of the Affordable Units (twenty-nine (29) 2-bedroom units and five (5) 3-bedroom units) shall be occupied by persons or households whose gross income is 80% or less of Area Median Income pursuant to California Health and Safety Code section 50079.5, as amended, or any successor statute thereto ("**Lower Income Households**").

X Term of Restrictions: fifty-five (55) years, commencing on _____ and terminating on _____.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements which apply to the Property. In the event of any conflict between the terms of this Notice and the terms of the Affordable Housing Restrictions, the terms of the Affordable Housing Restrictions shall control.

This Notice is being recorded and filed in compliance with Health and Safety Code section 33334.3(f)(3) and (4), and shall be indexed against the Agency and the current Owner of the Property.

CITY OF WINTERS COMMUNITY
DEVELOPMENT AGENCY, a public body
corporate and politic

Dated: _____

By: _____

Name: _____

Its: Executive Director

[Signature must be notarized]

Exhibit A
Legal Description

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG, AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 13

SUBORDINATION AGREEMENT-- BANK

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Frankel & Tennant Professional Corporation
Attorneys at Law
895 Dove Street, Suite 119
Newport Beach, CA 92660

THIS SPACE FOR RECORDER'S USE ONLY

SUBORDINATION AND INTERCREDITOR AGREEMENT

NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

This Subordination and Intercreditor Agreement ("Agreement") is entered into as of _____, 2010, by and among WINTERS ALMONDWOOD, LP, a California limited partnership ("Borrower"), the CITY OF WINTERS COMMUNITY DEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), the CITY OF WINTERS, a municipal corporation ("City"), and JPMORGAN CHASE BANK, N.A., a national banking association ("Bank"). The parties to this Agreement are referred to as the "Parties." Bank, City and Agency are referred to as the "Lenders."

RECITALS

A. Borrower has executed or is about to execute a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Bank Deed of Trust") for the benefit of Bank, to secure, among other things, that certain Construction Loan Agreement between Borrower and Bank of even date herewith (the "Bank Loan Agreement") and a promissory note of even date herewith (the "Bank Note") made by Borrower to the order of Bank evidencing a construction loan in the amount of \$2,697,000 (the "Bank Loan"). The Bank Deed of Trust encumbers, among other things, the real property more particularly described in Exhibit A attached to this Agreement (the "Land") and is to be recorded concurrently herewith in the Official Records of Yolo County, California ("Official Records"). The Land, together with all improvements now or hereafter located on the Land and all fixtures and personal property located on the Land and encumbered by any of the Recorded Items (as defined below) are referred to, collectively, as the "Property" or the "Project."

- 1 -

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B. Borrower, Agency and City have executed or are about to execute a AB 987 Notice on Transfer of Real Property (the "AB 987 Notice") and a Memorandum of Affordable Housing and Loan Agreement (the "Memorandum"), which are to be recorded concurrently herewith in Official Records.

C. Borrower has executed or is about to execute an Affordable Housing and Maintenance Covenant (the "Agency Covenant"), and a deed of trust (the "Performance Deed of Trust"), securing certain obligations of Borrower in connection with a grant by Agency to Borrower in the amount of \$300,000 (the "Agency Grant"). The Agency Covenant and the Performance Deed of Trust are to be recorded concurrently herewith in Official Records.

D. Borrower has executed or is about to execute a deed of trust (the "City Deed of Trust"), securing promissory note in the amount of \$300,000 in favor of City evidencing a loan by City to Borrower (the "City Loan"). The City Deed of Trust is to be recorded concurrently herewith in Official Records.

E. The Agency Grant and the City Loan are collectively referred to as the "City Financing." The Bank Deed of Trust, the Memorandum, the Agency Covenant, the City Deed of Trust, the Performance Deed of Trust and the AB 987 Notice are referred to as the "Recorded Items."

F. It is the intent of the Parties that the order of priority of the Recorded Items as liens on or charges against the Property be as follows:

1. Bank Deed of Trust
2. Memorandum
3. Agency Covenant
4. City Deed of Trust
5. Performance Deed of Trust
6. AB 987 Notice

G. It is a condition precedent to the respective obligations of each Party under the Recorded Items to which it is a party that the Recorded Items unconditionally be and remain at all times a lien or charge on the Property, having priority with respect to the other Recorded Items in the order set forth in Recital F above, and that each Party specifically and unconditionally subordinate the lien or charge of each of the Recorded Items to which it is a party as necessary in order that the Recorded Items have the relative priority set forth in Recital F above.

In consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce each Party to enter the Recorded Items to which it is a party, the Parties agree as follows:

AGREEMENT

1. **Priority and Subordination.**

(a) Each Recorded Item, and any and all renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, having the relative priority with respect to the other Recorded Items as set forth in Recital F above. Each Party intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Recorded Items to which it is a party in favor of the lien or charge upon the Property of the other Recorded Items to the extent necessary so that the Recorded Items shall have the relative priority set forth in Recital F above.

(b) Each Party acknowledges that it has been offered a satisfactory opportunity to review each of the Recorded Items and related documents to the extent that it wishes to review them.

(c) Agency and City will enter into a subordination and intercreditor agreement substantially similar to this Agreement with any lender which refinances the Bank Loan.

2. **Reliance.** The Parties would not enter into the Recorded Items to which they are parties without this Agreement.

