ORDINANCE NO. 2006-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS ADOPTING A DEVELOPMENT AGREEMENT (WINTERS HIGHLANDS PROJECT)

THE CITY COUNCIL OF THE CITY OF WINTERS HEREBY ORDAINS AS FOLLOWS:

Pursuant to the provisions of Government Code §65864 et seq. and Chapter 2 of Title 11 of the Winters City Code, the City Council of the City of Winters hereby:

1. Adopts and approves that certain document entitled: "A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WINTERS AND GBH-WINTERS HIGHLANDS, LLC RELATING TO THE DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS THE WINTERS HIGHLANDS PROPERTY".

2. Authorizes and directs the Mayor Pro Tem to sign the document on behalf of the City after the second reading of this ordinance and after it has first been signed by a duly authorized representative of GBH -- Winters Highlands, LLC.

3. Authorizes and directs the City Clerk to record the document, after it is signed by both parties, in the Office of the Recorder of Yolo County.

PASSED AND ADOPTED THIS 18th day of April 2006 on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Keith W. Fridae, Mayor Pro Tem

Attest:

_____
Nanci G. Mills, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Winters
318 First Street
Winters, California 95694
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27383

(Space Above This Line Reserved For Recorder's Use)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

GBH-WINTERS HIGHLANDS, LLC

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A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WINTERS AND GBH-WINTERS HIGHLANDS, LLC RELATING TO THE DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS THE WINTERS HIGHLANDS PROPERTY

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and GBH-WINTERS HIGHLANDS, LLC, a California limited liability company (the "Developer"), under the authority of § 65864 *et seq*. of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County. The City and the Developer are sometimes referred to herein as the Parties.

FACTS AND CIRCUMSTANCES

This Agreement is entered into based on the following facts and circumstances, among others:

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.

2. The Developer is in the business of developing residential communities in Northern California, including the development of property in a manner which promotes the goals envisioned by the City for its residents.

3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Winters Highlands Property and further described in Exhibit A and depicted in Exhibit B to this Agreement, is

through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. It is the intent of the Parties in entering into this Agreement to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain rights to develop the Winters Highlands Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

The following words or phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

1. "Agreement" means this Development Agreement.

2. "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.

3. "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.

4. "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (e.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

5. "City of Winters" means the physical boundaries of the City of Winters.

6. "City Public Works Improvement Standards and Construction Specifications" means the City of Winters Public Works Improvement Standards and Construction Specifications, dated September, 2003, and as amended from time to time.

7. "Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

8. "Conditions of Approval" means the conditions placed on the approval of the Winters Highlands Land Use Entitlements, including the Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

9. "Developer" means the GBH-Winters Highlands, LLC, a California limited liability company, and/or its successor(s) in interest.

10. "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

11. "Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

12. "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of the Property and used to pay for public facilities attributable to the development project.

13. "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval.

14. "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

15. "Mitigation Measures" means the requirements placed on the development of the Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for the Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

16. "Nexus Study" means a study used as the basis for imposing an Impact Fee on new development in accordance with California Government Code section 66000, *et seq*.

17. "Off-site improvement" means a public improvement constructed outside the physical boundaries of the Property.

18. "On-site improvement" means a public improvement constructed within the physical boundaries of the Property.

19. "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

20. "Phase" means a Final Map for a portion of the Winters Highlands Tentative Subdivision Map.

21. "Phasing Plan" means the Phases planned for development of Winters Highlands, to be developed generally in the sequence shown on the Plan. The Phasing Plan for the Winters Highland Tentative Subdivision Map is attached as Exhibit E.

22. "Phasing Schedule" means the schedule for commencement and completion of certain Infrastructure in conjunction with each Phase of the Phasing Plan. The Phasing Schedule is attached as Exhibit F.

23. "Property" means the property commonly known as the Winters Highland Property, Yolo County Assessor's Parcels No. 030-220-17, 030-220-19 and No. 030-220-33.

24. "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property.

25. "Winters Highlands Property" or the "Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcels No. 030-220-17, 030-220-19 and No. 030-220-33, and is more specifically shown and described in Exhibits A and B.

26. "Winters Highlands Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Winters Highlands Tentative Subdivision Map is attached as Exhibit C.

27. "Winters Highlands Subdivision" means the residential development created by the Winters Highlands Tentative Subdivision Map.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated By Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Winters Highlands Property, Yolo County Assessor's Parcels No. 030-220-17, 030-220-19 and 030-220-33. A map

showing the location and boundaries of the Property is attached as Exhibit B and a legal description describing the Property is attached as Exhibit A. In this Agreement the Winters Highlands Property will, in most instances, be referred to simply as the "Property."

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County.

b. The term of this Agreement is ten (10) years, commencing on the date it is recorded, unless otherwise extended in accordance with State law and City ordinances.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In

no event shall an owner or tenant of an individually completed residential unit within the Winters Highlands Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

a. Except as otherwise provided, the Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. No assignment shall be effective until the City, by action of its City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1. The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and,

2. The proposed assignee has adequate experience with residential developments of comparable scope and complexity to that being undertaken on the Property and has successfully completed such developments.

c. The provisions of subsection b. do not apply to the sale of five (5) or fewer finished residential lots to individual buyers or builders.

d. The obligations and conditions set forth in Article 4 of this Agreement are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Title 11, Chapter 2, Article 6 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

Section 2.7 Whole Agreement; Conflict with Municipal Code.

a. This Agreement, together with any subsequent addenda, amendments, or modifications, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 11, Chapter 2 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorneys' Fees; Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. Via certified U.S. Mail, return receipt requested.

2. Via an overnight mail service of the type normally used by the business community, such as Federal Express or UPS Overnight.

3. By facsimile, provided a "hard" copy is sent at the same time by regular U.S. Mail.

b. The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. Notices to the City shall be given as follows:

City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Telephone (530) 795-4910 x 110
FAX (530) 795-4935

c. Notices to the Developer shall be given as follows:

GBH-Winters Highlands, LLC
c/o Granite Bay Holdings, LLC
4230 Douglas Boulevard, Suite 100

Granite Bay, CA 95746
Attn: Larry John and Rick Cheney
Telephone (916) 960-1656
FAX (916) 960-1666

Section 2.10 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 2.11 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall insure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 2.12 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 5.2 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

Section 2.13 Unapproved Transfers Void. Any assignment or attempted Assignment that is not approved by the City as required under this Article 2, or that is inconsistent with the provisions of this Article 2, shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the convents or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

ARTICLE 3

DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

a. The Property shall be developed in accordance with the Conditions of Approval and the following ordinances, policies and Land Use Entitlements, all of which have been adopted or approved by the City Council:

1. Final Environmental Impact Report, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program (Resolution No. 2006-08 adopted on April 4, 2006).

2. This Development Agreement (Ordinance No. 2006-04 adopted April 18, 2006 and effective on May18, 2006, (the "Enacting Ordinance")).

3. General Plan Amendment (applicable city-wide) to change the density range for the Medium Density Residential (MR) designation from 5.4-8.8 dwelling units per acre to 4.1-6.0 dwelling units per acre (Resolution No. 2006-09 adopted on April 4, 2006).

4. General Plan Amendment to change the Land Use Map for the Property (102.6 acres) as follows (a) 7.81 acres from Low Density Residential (LR) to Medium/High Density Residential (MHR); (b) 25.26 acres from (LR) to Medium Density Residential (MR); (c) 3.19 acres from MR to LR; (d) 7.11 acres from MR to MHR; (e) 3.89 acres from MR to Recreation and Parks (RP); (f) 0.31 acres from MR to High Density Residential (HR); (g) 11.47 acres from LR to RP; (h) 0.37 acres from LR to Public/Quasi-Public (PQP); (i) 4.99 acres from PQP to MR; (j) 2.39 acres from RP to HR; (k) 4.71 acres from RP to MHR; (l) 0.23 acres

from PQP to MHR; (m) 6.66 acres from RP to MHR; (n) 1.51 acres from Open Space (OS) to RP; and, (o) 1.34 acres from RP to OS (Resolution No. 2006-09 adopted on April 4, 2006).

5. General Plan Amendment to change the Land Use Map for off-site property as follows: (a) 0.22 acres from RP to OS; (b) 0.02 acres from PQP to OS; (c) 2.44 acres from PQP to RP; (d) 0.29 acres from PQP to MHR; (e) 3.84 acres from LR to PQP; (f) 0.32 acres from PQP to Neighborhood Commercial (NC); (g) 0.48 acres from PQP to HR; (h) 2.09 acres from RP to HR; (i) 1.25 acres from NC to HR; (j) 1.94 acres from HR to LR; (k) 4.67 acres from RP to LR; (l) 0.48 acres from RP to PQP; (m) 0.07 acres from PQP to LR; and, (n) 3.16 acres from Rural Residential (RR) to LR. (Resolution No. 2006-09 adopted on April 4, 2006).

6. General Plan Amendment to modify the Flood Overlay Zone within the Land Use Element; and, re-designate Moody Slough Road as a Primary Collector in the Circulation Element (Resolution No. 2006-09 adopted on April 4, 2006).