3. **Recording.** Each Party consents to the recording of each of the Recorded Items and this Agreement.

4. **Notice of Default; Opportunity to Cure.** Each Party shall give each of the other Parties notice of default under each Recorded Item in favor of that Party prior to enforcing remedies for such default against Borrower or the Property and each of the other Parties shall have the right to cure such default at any time that Borrower would have a right to cure it. If that notice has been given by Bank as to any default under the Bank Loan Documents:

(a) Agency and City shall have the right to cure any default by Borrower within forty-five (45) days after a notice of default;

(b) If Agency or City takes title to the Project and offers to assume the obligations of Borrower under the documents evidencing and securing the Bank Loan (the "Bank Loan Documents"), Bank shall apply its normal underwriting process to evaluation of the proposed assumption and if, following the conclusion of such underwriting process, Bank accepts Agency or City, as applicable, as a successor to Borrower as obligor under the Bank Loan Documents, then Bank shall not exercise its rights to accelerate the Bank Loan by reason of transfer to Agency or City, as applicable, of title to the Project, or any portion thereof (or will accept reinstatement from Agency or City, as applicable if acceleration has already occurred); and

(c) Agency and City, as applicable, shall have the right to transfer the Project to a nonprofit corporation, which nonprofit corporation is acceptable to Bank under Bank's normal underwriting process. In that event Bank shall not exercise its rights to accelerate the Bank Loan by reason of transfer to Agency or City, as applicable, of title to the Project, or any portion thereof (or will accept reinstatement from Agency or City, as applicable if acceleration has already occurred).

5. **Certain Waivers.** Bank, without the consent of or notice to the Agency or the City, may enter into amendments of the Bank Deed of Trust and the documents and obligations secured thereby (collectively, the "Bank Loan Documents") in any manner, may release any or all persons or entities liable for any obligation secured by the Bank Loan Documents, and may release any or all security for the obligations secured by the Bank Loan Documents, all without affecting the subordination under this Agreement. Agency and City waive any right to require marshaling of assets or to require Bank to proceed against or exhaust any specific security for the obligations secured by the Bank Loan Documents, and waive any and all defenses arising out of the loss or impairment of any right of subrogation to the lien of the Bank Loan Documents.

TCAC Regulatory Agreement and Right of First Refusal Agreement. The Parties acknowledge that Borrower will be required to enter into a Regulatory Agreement (the "TCAC Regulatory Agreement"), a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("TCAC Deed of Trust"), and a Right of First Refusal Agreement ("TCAC ROFR Agreement") all with or for the benefit of the California Tax Credit Allocation Committee ("TCAC") in connection with financing which TCAC is providing to Borrower for acquisition and rehabilitation of the Project (the "TCAC Loan"). The TCAC Regulatory Agreement, TCAC Deed of Trust and TCAC ROFR Agreement (collectively, the "TCAC Agreements") will be on TCAC's standard forms. If requested to do so, City and Agency will consent to, and subordinate the liens and charges of the AB 987 Notice, Agency Covenant, Performance Deed of Trust and City Deed of Trust to the TCAC Agreements.

6. **Disbursements from City Account.**

(a) City and Agency shall fund the City Financing by disbursing the proceeds thereof to Bank for deposit into the City Account (as defined in the Bank Loan Agreement), which account shall be held for use pursuant to this Agreement and shall not be pledged as security for the Bank Loan.

(b) Bank may at any time, without the prior consent of or notice to City or Agency, and specifically without the prior approval by City or Agency of any draw request submitted by Borrower to Bank for such disbursement, disburse out of the City Account pursuant to the Bank Loan Agreement, on condition that funds in the City Account must be used to pay only "Hard Costs" and "Soft Costs," as those terms are understood and used in the building construction industry, for substantial rehabilitation of the Project, as provided in the Housing and Loan Agreement with respect

to the Project among Agency, City and Borrower, and consistent with California Redevelopment Law (including, specifically, Health and Safety Code section 33334.4).

(c) The Parties contemplate that, to the extent proceeds are available from the TCAC Loan, Borrower will use those proceeds before proceeds of the City Financing or the Bank Loan, and that Borrower will use proceeds of the City Financing to pay Hard Costs and Soft Costs before using proceeds of the Bank Loan or of any other funds on deposit at Bank and available for such use.

7. **Special Condition to Disbursement.** Notwithstanding Section 6 above, Bank may condition any disbursement of funds out of the City Account (or of proceeds of the Bank Loan or funds on deposit at Bank and available for such use) upon Bank's prior receipt, in a form reasonably acceptable to Bank, of a statement from City and Agency that neither is aware of any condition, event, act or omission which constitutes (or which, upon notice or the passage of time, would constitute) a breach, violation or default of or under any of the documents evidencing or securing the City Financing (the "City Financing Documents"), or that any such breach, violation or default has been unconditionally waived by City or Agency. At Bank's request, City and Agency shall, in writing, within five business days after Bank's written request, either provide such a statement or the facts constituting City and Agency's cause for withholding such a statement.

8. **Change Orders.** Neither Bank nor (notwithstanding anything to the contrary in the City Financing Documents) Borrower need give notice to or obtain the prior approval of City or Agency of any construction change order, change in the plans and specifications for the Project or any other item that would require Bank's prior written approval pursuant to any of the Bank Loan Documents (any of the foregoing, a "Change Order").

9. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the priority of the lien and charge of the Recorded Items against the Property. Additionally, all prior understandings and agreements, if any, regarding (i) disbursement of proceeds of the City Financing and/or (ii) the right of City, Agency or either of them to approve any Change Order are superseded and replaced by this Agreement.

(b) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the Land is located.

(c) **Successors; Assignment.** This Agreement is for the benefit of the Lenders and their respective successors and assigns, and any provision hereof may be waived or modified by agreement of Lenders without the consent of Borrower, and without affecting the priority of the liens and charges of the Recorded Items as provided in this Agreement. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of such Party's interest in the Property.

(d) **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered, or two business days after deposit in the U.S. mail, postage prepaid, to the Parties at the addresses set forth below, or to such other place as a Party may from time to time designate for itself by notice to the other Parties. No successor or assign of a Party shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

(e) **Amendment.** This Agreement may be amended only by a writing signed by the Parties, but this clause shall not impair the validity of any further agreements among fewer than all of the Parties as among themselves.

(f) **Legal Costs.** In the event of any litigation, arbitration or other legal proceeding in which any Party seeks to enforce its rights under this Agreement or to recover damages for the breach thereof, the prevailing Party or Parties shall be entitled to recover its legal costs and expenses, including but not limited to attorneys' fees, from the non-prevailing Party or Parties, whether such costs and expenses are incurred in connection with trial court proceedings, on appeal, in bankruptcy or other insolvency proceedings, in post-judgment collection proceedings, or otherwise.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(h) **Completion of Recording Information.** If this Agreement is signed without completion of certain recording information called for above, any Party or any escrow agent or title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(Remainder of page intentionally left blank)

NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

BORROWER:

WINTERS ALMONDWOOD, LP,
a California limited partnership

By: Central Valley Coalition for Affordable Housing,
a California nonprofit public benefit corporation
Its: Managing General Partner

By: _____
Christina Alley
Its: Chief Executive Officer

By: Winters Almondwood, LLC,
a California limited liability company
Its: Administrative General Partner

By: _____
Michael L. Condry
Its: Manager

Address:

Winters Almondwood, LP
1370 Jensen Avenue, Suite B,
Sanger, CA 93657

NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

BANK:

JPMORGAN CHASE BANK, N.A.
a national banking association

By: _____
Kathleen T. Calvert
Its: Vice President

Address:

Chase Community Development Banking
1999 Avenue of the Stars, 27th Floor
Los Angeles, CA 90067

NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

AGENCY AND CITY:

CITY OF WINTERS COMMUNITY
DEVELOPMENT AGENCY, a public body
corporate and politic

Dated: _____

By: _____

Name: _____

Its: Executive Director

"AGENCY"

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency General Counsel

CITY OF WINTERS, a California municipal
corporation

Dated: _____

By: _____

Name: _____

Its: City Manager

"CITY"

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Addresses:

City of Winters Community Development Agency
318 First Street
Winters CA 95694

City of Winters
318 First Street
Winters CA 95694

EXHIBIT A

LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL C, PARCEL MAP NO. 3012, FILED SEPTEMBER 16, 1980 IN BOOK 5 OF PARCEL
MAPS, PAGE 63, YOLO COUNTY RECORDS.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND
EGRESS OF VEHICLES AND PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET
LIGHTING AND STREET SIGNS, IN, ON, OVER, UNDER, ALONG AND ACROSS THE
WESTERN 30 FEET, RIGHT ANGLE MEASUREMENT, THEREOF.

ASSESSOR'S PARCEL NUMBER: 003-330-011

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OF VEHICLES AND
PEDESTRIANS, SEWER, WATER, DRAINAGE, STREET LIGHTING AND STREET SIGNS,
IN, ON, OVER, UNDER, ALONG AND ACROSS THE EASTERN 30 FEET, RIGHT ANGLE
MEASUREMENT, OF PARCEL A AND B, PARCEL MAP NO. 3012, FILED SEPTEMBER 16,
1980 IN BOOK 5 OF PARCEL MAPS, PAGE 63, YOLO COUNTY RECORDS.

Attachment No. 14

SUBORDINATION AGREEMENT—TCAC

RESOLUTION 2009-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS COMMITTING CDBG PROGRAM INCOME TO THE ALMONDWOOD APARTMENT ACQUISITION AND REHABILITATION PROJECT

WHEREAS, the Almondwood Apartments provide affordable housing for residents of the City of Winters; and

WHEREAS, the Almondwood Apartments are for sale; and

WHEREAS, the City of Winters finds it important to retain the Almondwood Apartments as a source of affordable housing for the residents of the City of Winters; and

WHEREAS, the City of Winters has CDBG (Community Development Block Grant) Program Income available to provide the gap financing necessary to retain the Almondwood Apartments as affordable housing.

NOW, THEREFORE BE IT RESOLVED the City of Winters commits the following to the funds as loans for the acquisition and rehabilitation of the Almondwood Apartment Complex

CDBG First time Homebuyer Program Income	\$ 58,000
CDBG Small Business Program Income	\$143,000
CDBG Housing Rehabilitation Program Income	<u>\$ 99,000</u>
Total Program Income Committed	\$300,000

PASSED AND ADOPTED by the City Council, City of Winters, the 17th day of March 2009.