7. Zoning Ordinance Amendments to change the Zoning Map for the Property (102.6 acres) as follows: (a) 7.81 acres from Single Family Residential 7,000 SF Average Minimum (R-1) to Single and Multi-Family Residential (R-3/PD); (b) 25.26 acres from R-1 to Single Family Residential 6,000 SF Average Minimum (R-2); (c) 3.19 acres from R-2 to R-1; (d) 7.11 acres from R-2 to R-3/PD; (e) 3.89 acres from R-2 to Parks and Recreation (P-R); (f) 0.31 acres from R-2 to High Density Multi-Family Residential (R-4); (g) 11.47 acres from R-1 to P-R; (h) 0.37 acres from R-1 to Public/Quasi-Public (PQP); (i) 4.99 acres from PQP to R-2; (j) 2.39 acres from P-R to R-4; (k) 4.71 acres from P-R to

R-2; (l) 0.23 acres from PQP to R-3/PD; (m) 6.66 acres from P-R to R-3/PD; (n) 1.51 acres from Open Space (OS) to P-R; and, (o) 1.34 acres from P-R to OS (Ordinance No. 2006-03 adopted April 18, 2006 and effective on May 18,. 2006).

8. Zoning Ordinance Amendments to change the Zoning Map for off- site property as follows: (a) 0.22 acres from Parks and Recreation (PR) to OS; (b) 0.02 acres from PQP to OS; (c) 2.44 acres from PQP to RP; (d) 0.29 acres from PQP to Multi-Family Residential (R-3); (e) 3.84 acres from Single Family Residential 7,000 Sf Minimum (R-1) to PQP; (f) 0.32 acres from PQP to Neighborhood Commercial (C-1); (g) 0.48 acres from PQP to High Density Multi-Family Residential (R-4); (h) 2.09 acres from PR to R-4; (i) 1.25 acres from C-1 to R-4; (j) 1.94 acres from R-4 to R-1; (k) 4.67 acres from PR to R-1; (l) 0.48 acres from PR to PQP; (m) 0.07 acres from PQP to R-1; and, (n) 3.16 acres from Rural Residential (R-R) to R-1. (Ordinance No. 2006-03 adopted April 18, 2006 and effective on May 18,. 2006).

9. Planned Development (PD) Permit to allow for modification of the minimum lot area, lot width, and lot depth for R-3 lots as identified on the Winters Highlands Tentative Subdivision Map (Permit No. 2006-01 approved on April 4, 2006).

10. Exclusion of the Property from the West Central Master Plan (Resolution No. 2006-09 adopted on April 4, 2006).

11. Amendments to the Circulation Master Plan (adopted May 19, 1992) and Standard Street Cross Sections (adopted October 2, 2001) (Resolution No. 2006-09 adopted on April 4, 2006).

12. Amendments to the Bikeway System Master Plan (adopted November19, 2002)(Resolution No. 2006-09 adopted on April 4, 2006).

13. Amendments to the Rancho Arroyo Storm Drain District Master Plan to modify the Rancho Arroyo drainage shed (Resolution No. 2006-09 adopted on April 4, 2006).

14. Winters Highlands Tentative Subdivision Map (Map No. 4507), with Findings of Fact and Conditions of Approval, on 102.6 acres creating 413 single-family lots (including 36 duplex lots) on 49.45 acres; a 2.01 acre parcel for 30 apartments; 10.63 acres for park land (plus a 10,000 SF well site); 7.43 acres of open space and wetlands; an exchange parcel of 0.04 acres to the Callahan Estates project; and 32.81 acres in public roads. (Resolution No. 2006-09 adopted on April 4, 2006).

15. A Lot Line Adjustment allowing an exchange of property with the adjoining Callahan Estates project (Resolution No. 2006-09 adopted on April 4, 2006).

b. Under the provisions of Government Code section 66452.6(a), the term of the Winters Highlands Subdivision Tentative Subdivision Map is hereby extended to be co-terminus with the term of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the General Plan of the City of Winters, as amended.

Section 3.3 Vested Rights of Developer.

Unless otherwise provided in this Agreement, the Developer shall have the vested right to develop the Property in accordance with the Land Use Entitlements described in Section 3.1 above, and in conformity with the City rules, regulations, policies, standards, specifications and ordinances (collectively "City laws") in effect on the date of adoption of the Enacting Ordinance.

Section 3.4 Rights Retained by the City.

This Agreement shall be construed to reserve to the City all power and authority to regulate the development of the Property, unless expressly limited herein. Notwithstanding any other provision of this Agreement, the following regulations and provisions shall apply to the development of the Property:

a) Application fees and charges of every kind and nature imposed by the City to cover the actual costs to the City of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

b) Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

c) Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other

uniform construction codes then applicable in the City at the time of permit application.

d) City laws which may be in conflict with the land use entitlements but which are reasonably necessary to protect the public health and safety, provided such City laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

e) New City laws applicable to the Property, (i) mandated by State or federal law; (ii) required for reasons of public health, safety or welfare, based upon findings adopted by the City Council; or (iii) which do not conflict with the vested right of Developer to develop the Property in accordance with the Land Use Entitlements described in Section 3.1 above, provided such new rules, regulations, policies, standards and specifications are uniformly applied to all substantially similar types of development projects and properties, and do not materially impact the Project.

f) Fees and charges which are in effect and collected at the time of the approval of a Final Subdivision Map or the issuance of a Building Permit, as provided in this Agreement or as generally applicable throughout the City of Winters, including, but not limited to, Impact Fees for traffic signalization, storm drainage infrastructure, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment.

Section 3.5 Other Vesting Laws Inapplicable.

a. It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of State or federal law pertaining to the vested rights of the Developer to develop the Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (section 65864 *et seq.*) and Development Rights [vesting tentative maps] (section 66498 *et seq.*).

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded and it is specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

c. The Developer shall not make any application to develop the Property, in whole or in part, under any vesting law, unless the right to do so is specifically granted by State and/or federal law which becomes effective after the date of the recording of this Agreement.

Section 3.6 Commencement and Phasing of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred and fifty (150) days after this Agreement is recorded, submit for approval by the City the Final Map for Phase I of the Winters Highlands Subdivision and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, acts of the State and/or federal government, a referendum of the ordinance adopting this

Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.

b. Any time limit prescribed for any action required by this Agreement shall be extended for the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.

c. Developer agrees to undertake the development of the five (5) Phases of the Winters Highlands Subdivision in sequential order (i.e., Phase I, Phase II, Phase III, Phase IV and Phase V), and to apply for a separate Final Map for each Phase of the Subdivision.

d. Developer acknowledges and agrees that the approval of a Final Map for any Phase of the Winters Highlands Subdivision shall be contingent upon a determination by the City that the Developer has fully complied with the terms of this Agreement in the development of the prior Phase or Phases, in addition to satisfying the other requirements imposed by State statute, City law, the Land Use Entitlements or the Conditions of Approval.

Section 3.7 Maximum Number of Building Permits Per Year; Non-Market Rate Units.

a. To provide for orderly growth within the City of Winters, the Developer shall be entitled to apply for and receive up to, but no more than, the following number of single family residential Building Permits per year for market rate residential units in the Winters Highlands Subdivision. For purposes of this section, the first year commences on September 1, 2006.

1. Year 1: 69
2. Year 2: 127
3. Year 3: 54
4. Year 4: 83
5. Year 5: 44
6. Years 6 through 10: 25 per year

b. If Developer does not apply for and/or is not issued the number of Building Permits specified in any given year as set forth in subsection a. above, then up to fifteen (15) of the unused units from that year's allocation shall automatically be added to the following year's allocation.

c. The total of the above numbers is not reflective of the total number of residential units within the Winters Highlands Subdivision. Except as otherwise provided in Section 3.7.b. above, unused allocations of building permits in any year shall NOT be added to the allocation for subsequent years. No Building Permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement.

d. There are sixty-six (66) deed restricted, below market rate units to be built in the Winters Highlands Subdivision pursuant to the City's Land Use Regulations. Such below market rate units are comprised of twenty-six (26) units for very low income households, twenty-five (25) units for low income households, and fifteen (15) units for moderate income households. The Developer may apply for and receive Building Permits for these units at any time during the term of this Agreement. The Building Permits for the below market rate units are in addition to, and not part of, the number of units per year set forth above. However, the Developer must complete the construction of the below

market rate units within each Phase of the subdivision prior the issuance of Building Permits for market rate units within any subsequent Phases. Further, the Developer must complete the construction of all below market rate units in all Phases of the subdivision prior to the expiration of this Agreement.

e. The Parties agree that the purpose of limiting the number of Building Permits issued in any year is to allow the City to meter growth in such a manner that the total number of new units built per year, both within the Winters Highlands Subdivision and on other properties, does not exceed the number which can reasonably be served with municipal and education services without unduly impacting existing residents of the City of Winters.

f. Should circumstances beyond the control of the Developer preclude the Developer from applying for and/or being issued the number of Building Permits specified in subsection a. in the year specified, then the City shall consider adjusting the schedule. For purposes of this subsection f., "circumstances beyond the control of the Developer" shall include, but are not limited to, acts of God, natural disasters, and acts of the State and/or federal government. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.

Section 3.8 Installation of Public Improvements.

Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Winters Highlands Subdivision. When the Final Map for each Phase of the Winters Highlands Subdivision is approved, the Developer shall enter into a separate written

agreement ("Subdivision Improvement Agreement") with the City by which it commits to build and dedicate to the City or applicable public agency, the public improvements required by the Land Use Entitlements and the Conditions of Approval. Security for the construction of the improvements shall be provided as required by State law and City law.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Winters Highlands Tentative Subdivision Map, acquire the real property rights necessary to construct or otherwise provide the public improvements required by this Agreement, the Land Use Entitlements or the Conditions of Approval.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the applicable Final Subdivision Map for the Winters Highlands Subdivision is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement or the Conditions of Approval, or b) if necessary, in accordance with and to the extent permitted by the procedures established by State law, use its power of eminent domain to acquire the property

interests. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

Section 3.10 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed.

a. In some instances, the Developer will be required to install public improvements to a size and/or capacity greater than that which is required to serve the residents of the Winters Highlands Subdivision, commonly referred to as "oversizing" improvements. In such an instance, the Developer shall be entitled to reimbursement for such oversizing of improvements from fees paid by other property owners at the time of development.

b. There are two sources from which the Developer may be reimbursed for oversizing improvements:

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property owner to reimburse the Developer its *pro rata* share of the cost of the oversizing of improvements. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of a separate agreement between the City and the Developer which will provide that the Developer will be reimbursed from Impact Fees. Such Impact Fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

c. In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive. Additionally, when the Developer will receive reimbursement from a benefiting property owner, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the *pro rata* share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property. When the Developer will receive reimbursement from Impact Fees, the City Engineer shall specify in the separate agreement the amount the Developer will be reimbursed and the approximate time when that amount will be paid.

d. The Developer shall have no recourse against the City if Impact Fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, or if a benefiting property fails to reimburse the Developer. However, the Developer retains all rights against the benefiting property owners.

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a Building Permit is

issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a Building Permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the Building Permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a Building Permit, the Developer shall be receive credit against such fee up to the actual cost of the installed improvement, or the estimate for such fee in the Nexus Study, whichever is less, as determined by the City Engineer. The City Engineer shall have the exclusive right to interpret this section in case of any disagreements concerning its applicability. This sub-section f. is not assignable, in whole or in part, it being the express intent of the Parties that it is to be applicable only to the Developer and to no third party unless this Agreement is specifically amended to provide otherwise.

Section 3.11 Subsequent Discretionary Approvals.

a. To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those Discretionary Approvals in the same manner as any other person applying for such Discretionary Approvals from the City. All Application fees then applicable for the type of Discretionary Approvals shall apply. The City will review these applications in good faith within a reasonable time to insure that the Developer may proceed to develop the Property in the manner contemplated by this Agreement.

b. The only remaining Discretionary Approval which is contemplated at this time is design review under the Zoning Ordinance.

Section 3.12 Review of Agreement.

Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Title 11, Chapter 2, Article 7 (Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Section 3.14 Subdivision Maps. A subdivision, as defined in Government Code section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Government Code.

ARTICLE 4
DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

a. The Developer acknowledges and agrees that the mitigation of the impact of the Winters Highlands Subdivision on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that its intention upon entering into this Agreement is to mitigate the impact on schools to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the Developer and

the Winters Joint Unified School District. A copy of the proposed agreement is attached as Exhibit G.

b. The Developer shall enter into an agreement with the Winters Joint Unified School District ("School District"), substantially in the form attached as Exhibit G, that provides, among other matters, that the Developer will pay to the School District:

1. For each of the four hundred and forty-three (443) residential units in the Winters Highlands Subdivision, fees at the rate of THREE DOLLARS AND TEN CENTS ($3.10) per square foot or higher, with such fee to be paid at the time of issuance of each building permit; and

2. For each of the four hundred and forty-three (443) residential units in the Winters Highlands Subdivision, except the very low income and low income affordable units, fees at the rate of THREE DOLLARS AND TEN CENTS ($3.10) per square foot or higher, with such fee to be paid at the close of escrow.

c. The Developer has represented to the City that it intends to fully and faithfully perform the agreement between the Developer and the School District, and the City has relied upon this representation in entering into this Agreement. A failure to perform the agreement with the School District by the Developer shall be deemed to be a default of this Agreement and subject to the provisions of Article 5.

d. In the event the School District does not execute an agreement substantially in the form of Exhibit G, or such agreement provides for the payment of less than the amount specified in subparagraph b. above, then the Developer will

pay to the City the difference between the amount payable under paragraph b. above of this Section 4.1 and the amount actually paid to the School District, which amount the City shall thereafter submit to the School District for the construction of school facilities.

Section 4.2 On-Site Park Improvements.

a. Developer shall fully improve, construct and dedicate a 10.86 acre linear park on Lots V, W and X within the Winters Highlands Subdivision, which includes a 0.23 acre well site, and as more particularly set forth in this Section 4.2 and in accordance with the Conditions of Approval. The dedication of this 10.86 acre park site exceeds the General Plan obligation by 0.56 acres, but is provided by the Developer as consideration for the benefits of this Agreement.

b. The City, through a public process to be conducted over the next several months, will create a design for the linear park, including improvements to the well site, and will provide the Developer with the design within one hundred and eighty (180) days from recordation of this Agreement.

c. The Developer shall improve and construct the linear park in a time and manner consistent with the Phasing Plan and Phasing Schedules attached as Exhibits E and F, respectively, and in accordance with the design provided by the City and the City Public Works Improvement Standards and Construction Specifications. Any changes to the design or timing of construction shall be approved in writing by the City. If the actual cost will exceed the estimated cost set forth in paragraph d. below, the parties will either (i) cooperate on a re-design of the improvements such that the actual cost does not exceed the estimated cost, or (ii) the City may elect, in its sole and absolute discretion, to fund the difference between the actual cost and estimated cost, for construction of the improvements as

initially designed. Notwithstanding any other provision in this Agreement, Developer agrees to complete construction of the linear park no later than December 1, 2009, or if Developer has not filed a Final Map for Phase I of the Winters Highlands Subdivision by December 1, 2009, then construction shall be completed prior to the filing of the Final Map for Phase I.

d. The total estimated cost of fully developing the linear park, as of the effective date of this Agreement, is THREE MILLION TWO HUNDRED AND NINETY-TWO THOUSAND AND FORTY-NINE DOLLARS ($3,292,049), computed by multiplying THREE HUNDRED AND THREE THOUSAND AND NINE HUNDRED AND SEVENTY-FIVE DOLLARS ($303,975) per acre (including infrastructure improvements, construction, administration and site equipment) by 10.86 acres. The improvement, construction and dedication of the linear park by the Developer shall be in lieu of the payment of any park impact fees or park land dedication or Quimby Act fees otherwise required by City ordinance.

Section 4.3 Off-Site Park Improvements

a. Concurrently with the construction of the improvements for Phase I of the Winters Highlands Subdivision, the Developer shall provide utilities stubbed out to the southeast corner of the twenty-two (22) acre community park site located to the north of the Winters Highlands Subdivision park site, in a location selected by the City, provided that such utility stubs shall not extend more than seventy-five feet (75') from the centerline of the adjacent public street.

b. In addition to providing utilities stubbed out to the southeast corner of the park site, the Developer shall pay the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000) to the City to be used for

constructing improvements to the park site prior to the recordation of the Final Map for Phase II of the Winters Highlands Subdivision.

Section 4.4 Funding For Police/Fire/Municipal Facilities.

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services and a facility for general municipal services. In order to provide sufficient funds for the City to complete construction of these facilities, the Developer shall, on or before the later of (i) December 31, 2007 or (ii) recordation of the Final Map for Phase I for the Winters Highlands Subdivision, pay to the City development fees as follows:

1. A police facilities fee at the rate in effect on December 31, 2007 for all residential units in the Winters Highlands Subdivision.

2. A fire facilities fee at the rate in effect on December 31, 2007 for all residential units in the Winters Highlands Subdivision .

3. A general municipal facilities fee at the rate in effect on December 31, 2007 for all residential units in the Winters Highlands Subdivision.

b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with having paid in full the fees identified in subsection a. above.

Section 4.5 Annuity in Lieu of Mello-Roos District.

a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of the Winters Highlands Subdivision pursuant to the report titled "City of Winters; Winters Highlands Fiscal Impact

Analysis" prepared by Economic & Planning Systems, Inc., and dated December 1, 2005. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

b. The funding of the annuity will be created and funded as follows:

1. Concurrently with the recordation of the Final Map for each Phase of the Winters Highlands Subdivision, the Developer shall record a Deed of Trust, in a form satisfactory to the City Attorney, against each residential lot that secures the payment of the sum of FIVE THOUSAND SIX HUNDRED AND FORTY-THREE DOLLARS ($5,643.00) to the City from the escrow for the sale of each residential unit to a third party. The Deed of Trust shall include language stating that (i) the rights protected by the Deed of Trust shall not be subordinated to a lien, encumbrance or deed of trust of a lender or holder of a mortgage, and (ii) any lender or lienholder obtaining title by foreclosure or deed in lieu of foreclosure shall not be obligated to pay the amount secured by the Deed of Trust until the close of escrow for the sale of the residential unit to a third party

2. Subject to the provisions of b.4., below, from the escrow for the sale of each residential unit to a third party , the Developer will pay to the City the sum of FIVE THOUSAND SIX HUNDRED AND FORTY-THREE DOLLARS ($5,643.00).

3. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of the Winters Highlands Subdivision

4. The amount of FIVE THOUSAND SIX HUNDRED AND FORTY-THREE DOLLARS ($5,643.00)will be adjusted with the issuance of the first Building Permit for a residential unit, and thereafter, on or before April 30th of each subsequent year, to account for rising assessed values resulting from increased new home prices within the Winters Highlands Subdivision, if any. The formula for making this adjustment is set forth in Exhibit H.

c. At the end of the third year after the recording of this Agreement, the City will prepare an updated Fiscal Impact Analysis, consistent with the analysis referenced in subdivision a above. The amount set forth in subsection b. 3. shall be adjusted in accordance with the results of that analysis, and shall thereafter be amended annually by the formula set out in Exhibit H.

Section 4.6 Payment to Library Fund and Community Pool Fund.

a. Prior to the recordation of the Final Map for Phase I and the Final Map for Phase II for the Winters Highlands Subdivision, the Developer shall pay to the City the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000), each, for an aggregate payment of ONE HUNDRED AND FIFTY THOUSAND DOLLARS ($150,000). This amount shall be kept in a separate account designated for library improvement funds by the City and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

b. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City the sum of ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($1,250,000). This amount shall be kept in a separate account designated for pool

improvement funds by the City and used solely for constructing and/or maintaining the new Bobbie Greenwood Community Swimming Pool in the City of Winters.

Section 4.7 Wastewater Treatment Plant Expansion.

a. An expanded and upgraded Wastewater Treatment Plant ("WWTP") is needed in order to treat the wastewater from the Winters Highlands Subdivision, and other developing properties within the City. The Developer shall be required to fund the cost of the expansion and upgrade project (referred to as "WWTP Phase II"), which would expand the capacity of the WWTP to approximately 1.2 million gallons per day, in accordance with the terms of this Section 4.7. The Developer shall be required to provide funding for WWTP Phase II in excess of the Developer's fair share obligation, and shall receive credit and/or reimbursement for such excess funding, pursuant to the terms of a credit and/or reimbursement agreement, which agreement shall be negotiated and executed by the Parties prior to the approval of the Final Map for Phase I for the Winters Highlands Subdivision.

b. The Developer shall provide funding as follows:

1. On or before December 1, 2006, the Developer shall provide funding to the City in the amount estimated as necessary by the City Engineer to fully pay for the cost of designing the WWTP Phase II. Sixty (60) days prior to December 1, 2006, the City shall provide written notification to the Developer of the estimated amount needed for design costs.

2. On or before December 1, 2007, the Developer shall provide funding to the City in the amount estimated as necessary to fully pay for the acquisition of land necessary for the construction of the WWTP Phase II. This amount

shall include the estimated cost of the land (based upon an appraisal) and administrative, legal and environmental review costs directly related to the land acquisition. Sixty (60) days prior to December 1, 2007, the City shall provide written notification to the Developer of the estimated amount needed for land acquisition costs.

3. On or before December 1, 2008, or if Developer has not filed a Final Map for Phase I of the Winters Highlands Subdivision by December 1, 2008, then prior to the filing of the Final Map for Phase I, the Developer shall provide funding to the City in the amount estimated by the City Engineer as necessary to fully pay for the cost of constructing the WWTP Phase II. One hundred and twenty (120) days prior to December 1, 2008, the City shall provide written notification to the Developer of the estimated amount needed for construction of the WWTP Phase II.

4. In the event that the amounts estimated by the City pursuant to subparagraphs b1., b2. and b3. above are insufficient to cover the actual costs of design, land acquisition or construction of the WWTP Phase II, the Developer shall provide the additional funding necessary to cover the actual costs, within one hundred and twenty (120) days of receipt of written request from the City for supplementary funding.

c. In consideration of Developer's commitment to provide funding as set forth in this Section 4.7, City agrees to provide sewer connections for each residential unit within Phases I, II and III of the Winters Highlands Subdivision prior to completion of WWTP Phase II, subject to the following conditions, which must be satisfied prior to the issuance of a Building Permit for each residential unit: (1) Developer is in compliance with the terms of this Agreement, including

this Section 4.7; (2) the Building Permit for the applicable residential unit has been issued prior to December 1, 2009; and (3) no circumstances beyond the control of the City have occurred. For the purposes of this subsection c., "circumstances beyond the control of the City" shall include, but are not limited to, acts of God, natural disasters, and acts of the State and/or federal government.

d. The Developer acknowledges and agrees that the City shall not be required to approve or record a Final Map for Phase IV and Phase V of the Winters Highlands Subdivision until and unless the City Engineer determines, in his/her sole and absolute discretion, that the WWTP has adequate capacity to serve all residential units and other buildings to be constructed within that Phase of the Winters Highlands Subdivision, provided, however, if the WWTP Phase II is then completed and operational, City shall reserve from the capacity represented by such expansion the amount needed to serve the remaining residential units within the Winters Highlands Subdivision. This reservation of capacity shall expire upon the termination of this Agreement.

Section 4.8 New Sewer Pump Station.

a. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay its *pro rata* share of the construction of a new sewer pump to be located at a site specified by the City Engineer. The new pump will be financed entirely by developer contributions without any reimbursement from the City.

b. The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly.

c. The Developer understands and acknowledges that no Building Permits shall be issued for any residential unit within the Winters Highlands Subdivision until the new sewer pump station is constructed and accepted by the City. Therefore, if the developer which is currently obligated to construct this facility fails to do so, Developer may be required to construct this facility in order to proceed with development of the Property.

Section 4.9 Urban Water Management Plan.

Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share of Ninety Thousand Dollars ($90,000) for the cost for preparation of a City Urban Water Management Plan.

Section 4.10 Water Well.

a. A water well is required in order to provide water service to the Winters Highlands Subdivision and other developing properties. A second water well may be required, depending upon the productivity of the first water well.

b. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay its *pro rata* share of the construction of the new water well to be located at a site specified by the City Engineer.

c. The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly.

d. The Developer understands and acknowledges that no Building Permits shall be issued for any residential unit within the Winters Highlands

Subdivision until the new water well is constructed and accepted by the City. Therefore, if the developer which is currently obligated to construct this facility fails to do so, Developer may be required to construct this facility in order to proceed with development of the Property.

e. The Developer agrees to construct a second water well or pay its *pro rata* share of the cost of such facility, upon demand by the City Engineer. If Developer fails to construct or pay for such facility upon the demand and as determined of the City Engineer, then the City may withhold the issuance of Building Permits for the Property.

f. If required to build these facilities, the Developer shall be entitled to a *pro rata* reimbursement of the cost of the water well(s) to be paid by other developments benefiting from it, including, but not limited to, those commonly identified as Hudson-Ogando, Callahan Estates, and Creekside.

g. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.11 Pedestrian Circulation and Safety Improvements.

Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share, as determined by the City Engineer, of the cost for the construction of pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street pursuant to the Morgan Street Area Circulation Study, July 1999. The total cost for these improvements is currently estimated to be ONE HUNDRED AND FIFTY THOUSAND DOLLARS ($150,000).

Section 4.12 Walnut Street - Dutton Street- East Street Intersection Corridor.

Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share, as determined by the City Engineer, of the cost for the design and construction of intersection and roadway improvements within the Walnut Street - Dutton Street- East Street intersection corridor, also known as the Grant Avenue Access Project. The total cost for these improvements is currently estimated to be FIVE HUNDRED THOUSAND DOLLARS ($500,000).

Section 4.13 Energy Efficiency.

In order to obtain energy efficiency in each unit with the Winters Highlands Subdivision, to the maximum extent possible the techniques identified in the July 27, 2004 Planning Commission staff report on the "Proposed Energy Resolution" shall be utilized; provided, however, that the following techniques are mandatory:

a. Fifty percent (50%) of the market rate units shall be built with a photovoltaic solar energy system capable of producing 2.4 peak rated direct current (DC) kilowatts. The remaining market rate units shall be pre-wired to accommodate such a system.

b. All units shall be constructed to the Energy Star Standards as defined by the U. S. Environmental Protection Agency.

c. All units shall be built with low emission furnaces.

d. No unit shall be built with any dark colored roofing material.