AYES: Council Members Aguiar-Curry, Anderson, Fridae and Mayor Martin
NOES: None
ABSTAIN: None
ABSENT: Council Member Stone

Michael Martin, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

RESOLUTION NO. 2009-21

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF WINTERS AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A HOUSING AND LOAN AGREEMENT WITH WINTERS ALMONDWOOD, LP, A CALIFORNIA LIMITED PARTNERSHIP FOR THE ACQUISITION AND REHABILITATION OF THE ALMONDWOOD APARTMENTS

WHEREAS, the Community Development Agency has determined that there is a need for affordable housing within the jurisdiction of the City; and

WHEREAS, Winters Almondwood, LP, a California limited partnership, will acquire and rehabilitate Almondwood Apartments;

WHEREAS, the City Council adopted Resolution 2009-08 committing a \$300,000 loan from CDBG Program Income to the Almondwood Apartment Acquisition and Rehabilitation Project;

WHEREAS, the Agency will agree to provide financial assistance for the acquisition and rehabilitation of Almondwood Apartments in loans and grants in a total amount not to exceed \$600,000;

WHEREAS, Winters Almondwood, LP, will agree to a 55-year affordability restriction on the Almondwood Apartments;

NOW, THEREFORE, BE IT RESOLVED by the Winters Community Development Agency that the Executive Director execute a Housing and Loan Agreement with Winters Almondwood, LP, for the Acquisition and Rehabilitation of the Almondwood Apartments.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted to the City Council of the City of Winters, County of Yolo, State of California, on the 21st day of April, 2009 by the following vote:

AYES: Agency Members Aguiar-Curry, Anderson, Martin, Stone and
Chairman Fridae
NOES: None
ABSENT: None
ABSTAIN: None

Woody Fridae, Agency Chairman

ATTEST:

Nanci G. Mills, Agency Clerk

RESOLUTION NO. 2010-48 AND

RESOLUTION NO. 2010-49 (CDA)

A JOINT RESOLUTION OF THE CITY COUNCIL AND THE COMMUNITY DEVELOPMENT AGENCY OF WINTERS AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE SUBORDINATION AGREEMENTS IN CONJUNCTION WITH A HOUSING AND LOAN AGREEMENT WITH WINTERS ALMONDWOOD, LP, A CALIFORNIA LIMITED PARTNERSHIP FOR THE ACQUISITION AND REHABILITATION OF THE ALMONDWOOD APARTMENTS

WHEREAS, the Community Development Agency ("Agency") is carrying out the Redevelopment Plan ("Redevelopment Plan") for the Winters Redevelopment Project Area ("Redevelopment Project") and affordable housing projects within the City of Winters as permitted by the Redevelopment Plan; and

WHEREAS, Winters Almondwood, LP, a California limited partnership, will acquire and rehabilitate Almondwood Apartments; and

WHEREAS, the Agency wishes to assist Winters Almondwood, LP in the acquisition and rehabilitation of the 39 unit Almondwood Apartments, located at 801 Dutton Street ("Housing Project") for persons and families of lower income; and

WHEREAS, the City Council adopted Resolution 2009-08 committing a \$300,000 loan from CDBG Program Income to the Almondwood Apartment Acquisition and Rehabilitation Project; and

WHEREAS, the Agency adopted Resolution 2009-21 which committed to providing financial assistance for the acquisition and rehabilitation of Almondwood Apartments in loans and grants in a total amount not to exceed \$600,000; and

WHEREAS, Winters Almondwood, LP, will agree to a 55-year affordability restriction on the Almondwood Apartments; and

WHEREAS, California Health and Safety Code Section 33334.14(a) sets forth conditions under which covenants or restrictions imposed by an agency pursuant to subdivision (f) of Section 33334.3 may be subordinated to a lien, encumbrance, or regulatory agreement providing financing, refinancing, or other assistance; and

WHEREAS, City Staff has determined under California Environmental Quality Act ("CEQA") Guidelines, that this project fits within the definition stipulated under "In-fill Development Projects" in Section 15332, Class 32 (a-e) as Categorically Exempt from further CEQA review. This project is consistent with the City's general plan and the zoning regulations, and occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses. Furthermore, the project site has no value as habitat for endangered, rare or threatened species and approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality. Finally, the site can be adequately served by all required utilities and public services. As such, staff has concluded that this Categorical Exemption applies to this proposed project; and Agency hereby finds the Project Categorically Exempt as infill development per California Environmental Quality Act ("CEQA") per CEQA Regulation Section 15332; and

WHEREAS, the Agency hereby finds, based on the information provided by the Approved Lenders and in connection with the Developer Financing (as those terms are defined in the Housing and Loan Agreement), that subordination of covenants or restrictions imposed on the Project and Site under the Agreement (including the Covenant) is necessary because an economically feasible alternative method of financing, refinancing, or assisting the Project on substantially comparable terms and conditions, but without subordination is not reasonably available.