Section 4.14 Flood Overlay Zone; Payment of Impact Fees.

a. As part of the Land Use Entitlement for the Winters Highlands Subdivision, Developer requested and City approved a General Plan Amendment to remove approximately thirty (30) acres of the Property from the Flood Overlay Area. This area of the Property is referred to herein as the "Winters Highlands Flood Overlay Area".

b. To accommodate the development of the Winters Highlands Flood Overlay Area, the drainage from this portion of the Property will be directed to the Rancho Arroyo Detention Basin. Developer shall fund and construct all drainage improvements necessary to develop the Winters Highlands Overlay Area. The drainage improvements currently contemplated include a pump station in the Rancho Arroyo Pond and storm drainage piping. Developer understands and acknowledges that all costs for the drainage improvements relating to the Winters Highlands Overlay Area shall be paid for by Developer, and Developer shall not be entitled to reimbursement from the City or other property owners.

c. Notwithstanding the amendment of the General Plan to remove the Winters Highlands Overlay Areas from the General Plan Flood Overlay Area, Developer agrees to pay, with respect only to development within the Winters Highlands Flood Overlay Area, any drainage Impact Fee adopted or enacted by the City to fund drainage improvements in the General Plan Flood Overlay Area, at the applicable rate and at the time established by ordinance or resolution. If the drainage Impact Fee is required to be paid prior to the approval of a final map, and a final map has already been approved for all or a portion of the Winters Highlands Flood Overlay Area prior to the Impact Fee being adopted, then the Impact Fee shall be paid at or prior to the issuance of any Building Permit for

development within the portion of the Winters Highlands Flood Overlay Area covered by the final map. If a Building Permit has been issued within the portion of the Winters Highlands Flood Overlay Area covered by a final map prior to the Impact Fee being adopted, then the Impact Fee shall be paid by Developer to the City within ninety (90) days from the adoption or enactment of the drainage Impact Fee.

d. Developer waives any and all rights to challenge or protest the imposition or payment of a drainage Impact Fee for the General Plan Flood Overlay Area.

Section 4.15 Miscellaneous Contributions.

a. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay ONE HUNDRED THOUSAND DOLLARS ($100,000) to the City to be used for environmental education programs, with such programs to be determined in the sole discretion of the City Council.

b. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay ONE HUNDRED THOUSAND DOLLARS ($100,000) to the City, to be deposited in the Putah Creek Park Development Fund, to be used in the sole discretion of the City Council.

c. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay FIFTY THOUSAND DOLLARS ($50,000) to the Winters Joint Unified School District ("School District"), to be used for improvements to the cafeteria at the high school, with such improvements

to be determined in the sole discretion of the Board of Trustees for the School District.

d. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay TWO HUNDRED THOUSAND DOLLARS ($200,000) to the City, to be used for studies and other efforts associated with evaluating the impacts of growth and bringing jobs to the community.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 Application of Article. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 Termination of Agreement.

a. This Agreement is terminable: (i) by mutual written consent of the Parties, or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement.

b. Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, neither Party shall have any further rights or obligations under this Agreement. Subject to the subparagraph d. below. Each party understands that it may have sustained damages that arise, or may arise out of, or relate to the termination of this Agreement that may not be

apparent and that are presently unknown. Each party waives, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for all such damages. The waivers and releases in this Agreement include waivers and releases of any claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to termination of this Agreement by mutual written consent of the Parties.

c. Subject to subparagraph d. below. Each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, all rights or benefits that it has or may have under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 reads 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.

d. Nothing herein contained shall release or excuse Developer in the performance of its obligations to indemnify and defend the City as provided in this Agreement.

Section 5.3 <u>City's Remedies</u>.

a. The City's remedies under this Agreement are as follows:

1. Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Winters Highlands Subdivision pending

a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. Specific performance as provided in subsection c.

4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. An action for damages as provided in subsection d.

6. The right to withhold the issuance of any permits, including building permits, as provided in subsection e.

b. With respect to a default by the Developer under this Agreement, the City shall:

1. First submit to the Developer a written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided Developer has continuously and diligently pursued such remedy at all times until such default(s) is cured.

2. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance

with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

3. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. To properly complete and dedicate any public improvements which are required by this Agreement.

3. To complete, demolish or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

d. The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for The Winters Highlands Subdivision.

e. In the event of a default by Developer, or following notice of default by Developer and during the cure period specified in subparagraph b. above, the City shall have the right to refuse to issue any permits to which Developer would otherwise have been entitled pursuant to this Agreement or City ordinances, including but not limited to, building permits and certificates of occupancy, provided that such refusal shall not extend for a period of more than ninety (90) days unless the City Council, following consideration of evidence regarding the default by Developer, determines there is a reasonable basis to extend such period of refusal. This provision is in addition to and shall not limit any actions that the City may take to enforce this Agreement, the Land Use Entitlements or the Conditions of Approval.

Section 5.4 Developer's Remedies.

a. The Developer's only remedies under this agreement are as follows:

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Winters Highlands Subdivision pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

a. The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b. In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

c. In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of The Winters Highlands Subdivision is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents, and employees from any claim of injury to person or property arising out of or relating to this Agreement or the operations of the Developer in the development of The Winters Highlands Subdivision under the terms of this Agreement.

c. Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of, or to collect damages for, any breach of this Section 6.2.

Section 6.3 Duty to Defend Challenges to this Agreement.

a. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

b. The Parties agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. In the event of any such challenge, each Party shall bear its own attorneys' fees and other litigation expenses, unless the City elects to tender the defense to the Developer pursuant to subsection e. below.

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto. Developer's obligation to pay any and all fees, costs or expenses awarded against the City is not affected by City's decision to tender, or not tender, the defense of an action to the Developer.

e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO FOLLOW

"DEVELOPER"
GBH WINTERS HIGHLANDS, LLC,
a California limited liability company

By:_____

Its:_____

Dated:_____

"CITY"

CITY OF WINTERS, a municipal corporation

By:_____
Mayor

Dated:_____

Attest:_____
City Clerk

Approved as to form:

_____
John Wallace, City Attorney

. . . . . .

LIST OF EXHIBITS

A	Legal Description of the Property
B	Map Showing Location and Boundaries of the Property
C	Winters Highlands Tentative Subdivision Map
D	Conditions of Approval
E	Phasing Plan for the Winters Highland Tentative Subdivision Map
F	Phasing Schedule
G	Form of Agreement Between Developer and Winters Unified School District
H	Annuity Adjustment Formula

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED PARTIALLY IN THE UNINCORPORATED AREA AND PARTIALLY IN THE CITY OF WINTERS, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 1 THROUGH 21, INCLUSIVE, MOSBACHER TRACT NO. 1, FILED November 5, 1919, IN BOOK 3 OF MAPS, PAGE 34, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED IN THE DEEDS TO THE CITY OF WINTERS, RECORDED January 25, 1990, IN BOOK 2091 OF OFFICIAL RECORDS, PAGE 446 AND 450.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED IN THE DEED TO WINTERS JOINT UNIFIED SCHOOL DISTRICT, RECORDED AUGUST 13, 1999, INSTRUMENT NO. 25340, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE FOLLOWING:

A) 50% OF ALL OIL, GAS, MINERALS RIGHTS LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF SAID LAND FOR EXPLORING, EXTRACTING OR ANY OTHER PURPOSE, AS RESERVED IN THE DEED EXECUTED BY CECIL MOSBACHER, ET AL., RECORDED AUGUST 25, 1976, IN BOOK 1207 OF OFFICIAL RECORDS, PAGE 140.

B) AN UNDIVIDED 12.5% INTEREST IN AND TO ALL OIL, GAS, MINERALS AND MINERAL RIGHTS LYING BELOW A DEPTH 500 FEET FROM THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND FOR EXPLORING, EXTRACTING OR ANY OTHER PURPOSE, AS GRANTED TO DANIEL K. DOWLING IN THE DEED RECORDED November 8, 1977, IN BOOK 1276 OF OFFICIAL RECORDS, PAGE 611.

C) AN UNDIVIDED 12.5% INTEREST IN AND TO ALL OIL, GAS, MINERALS AND MINERAL RIGHTS LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND FOR EXPLORING, EXTRACTING OR ANY OTHER PURPOSE, AS GRANTED TO PETER F. ANDERS IN THE DEED RECORDED November 8, 1977, IN BOOK 1276 OF OFFICIAL RECORDS, PAGE 612.

D) AN UNDIVIDED 25% INTEREST IN AND TO ALL OIL, GAS, CASINGHEAD GAS, ASPHALTUM, AND OTHER HYDROCARBONS, AND ALL CHEMICAL GAS, NOW OR HEREAFTER FOUND SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING MORE THAN FIVE HUNDRED FEET (500) BELOW THE SURFACE THEREOF, TOGETHER WITH THE RIGHT TO SLANT DRILL FOR AND REMOVE ALL OR ANY OF SAID OIL, GAS CASINGHEAD GAS, ASPHALTUM AND OTHER HYDROCARBONS AND CHEMICAL GAS LYING BELOW A DEPTH OF MORE THAN AVE HUNDRED FEET (500) VERTICAL DISTANCE BELOW THE SURFACE THEREOF, AS RESERVED IN THE DEEDS EXECUTED BY MELVIN M. NORMAN CONSTRUCTION, INC., ET AL., RECORDED MARCH 26, 1990, IN BOOK 2106 OF OFFICIAL RECORDS, PAGES 251, 253, AND 267.

APN: 030-220-17-1; 030-220-19-1; & 030-220-33-1

PARCEL B:

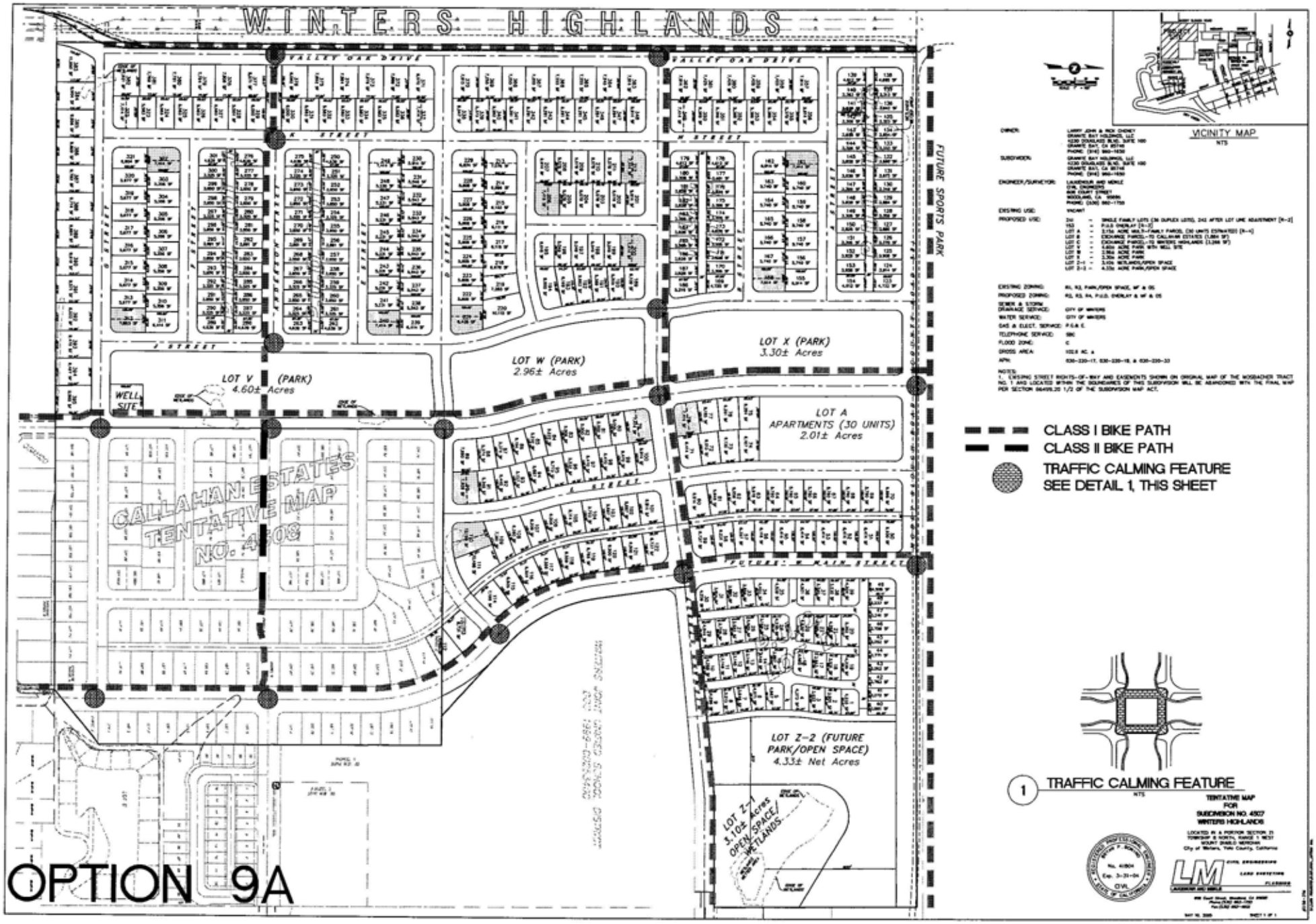
A PORTION OF LOT 4, CARPENTER BRO'S. SUBDIVISION OF A PORTION OF SECTION 20, TOWNSHIP 8 NORTH, RANGE 1 WEST, M.D.B. & M., ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED January 2, 1894, IN BOOK 1 OF MAPS, PAGE 22, YOLO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4, WHICH POINT IS ALSO THE QUARTER SECTION CORNER OF THE EAST LINE OF SAID SECTION 20; RUNNING THENCE WEST, ALONG THE NORTH LINE OF SAID LOT, A DISTANCE OF 42 FEET; THENCE EAST AT RIGHT ANGLES A DISTANCE OF 160 FEET TO THE EAST LINE OF SAID LOT 4; THENCE NORTH ALONG SAID LINE A DISTANCE OF 42 FEET TO THE POINT OF BEGINNING.

APN: 030-361-01-1

APN: 030-220-17-1, 030-220-19-1, 030-220-33-1, 030-361-01-1

Winters Highlands
Project Area
INTERSTATE 505


WINTERS HIGHLANDS
VALLEY OAK DRIVE
K STREET
M STREET
J STREET
L STREET
FUTURE SPORTS PARK
LOT V (PARK)
4.60± Acres
WELL SITE
LOT W (PARK)
2.96± Acres
LOT X (PARK)
3.30± Acres
LOT A
APARTMENTS (30 UNITS)
2.01± Acres
CALLAHAN ESTATES
TENTATIVE MAP
NO. 4508
FUTURE W MAIN STREET
LOT Z-2 (FUTURE
PARK/OPEN SPACE)
4.33± Net Acres
LOT Z-1
3.10± Acres
OPEN SPACE/
WETLANDS
VICINITY MAP
NTS
CLASS I BIKE PATH
CLASS II BIKE PATH
TRAFFIC CALMING FEATURE
SEE DETAIL 1, THIS SHEET
1 TRAFFIC CALMING FEATURE
NTS
TENTATIVE MAP
FOR
SUBDIVISION NO. 4507
WINTERS HIGHLANDS
LM
OPTION 9A

FINDINGS OF FACT AND CONDITIONS OF APPROVAL for the WINTERS HIGHLAND SUBDIVISION (April 18, 2006 – Final)

FINDINGS OF FACT

CEQA Findings

These findings will be addressed in a separate Resolution to be presented to the City Council.

Findings for General Plan Amendments

1. Amendments of the General Plan to modify the Citywide MR density range, the Flood Overlay Area, the Circulation Element, and the land use designation of specified properties are in the best interest of the citizens of Winters.

Findings for Rezonings

1. The public health and general welfare warrant the change of zones and the change of zones is in conformity with the General Plan.

Findings for Exclusion from West Central Master Plan

1. The proposed project, as modified and conditioned, better meets the requirements of the General Plan and there is no detriment to property remaining in the West Central Master Plan by removing this property.

Findings for PD Overlay and PD Permit

1. The project, as modified and conditioned, is consistent with the General Plan and the purposes of Section 8-1.5117 of the Zoning Ordinance.

2. Deviations from specified provisions of the basic zoning district on the property have been justified as necessary to achieve an improvement design for the development and/or the environment. The development complies with the remaining applicable provisions of the basic zoning district on the property.

3. The proposed development, as modified and conditioned, is desirable to the public comfort and convenience.

4. The requested plan, as modified and conditioned, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.

5. Adequate utilities, access roads, sanitation, and/or other necessary facilities and services will be provided or available.

6. The development, as modified and conditioned (including execution of the Development Agreement) will not create an adverse fiscal impact for the City in providing necessary services.

Findings for Amendment of the Circulation Master Plan, Standard Street Cross Sections, and Bikeway System Master Plan

1. The amendments to these City documents result in increased bicycle trail standards for the City resulting in a net benefit to the community and net increase in protected routes for alternative circulation.

Findings for Amendment of the Rancho Arroyo Storm Drain District Master Plan

1. The amendment to this document modifies the district maps and plan to be consistent with the approved project drainage system.

Findings for Tentative Subdivision Map (G.C. 66474) and Lot Line Adjustment

1. The proposed map is consistent with the General Plan.
2. The design and improvement of the proposed map is consistent with the General Plan.
3. The site is physically suitable for the type of development.
4. The site is physically suitable for the proposed density of development.
5. The design of the subdivision and the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. The design of the subdivision and type of improvements will not cause serious public health problems.
7. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Findings for Development Agreement

1. The DA is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
2. The DA is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.
3. The DA is in conformity with and will promote public convenience, general welfare and good land use practice.
4. The DA will not be detrimental to the health, safety and general welfare.
5. The DA will not adversely affect the orderly development of property or the preservation of property values.
6. The DA will meet the intent of Section 11-2.202(a) (Public Benefits) of the City Code.
7. The DA is consistent with Ordinance 2001-05 (Development Agreements).

CONDITIONS OF APPROVAL

The following conditions of approval are required to be satisfied by the applicant/developer prior to final map, unless otherwise stated.

General

1. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project Applicant shall defend, indemnify, and hold harmless the City or its agents, officers and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense which includes court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the subdivider in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning commission, any advisory agency to the City, local district and the City Council.

2. Developer acknowledges and agrees that, but for Developer's contributions as set forth in the Development Agreement for Winter Highlands, City would not approve the development of the project. City's approval of the development entitlements is expressly granted in reliance upon and in consideration of Developer's execution of the Development Agreement and Developer's expressed intent to fully and faithfully perform such agreement. In the event that the Development Agreement is terminated for any reason whatsoever, regardless of fault, or if Developer is in default of the Development Agreement, as defined therein, then Developer may not proceed with the development of the project and any of the rights granted by the development entitlements shall be deemed suspended in the event of default, and automatically revoked in the event of termination of the Development Agreement.