NOW, THEREFORE, the City Council and the Agency Board hereby approve and authorizes that the terms and provisions contained in the Performance Documents may be subordinated as provided in the Agreement, the Subordination Agreement – TCAC, and in the Subordination Agreement – Bank, both of which are attached Attachments to the Agreement; and

NOW, THEREFORE, the City Council and the Agency Board hereby delegates and authorizes to the City Manager/Executive Director the authority to negotiate and execute such other subordination agreements as are necessary or desirable, consistent with the Housing and Loan Agreement; and

NOW, THEREFORE, subject to the foregoing, the City Council and the Agency Board hereby authorizes and directs the City Manager/Executive Director to take all actions and execute for and on behalf of the City/Agency any and all documents, in form and content satisfactory to the City Manager/Executive Director and City Attorney/Agency Counsel (including conforming and clarifying changes and similar revisions to the Agreement, the Subordination Agreement – TCAC, and the Subordination Agreement – Bank), as may be necessary from time to time to carry out the purposes of this Resolution.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted to the City Council/Agency Board of the City of Winters, County of Yolo, State of California, on the 7th day of September, 2010 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

AYES:
NOES:
ABSENT:
ABSTAIN:

Cecilia Aguiar-Curry, Agency Chairperson

ATTEST:

Nanci G. Mills, Agency Secretary



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: Second Reading and Adoption of Ordinance No. 2010-08, Medical Marijuana Dispensaries Moratorium - **Further Extension**

RECOMMENDATION: Adoption of Ordinance No. 2010-08.

BACKGROUND: The City Council on November 3, 2009 adopted Ordinance 2009-15, an urgency interim ordinance establishing a moratorium on issuing permits, licenses or other entitlements for the operation of Medical Marijuana Dispensaries pending further study by the Planning Commission. That ordinance would have expired after 45 days, on December 18, 2009. State Law allows a second extension of the moratorium initially for up to 10 months and 15 days. The Winters City Council on December 15, 2010, voted to extend the moratorium for an additional 10 months and 15 days. That moratorium will expire on September 30, 2010. Staff has presented the issue to the Planning Commission, and has supplied documentation to the Planning Commission. Staff has recommended this further extension, for up to one year, to incorporate the results of the state-wide initiative in November on marijuana usage into a final recommendation to the City Council. Such an extension, the last one legally available, is authorized by state law.

FISCAL IMPACT: Staff time, publication costs.

GOVERNMENT CODE SECTION 65858(d) WRITTEN REPORT: State law requires that the City Council issue a written report at least 10 days before the

expiration of the 45 day moratorium ordinance. The written report has been issued at least 10 days prior to this Council Meeting, and is attached.

Conclusion

Staff recommends that Council adopt City of Winters Ordinance No. 2010-08, an urgency ordinance extending the moratorium on the establishment and operation of medical marijuana dispensaries for an additional period of one year in order to allow the City to continue to study the impacts of such uses, and make decisions regarding siting and zoning.

Attachment:

Ordinance No. 2010-08

Ordinance No. 2010-08 Notice of Public Hearing

Ordinance No. 2010-08 65858 Written Report

Ordinance No. 2010-08 8-17-2010 Agenda Report

CITY OF WINTERS
ORDINANCE NO. 2010-08

AN INTERIM URGENCY ORDINANCE OF THE CITY OF WINTERS ENACTED
PURSUANT TO GOVERNMENT CODE SECTION 65858 TO EXTEND INTERIM
URGENCY ORDINANCE NO. 2009-15 FOR AN ADDITIONAL ONE YEAR
AND CONTINUE FOR THIS PERIOD THE TEMPORARY PROHIBITION
AGAINST ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA
DISPENSARIES

WHEREAS, on November 3, 2009, pursuant to section 65858 of the California Government Code, the City Council of the City of Winters ("City Council") adopted Ordinance No. 2009-15, an interim urgency ordinance, which temporarily prohibits the establishment and operation of medical marijuana dispensaries in all locations in the City of Winters; and

WHEREAS, Section 65858(a) of the California Government Code provides that Ordinance No. 2009-15 shall expire and be of no further force and effect forty-five (45) days from its date of adoption; and

WHEREAS, Section 65858(a) of the California Government Code provides that prior to the expiration of Ordinance No. 2009-15, the City may extend Ordinance No. 2009-15 for an additional ten (10) months and fifteen (15) days after giving notice pursuant to Section 65090 of the California Government Code and conducting a public hearing; and

WHEREAS, The City Council of the City of Winters on December 15, 2010 adopted Ordinance 2009-17, an ordinance extending Ordinance No. 2009-15 for an additional ten (10) months and fifteen (15) days after giving notice pursuant to Section 65090 of the California Government Code and conducting a public hearing; and

WHEREAS, prior to this hearing, the City Council authorized the issuance of a written report describing the measures and actions taken by the City to alleviate the circumstances and conditions which led to the adoption of the Ordinance No. 2009-15 since its adoption on September 26, 2006, and Ordinance No. 2009-17 since its adoption on December 15, 2009, as required by Government Code section 65858(d) ("Council Report"); and

WHEREAS, based on the Council Report, the City Council has determined that the circumstances and conditions that led to the adoption of Ordinance Nos. 2009-15 and 2009-17, which are set forth in the recitals of Ordinance No. 2009-

15 and are fully incorporated herein by this reference, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance Nos. 2009-15 and 2009-17; and

WHEREAS, the City Council now seeks to extend the temporary prohibition on the establishment and operation of medical marijuana dispensaries, as currently authorized under Ordinance Nos. 2009-15 and 2009-17, to continue studying possible amendments to the Winters General Plan and the City's zoning regulations to help ensure that medical marijuana dispensaries are regulated in a way that protects the community and complies with applicable law; and

WHEREAS, the purpose for extending Ordinance Nos. 2009-15 and 2009-17 is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Ordinance Nos. 2009-15 and 2009-17; and

WHEREAS, the City Council has determined there is a need to extend Ordinance Nos. 2009-15 and 2009-17 for an additional one year as authorized under section 65858(a) of the California Government Code; and

WHEREAS, the notice and public hearing required by section 65858(a) of the California Government Code for the extension of Ordinance Nos. 2009-15 and 2009-17 has been provided in accordance with applicable law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption of this urgency interim ordinance ("Ordinance") shall constitute an extension of Ordinance Nos. 2009-15 and 2009-17 pursuant to section 65858 of the California Government Code.

SECTION 2. During the time this Ordinance is in effect, the City shall not issue any use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation of a medical marijuana dispensary in Winters.

SECTION 3. For purposes of this Ordinance, the terms defined below shall have the following meanings:

A. "Medical marijuana dispensary" shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver.

B. "Primary caregiver," "qualified patient," and "identification card" shall have the

meanings set forth in Health and Safety Code section 11362.7.

SECTION 4. The City Council hereby finds and determines that adoption of this Ordinance and the extension of Ordinance Nos. 2009-15 and 2009-17 is necessary for the current and immediate protection of the public health, safety, and welfare of the City and its residents for all the reasons set forth in the recitals above, the recitals of Ordinance Nos. 2009-15 and 2009-17, and the agenda report prepared in connection with this Ordinance, which are hereby expressly incorporated as though fully set forth herein, and the following additional reasons:

A. The City continues to study the issue of regulation of medical marijuana dispensaries, and has collected studies, reports, and other information from other California cities concerning the effects created by the operation of medical marijuana dispensaries, which have indicated that dispensaries can have negative effects on the surrounding areas if not properly regulated.

B. Establishment and/or operation of medical marijuana dispensaries under existing zoning and development standards will have a detrimental effect because the existing standards do not consider the unique impacts created by medical marijuana dispensaries, which would create the potential for severe land use incompatibilities, with associated impacts to adjacent residents and businesses. These adverse impacts on the public health, safety, and welfare can be avoided through careful study and proper planning for the regulation of medical marijuana dispensaries.

SECTION 5. The City Council hereby directs the Planning Division to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning-based regulations and other regulations.

SECTION 6. The City Council hereby finds that this Ordinance is not subject to the California Environmental Quality Act (Pub. Resources Code, Sec. 21000 et seq.) ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 7. Ten days prior to the expiration of this Ordinance, the City Council shall issue a written report describing the measures which the City has taken to alleviate the conditions which led to the adoption of this Ordinance.

SECTION 8. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance

are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 9. This Ordinance shall be adopted by a four-fifths vote of the City Council. Upon adoption, the Mayor shall sign this Ordinance, and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Winters Courier, a semi-weekly newspaper of general circulation, printed, published and circulated in the City of Winters. The term of this Ordinance shall be in effect beginning September 7, 2010 for one year and shall thereafter be of no further force and effect.

PASSED, APPROVED, AND ADOPTED this 7th day of September, 2010

STATE OF CALIFORNIA
COUNTY OF YOLOss:
CITY OF WINTERS

I, Nanci G. Mills, City Clerk of the City of Winters, County of Yolo, State of California, hereby certify that the foregoing Urgency Ordinance No. 2010-08 was introduced at a regular meeting of said City Council on the 17th day of August, and was passed and adopted by said City Council at a regular meeting of said City Council held on the 7th day of September, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Woody Fridae, MAYOR
CITY OF WINTERS

ATTEST:

Nanci G. Mills, CITY CLERK
CITY OF WINTERS

NOTICE OF PUBLIC HEARING

CITY OF WINTERS ORDINANCE NO. 2010-08

AN INTERIM URGENCY ORDINANCE OF THE CITY OF WINTERS ENACTED PURSUANT TO GOVERNMENT CODE SECTION 65858 TO EXTEND INTERIM URGENCY ORDINANCE NOS. 2009-15 AND 2009-17 FOR AN ADDITIONAL ONE YEAR AND TO CONTINUE FOR THIS PERIOD THE TEMPORARY PROHIBITION AGAINST ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

NOTICE IS HEREBY GIVEN that the Winters City Council will hold a public hearing on Tuesday, August 17, 2010, at 6:30 p.m. in the Council Chambers of City Hall, 318 First Street, Winters, California. Purpose of the Public Hearing is consider introduction and adoption of CITY OF WINTERS ORDINANCE NO. 2010, AN INTERIM URGENCY ORDINANCE OF THE CITY OF WINTERS ENACTED PURSUANT TO GOVERNMENT CODE SECTION 65858 TO EXTEND INTERIM URGENCY ORDINANCE NOS. 2009-15 AND 2009-17 FOR AN ADDITIONAL ONE YEAR AND TO CONTINUE FOR THIS PERIOD THE TEMPORARY PROHIBITION AGAINST ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES.