3. All conditions identified herein shall be fully satisfied prior to acceptance of the first final map unless otherwise stated.

4. The project is as described in the Environmental Impact Report. The project shall be constructed as depicted on the maps and exhibits included in the Environmental Impact Report, except as modified by these conditions of approval. Substantive modifications require a public hearing and Council action.

General Plan Requirements

5. Pursuant to General Plan Policy II.A.19, a minimum of ten percent of the single-family lots (41 lots) shall be reserved for and sold to local builders or owner-builders.

6. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. Pursuant to Policy II.C.2 of the Housing Element, energy conservation and weatherization features shall be incorporated into the home design. At a minimum this shall include: a) maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution". b) Attainment of EPA Energy Star Standards in all units. c) Low emission furnaces in all units. d) Avoidance of dark colored roofing on all units. e) A minimum of 50 percent of the market-rate units shall have a photovoltaic solar energy system capable of producing a minimum of 2.4kW (peak-rated DC watts) photovoltaic. The remainder of the market-rate units shall be pre-wired for an equivalent system. The applicant shall make a good faith effort to obtain outside funding in order to install photovoltaic solar energy systems in the affordable units.

7. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to occupancy of each phase of the project.

8. Pursuant to General Plan Policy III.B.3, the location of one or more bus turnouts along Main Street shall be coordinated with the City and the Yolo County Transportation District, and shall be installed by the developer with construction of Main Street.

9. Pursuant to General Plan Policy IV.B.12 and V.A.13, drought-tolerant plant species and drip irrigation systems shall be used in landscaping the proposed new park, to the extent practical. Pursuant to General Plan Policy VI.C.7, drought-tolerant and native plants, especially valley oaks, shall be used for landscaping roadsides, parks, schools, and private properties. Pursuant to General Plan Policy VI.C.8, parks and drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat. All homes in this subdivision shall have "low application rate" lawn sprinkler systems, as approved by the Planning Commission.

10. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.

11. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.

12. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.

13. Pursuant to General Plan Policy V.A.3, park maintenance shall be funded through a lighting and landscaping district or other appropriate mechanism.

14. Pursuant to General Plan Policy V.A.10, the proposed neighborhood park shall be designed to buffer existing and planned surrounding residential uses from excessive noise, light, and other potential nuisances.

15. Pursuant to General Plan Policy VI.A.6, grading shall be carried out during dry months, when possible. Areas not graded shall be disturbed as little as possible. Construction and grading areas, as well as soil stockpiles, should be covered or temporarily revegetated when left for long periods. Revegetation of slopes shall be carried out immediately upon completion of grading. Temporary drainage structures and sedimentation basins must be installed to prevent sediment from entering and thereby degrading the quality of downstream surface waters, particularly Putah Creek. The full cost of any necessary mitigation measures shall be borne by the project creating the potential impacts. Pursuant to General Plan Policy VII.B.3, should the City allow any grading to occur during the rainy season, conditions shall be implemented to ensure that silt is not conveyed to the storm drainage system.

16. Pursuant to General Plan Policy VI.E.6, construction-related dust shall be minimized. Dust control measures shall be specified and included as requirements of the contractor(s) during all phases of construction of this project.

    - All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.

    - Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.

    - Construction vehicle speed on unpaved roads shall not exceed 15 MPH.

    - Construction equipment and engines shall be properly maintained.

    - If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.

- Construction practices will minimize vehicle idling.
- Potentially windblown materials will be watered or covered.
- Construction areas and streets will be wet swept.

17. Pursuant to General Plan Policy VII.A.1, VII.A.2, and VII.C.4 all site work and construction activities shall be in accordance with the requirements of the City, and other applicable local, regional, state, and federal regulations.

18. Pursuant to General Plan Policy VII.C.1, necessary water service, fire hydrants, and access roads shall be provided to the satisfaction of the Fire Chief and Fire Protection District standards.

19. Pursuant to General Plan Policy VII.C.2, a minimum fire-flow rate of 1,500 gallons per minute is required for all residential uses.

20. Pursuant to General Plan Policy VIII.D.2, street trees shall be planted along all streets, in accordance with the City's Street Tree Plan and Standards. There shall be a minimum of one street tree in the center front of each single-family lot, and on both frontages for corner lots. All trees shall be of a type on the approved street tree list and shall be a minimum of fifteen gallons in size with a mature tree canopy of at least a thirty-foot diameter within five years. The intent is that majestic street tree species that create large canopies at maturity will be required in all medians and streetside landscape strips. The goal is create maximum shade canopy over streets and sidewalks.

21. Pursuant to General Plan Policy VIII.D.4, a permanent mechanism for the ongoing maintenance of street trees is required, to the satisfaction of the City Manager and City Finance Director.

22. Pursuant to General Plan Policy VIII.D.7, all lighting including street lighting, shall be designed, installed, and maintained to minimize excess light spillage, unnecessary brightness and glare, and degradation of night sky clarity.

Environmental Impact Report Mitigation Measures

23. **Mitigation Measure 1:** Outdoor light fixtures shall be low-intensity, shielded and/or directed away from adjacent areas and the night sky. All light fixtures shall be installed and shielded in such a manner that no light rays are emitted from the fixture at angles above the horizontal plane. High-intensity discharge lamps, such as mercury, metal halide and high-pressure sodium lamps shall be prohibited. Lighting plans shall be provided as part of facility improvement plans to the City with certification that adjacent areas will not be adversely affected and that offsite illumination will not exceed 2-foot candles.

    Prior to issuance of a building permit, the applicant shall submit a photometric and proposed lighting plan for the project to the satisfaction of the Community Development Department to ensure no spillover light and glare onto adjoining properties.

24. **Mitigation Measure 2:** a) Construction equipment exhaust emissions shall not exceed District Rule 2-11 Visible Emission limitations; b) Construction equipment shall minimize idling time to 10 minutes or less; and c) The prime contractor shall submit to the District a comprehensive inventory (i.e. make, model, year, emission rating) of all the heavy-duty off-road equipment (50 horsepower or greater) that will be used an aggregate of 40 or more hours for the construction project. District personnel, with assistance from the California Air Resources Board, will conduct initial Visible Emission Evaluations of all heavy-duty equipment on the inventory list.

    An enforcement plan shall be established to weekly evaluate project-related on-and-off- road heavy-duty vehicle engine emission opacities, using standards as defined in California Code of Regulations, Title 13, Sections 2180 - 2194. An Environmental Coordinator, CARB-certified to perform Visible Emissions Evaluations (VEE), shall routinely evaluate project related off-road and

heavy duty on-road equipment emissions for compliance with this requirement. Operators of vehicles and equipment found to exceed opacity limits will be notified and the equipment must be repaired within 72 hours.

Construction contracts shall stipulate that at least 20% of the heavy-duty off-road equipment included in the inventory be powered by CARB certified off-road engines, as follows:

175 hp - 750 hp	1996 and newer engines
100 hp - 174 hp	1997 and newer engines
50 hp- 99 hp	1998 and newer engines

In lieu of or in addition to this requirement, the applicant may use other measures to reduce particulate matter and nitrogen oxide emissions from project construction through the use of emulsified diesel fuel and or particulate matter traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

25. **Mitigation Measure 3:** Homes and apartments constructed as a part of the Highlands project shall contain only low-emitting EPA certified wood-burning appliances or natural gas fireplaces.

26. **Mitigation Measure 4:** If cultural resources (historic, archeological, paleontological, and/or human remains) are encountered during construction, workers shall not alter the materials or their context until an appropriately trained cultural resource consultant has evaluated the situation. Project personnel shall not collect cultural resources. Prehistoric resources include chert or obsidian flakes, projectile points, mortars, pestles, dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits often in old wells and privies.

27. **Mitigation Measure 5:** Special preparation of subgrades and reinforcement of foundations and floor slabs shall be conducted in full and as described in the Geotechnical Engineering Report Winters Highlands (January 9, 1990, and February 22, 1994, Wallace-Kuhl & Associates) for the Proposed Project.

28. **Mitigation Measure 6:** The City Council shall: a) direct that 6 medium density units be added to the project; b)find the project to be in substantial compliance with the density range of the Medium Density Residential (MR) designation; or c) approve a citywide General Plan amendment to change the density range for the proposed Medium Density Residential (MR) designation from 5.4 – 8.8 dwelling units per acre, back to 4.1 – 6.0 dwelling units per acre.

29. **Mitigation Measure 7:** All aspects of the project shall be subject to design review to ensure compatibility with the surrounding area and satisfaction of the Community Design Guidelines and other applicable principles of good neighborhood design. Prior to issuance of a building permit for each phase of construction of the project, the applicant shall submit full architectural renderings, including building elevations and floor plans, for design review and approval.

30. **Mitigation Measure 8:** The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for controlling the pace of growth on an annual basis. Provisions for the design, funding, and construction of necessary infrastructure to accommodate allowed growth shall also be addressed. Threshold requirements for the construction of affordable units shall be included to ensure that the development of affordable units reasonably keep pace with the development of market-rate units within the project.