The ordinance is summarized, pursuant to the California Government Code, as follows:

Interim urgency ordinance 2009-15 took effect November 3, 2009, establishing a 45-day moratorium on the approval or issuance of any use permit, variance, building permit, business license, or other applicable entitlement for the establishment or operation of a medical marijuana dispensary in the City of Winters. The ordinance directed the Winters Planning Commission to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning based regulations and other regulations. Ordinance 2009-17 extended the moratorium for an additional 10 months and 15 days, to allow additional time for study and legislative action. That ordinance is currently in effect and the moratorium, absent further action by the City Council, will expire next month. This ordinance will extend the moratorium an additional one year, to allow the City Planning Commission and the Winters City Council to complete its study of the issue, and to incorporate the results of the November, 2010 statewide initiative measure on marijuana usage. The ordinance will take effect upon adoption.

Copies of the proposed ordinance are on file with the Winters City Clerk, 318 First Street, Winters, California. A written report on the reasons for the extension

are also on file. Written comments may be submitted at the hearing or by prior submission to the Winters City Clerk, and oral comments may be made at the hearing. All interested citizens are invited to attend.

In compliance with the Americans With Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these proceedings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one full business day before the start of the hearing.

Dated: August 3, 2010

/s/ John C. Wallace, City Attorney,
City of Winters



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: August 17, 2010
THROUGH: John W. Donlevy, Jr., City Manager *JW*
FROM: John C. Wallace, City Attorney
SUBJECT: Ordinance No. 2010-08, Medical Marijuana Dispensaries Moratorium
Further Extension

RECOMMENDATION: (1) Open the public hearing; (2) Approve and place the California Government Code Section 65858(d) written report into the record; (3) Hear from any members of the public; (4) Close the public hearing; (5) Council Discussion; (6) Introduction of the ordinance.

BACKGROUND: The City Council on November 3, 2009 adopted Ordinance 2009-15, an urgency interim ordinance establishing a moratorium on issuing permits, licenses or other entitlements for the operation of Medical Marijuana Dispensaries pending further study by the Planning Commission. That ordinance would have expired after 45 days, on December 18, 2009. State Law allows a second extension of the moratorium initially for up to 10 months and 15 days. The Winters City Council on December 15, 2009, voted to extend the moratorium for an additional 10 months and 15 days. That moratorium will expire on September 30, 2010. Staff has presented the issue to the Planning Commission, and has supplied documentation to the Planning Commission. Staff has recommended this further extension, for up to one year, to incorporate the results of the state-wide initiative in November on marijuana usage into a final recommendation to the City Council. Such an extension, the last one legally available, is authorized by state law.

FISCAL IMPACT: Staff time, publication costs.

GOVERNMENT CODE SECTION 65858(d) WRITTEN REPORT: State law requires that the City Council issue a written report at least 10 days before the expiration of the 45 day moratorium ordinance. The written report has been issued at least 10 days prior to this Council Meeting, and is attached.

Conclusion

Staff recommends that Council introduce City of Winters Ordinance No. 2010-08, an urgency ordinance extending the moratorium on the establishment and operation of medical marijuana dispensaries for an additional period of one year in order to allow the City to continue to study the impacts of such uses, and make decisions regarding siting and zoning.

Attachment:

Ordinance No. 2010-08

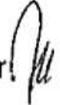
Ordinance No. 2010-08 Notice of Public Hearing

Ordinance No. 2010-08 65858 Written Report

Ordinance No. 2010-08 8-17-2010 Agenda Report



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: Honorable Chairman and Board of Directors
DATE: September 7, 2010
THROUGH: John W. Donlevy, Jr., Executive Director 
FROM: Nelia Dyer, Community Development Director
Dan Maguire, Housing Programs Manager
SUBJECT: Almondwood Housing and Loan Agreement

RECOMMENDATION:

Staff recommends the Community Development Agency 1) receive a report on the Housing and Loan Agreement with Winters Almondwood, LP, a California limited partnership for the acquisition and rehabilitation of the Almondwood Apartments, and 2) adopt Joint Resolution 2010-48 and 2010-49 (CDA) authorizing the City Manager / Executive Director to execute subordination agreements in conjunction with a Housing and Loan Agreement with Winters Almondwood, LP for the acquisition and rehabilitation of the Almondwood Apartments .

BACKGROUND:

The Almondwood apartment complex located on Dutton Street was constructed in 1983 under the Section 515 U.S. Department of Agriculture (USDA) loan program. Of the 39 units, 22 are subsidized by USDA rental assistance, 12 units are subsidized by RHCP (State) program, and the remaining 5 units are not covered by rental assistance. The complex's affordability is jeopardized by expiring affordability restrictions and is considered to be at risk of going to market rate. The previous owners, Bill Brown and Betty Brickey decided to sell the facility and wanted the new owner to continue to operate the facility for affordable housing. Mike Condry, a private real estate investor from Sanger, is under contract to purchase the Almondwood Apartments. He has purchased ten Section 515 projects in the last five years leading into this acquisition.

In conjunction with the acquisition, the developer understands that City participation (through the CDA) would require a 55-year affordability restriction. Condry has prepared a rehabilitation budget report that details the rehabilitation work and costs. Funding for Condry's acquisition and rehabilitation in order of lien position is (1) Chase, (2) assumption of existing USDA Rural Development loan (assuming an existing USDA RD 515 Loan, (3) TCAC, and (4) City/Agency. At conversion from construction lending to permanent financing, the Chase loan will be replaced by a USDA 538 Loan, with the

subordination order as follows: (1) USDA 538 Loan, (2) USDA 515 Loan, (3) TCAC, and (4) City/Agency.

The City has conditionally committed to providing \$600,000 to the project, adopting Resolution 2009-08 (March 17, 2009) committing \$300,000 in CDBG Program Income to the Almondwood Apartment Acquisition and Rehabilitation Project. The overall funding level of \$600,000 for the project was authorized with the adoption of Resolution 2009-21 (April 21, 2009), which also authorized the Executive Director to execute a Housing and Loan Agreement with Winters Almondwood, LP.

FISCAL IMPACT:

\$300,000 Program Income ("PI") from CDBG Housing Rehabilitation Revolving Loan Fund ("RFL"), with an additional \$300,000 to be granted (2007 Tax Exempt bond proceeds) at the close of escrow.

ATTACHMENTS:

Almondwood Housing and Loan Agreement
Housing and Loan Agreement Attachments
Resolution 2009-08
Resolution 2009-21
Joint Resolution 2010-48 and 2010-49

RESOLUTION NO. 2010-48 AND

RESOLUTION NO. 2010-49 (CDA)

A JOINT RESOLUTION OF THE CITY COUNCIL AND THE COMMUNITY DEVELOPMENT AGENCY OF WINTERS AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE SUBORDINATION AGREEMENTS IN CONJUNCTION WITH A HOUSING AND LOAN AGREEMENT WITH WINTERS ALMONDWOOD, LP, A CALIFORNIA LIMITED PARTNERSHIP FOR THE ACQUISITION AND REHABILITATION OF THE ALMONDWOOD APARTMENTS

WHEREAS, the Community Development Agency ("Agency") is carrying out the Redevelopment Plan ("Redevelopment Plan") for the Winters Redevelopment Project Area ("Redevelopment Project") and affordable housing projects within the City of Winters as permitted by the Redevelopment Plan; and

WHEREAS, Winters Almondwood, LP, a California limited partnership, will acquire and rehabilitate Almondwood Apartments; and

WHEREAS, the Agency wishes to assist Winters Almondwood, LP in the acquisition and rehabilitation of the 39 unit Almondwood Apartments, located at 801 Dutton Street ("Housing Project") for persons and families of lower income; and

WHEREAS, the City Council adopted Resolution 2009-08 committing a \$300,000 loan from CDBG Program Income to the Almondwood Apartment Acquisition and Rehabilitation Project; and

WHEREAS, the Agency adopted Resolution 2009-21 which committed to providing financial assistance for the acquisition and rehabilitation of Almondwood Apartments in loans and grants in a total amount not to exceed \$600,000; and

WHEREAS, Winters Almondwood, LP, will agree to a 55-year affordability restriction on the Almondwood Apartments; and

WHEREAS, California Health and Safety Code Section 33334.14(a) sets forth conditions under which covenants or restrictions imposed by an agency pursuant to subdivision (f) of Section 33334.3 may be subordinated to a lien, encumbrance, or regulatory agreement providing financing, refinancing, or other assistance; and

WHEREAS, City Staff has determined under California Environmental Quality Act ("CEQA") Guidelines, that this project fits within the definition stipulated under "In-fill Development Projects" in Section 15332, Class 32 (a-e) as Categorically Exempt from further CEQA review. This project is consistent with the City's general plan and the zoning regulations, and occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses. Furthermore, the project site has no value as habitat for endangered, rare or threatened species and approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality. Finally, the site can be adequately served by all required utilities and public services. As such, staff has concluded that this Categorical Exemption applies to this proposed project; and Agency hereby finds the Project Categorically Exempt as infill development per California Environmental Quality Act ("CEQA") per CEQA Regulation Section 15332; and

WHEREAS, the Agency hereby finds, based on the information provided by the Approved Lenders and in connection with the Developer Financing (as those terms are defined in the Housing and Loan Agreement), that subordination of covenants or restrictions imposed on the Project and Site under the Agreement (including the Covenant) is necessary because an economically feasible alternative method of financing, refinancing, or assisting the Project on substantially comparable terms and conditions, but without subordination is not reasonably available.

NOW, THEREFORE, the City Council and the Agency Board hereby approve and authorizes that the terms and provisions contained in the Performance Documents may be subordinated as provided in the Agreement, the Subordination Agreement – TCAC, and in the Subordination Agreement – Bank, both of which are attached Attachments to the Agreement; and

NOW, THEREFORE, the City Council and the Agency Board hereby delegates and authorizes to the City Manager/Executive Director the authority to negotiate and execute such other subordination agreements as are necessary or desirable, consistent with the Housing and Loan Agreement; and

NOW, THEREFORE, subject to the foregoing, the City Council and the Agency Board hereby authorizes and directs the City Manager/Executive Director to take all actions and execute for and on behalf of the City/Agency any and all documents, in form and content satisfactory to the City Manager/Executive Director and City Attorney/Agency Counsel (including conforming and clarifying changes and similar revisions to the Agreement, the Subordination Agreement – TCAC, and the Subordination Agreement – Bank), as may be necessary from time to time to carry out the purposes of this Resolution.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted to the City Council/Agency Board of the City of Winters, County of Yolo, State of California, on the 7th day of September, 2010 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

AYES:
NOES:
ABSENT:
ABSTAIN:

Cecilia Aguiar-Curry, Agency Chairperson

ATTEST:

Nanci G. Mills, Agency Secretary