31. **Mitigation Measure 9:** The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for mitigating the projected fiscal deficit. This may include an on-going Mello-Roos Community Facilities District (CFD) to fund eligible services, a Lighting and Landscaping District which could fund eligible park and landscaping expenses, establishment of an annuity the interest proceeds of which would cover the projected deficit, or other acceptable mechanisms.

32. **Mitigation Measure 10:** The project park site shall be designed and constructed to meet the specifications of the City of Winters. Park phasing and a final date by which the park shall be completed, operational, and accepted by the City shall be established in the project Development Agreement.

33. **Mitigation Measure 11:** a) Install a traffic signal at the intersection of Grant Avenue/I-505 Northbound Ramps. The traffic signal would need to be installed after construction and occupancy of 40 single family dwelling unit "equivalents" citywide(i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");

    b) Install a traffic signal at the intersection of Grant Avenue/Walnut Lane. The traffic signal would need to be installed after construction and occupancy of 380 single family dwelling unit "equivalents" citywide (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents"). A preliminary review of traffic volumes indicates that conditions at this intersection would likely not meet the warrants, or criteria, applied by Caltrans for installation of traffic signals on a state highway. OR Prohibit left turn movements from southbound Walnut Lane onto eastbound Grant Avenue. Southbound vehicles on Walnut Lane would be forced to turn right and make a u-turn at the signalized intersection of Grant Avenue/Railroad Avenue;

    c) Install a traffic signal at the intersection of Grant Avenue/West Main Street. The traffic signal would need to be installed after construction and occupancy of 50 single family dwelling unit "equivalents" from this project and/or Hudson/Ogando, Callahan Estates, or Creekside(i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");

    d) The applicant shall pay a fair share of the cost for design and installation of a traffic signal at the intersection of Railroad Avenue/Main Street at buildout.

34. **Mitigation Measure 12:** The applicant shall be required to complete full roadway improvements, including traffic calming, to City Standards. Where phasing of improvements is allowed to support phased construction of residences, interim phased improvements shall be to the satisfaction of the City Engineer.

35. **Mitigation Measure 13:** The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map. The project is required to fund and construct off-site improvements necessary to support the development. Such improvements could include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. Should property acquisition or additional CEQA clearance be required for off-site improvements, this will be the responsibility of the developer.

36. **Mitigation Measure 14:** The proposed project shall contribute its fair share toward expansion of the City of Winters Wastewater Treatment Plant, consistent with the Wastewater Treatment Plant Master Plan. An acceptable financing mechanism shall be in place for the WWTP expansion prior to acceptance of a final map. Building permits for each phase of development shall be issued only after the City has established that WWTP capacity will be available to serve that phase of development.

37. **Mitigation Measure 15:** The applicant shall offer three alternative locations, satisfactory to the City, for locating a new well to serve the subdivision. Upon determination of an acceptable site, the City will release unused sites back to the applicant. At the City's discretion, the City may waive the requirement for an on-site location, should an acceptable off-site location be acquired and cleared procedurally (e.g. CEQA, etc.) for construction. If determined to be necessary, a separate CEQA analysis shall be conducted to clear the well site for construction. The applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement.

38. **Mitigation Measure 4.3-1(a):** The applicant shall mitigate for Project-related impacts to 0.67 acre of habitat for federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service

(USFWS) guidelines regarding mitigation for Project-related impacts to vernal pool invertebrate habitat. A mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs.

39. **Mitigation Measure 4.3-2(a):** The applicant will develop and implement a plan to manage the Preserve with the objective of ensuring that the wetland and upland habitats within the Preserve core zone are maintained in perpetuity at their present condition or better, and ensuring that any activities or structures authorized within the Preserve buffer zone are consistent with preserving the integrity of the Preserve core zone.

    The Preserve shall cover approximately 7.43 acres in the northeast portion of the Project site and will include both a core zone ("wetlands area") and a buffer zone ("open space area"). The Preserve core zone shall be approximately 3.10 acres and include the 0.99 acre of seasonal wetland/vernal pool habitat and 2.10 acres of immediately adjacent annual grassland habitat. The Preserve buffer zone will cover approximately 4.33 acres and border the Preserve core zone to the north and west and provide an upland buffer to protect the Preserve core zone from adjacent land uses.

    The Management Plan shall be consistent with the terms proposed by the applicant as outlined in the EIR, with the following modifications:

    1. The conservation easement shall protect the entire 7.43 acres, not just the 3.10-acre core zone.

    2. The buffer zone shall be maintained in a natural condition and shall not be planted with non-native vegetation. Irrigation will occur only during the initial establishment of any vegetation planted at the Preserve.

    3. The U.S. Army Corps of Engineers does not need to be involved in the decision-making for removal of problematic non-native plant species.

    4. No surface runoff from other sources shall be allowed.

    5. Approval for the use of pesticides and other chemical agents must go through the U.S. Fish and Wildlife Service but need not go through the U.S. Army Corps of Engineers.

    6. "Low impact" activities shall be defined and guidance on activities not allowed shall be provided. The U.S. Army Corps of Engineers need not be involved in the decision-making.

    7. The structure of the conservation easement, including parties to the agreement, shall be to the satisfaction of the City of Winters.

    8. The U.S. Fish and Wildlife Service rather than the U.S. Army Corps of Engineers shall be given authority to enforce provisions of the Management Plan and conservation easement.

    9. The Management Plan shall include provisions for access by the Sacramento-Yolo Mosquito & Vector Control District personnel for routine surveillance of the ponded area(s) and shall identify a procedure for addressing possible vegetation management concerns should the District determine that dense vegetation growth in the wetland(s) may contribute to future mosquito outbreaks.

40. **Mitigation Measure 4.3-3(a):** The applicant shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with one of the following:

    i) If the Yolo County Memorandum of Understanding (MOU) regarding project–related impacts to Swainson's hawk foraging habitat is in full force and effect at the time the applicant seeks to satisfy this mitigation, the applicant may pay the appropriate fees allowed by this agreement. The MOU requires the applicant to mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging

habitat that is impacted by the project. A fee will be collected by the City of Winters for impacts to 102.6 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed regularly and the applicant shall be charged at the rate per acre in effect at the time. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.

ii) If the Yolo County NCCP/HCP has been adopted, the applicant shall mitigate for Swainson's hawk impacts by complying with the terms and requirements of the Plan. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.

iii) If the MOU is not in full force and effect and if the NCCP/HCP has not yet been adopted, the project applicant shall purchase and set aside in perpetuity 102.6 acres of Swainson's hawk foraging land in proximity to the City of Winters (as approved by the City) through the purchase of the underlying land and/or the development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an endowment or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit. To the extent feasible as determined by the City, identification of acceptable mitigation land shall be coordinated with the Yolo County Habitat Conservation Joint Powers Agency.

41. **Mitigation Measure 4.3-4(a):** The applicant shall conduct pre-construction surveys of suitable habitat at the Project site and buffer zone(s) within 30 days prior to initiation of construction activity. If ground disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the Project site shall be resurveyed. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the California Department of Fish and Game verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Passive relocation techniques shall be used to relocate owls, to the extent feasible. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.

42. **Mitigation Measure 4.3-4(b):** The loss of burrowing owl foraging and nesting habitat on the Project site will be offset by either acquiring and permanently protecting off-site at a location satisfactory to the City a minimum of 6.5 acres of foraging habitat (calculated on a 100 m {approx. 300 ft.} foraging radius around the burrow) per pair or unpaired resident bird or acquiring the requisite number of acres of credit at an approved mitigation bank satisfactory to the City.

    The applicant shall either acquire and protected, or mitigation credits purchased at an approved mitigation bank 19.5 acres of burrowing owl habitat. If the applicant chooses to acquire and protect land for the burrowing owl, the protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the California Department of Fish and Game and the City. If the applicant chooses to acquire and protect land for the burrowing owl, existing unsuitable burrows at the protected land shall be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1. This will require that the applicant have the Project site surveyed to determine the number of active burrows being used by the burrowing owl.

    The applicant shall provide funding for long-term management and monitoring of the protected lands should the applicant choose to pursue that option. The monitoring plan shall include success criteria, remedial measures, and an annual report to the California Department of Fish and Game and the City of Winters.

43. **Mitigation Measure 4.3-5(a):** Pursuant to General Plan Policy VI.C.2 the applicant must replace loss of riparian and wetland habitat acreage and ecological value on at least a 1:1 basis.

Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the Project. The replacement habitat must consist of locally occurring, native species and be located either at the City's Community Sports Park site north of Moody Slough Road or elsewhere as directed and approved by the City. Study expenses shall be born by the applicant.

The mitigation ratio for the 0.54 acre of seasonal wetlands that occur in the Highlands Canal shall be at a 1:1 ratio but the mitigation ratio for the 0.81 acre of wetlands that occur outside the Highlands Canal shall be mitigated at a 2:1 ratio (creation of 1.62 acres of new wetlands). The 0.81 acre of seasonal wetlands are dominated by native species and either provide known habitat or potential habitat for federally listed vernal pool crustaceans. These seasonal wetlands represent one of the few areas in the western part of Yolo County and nearby area of Solano County known to support federally listed vernal pool crustaceans.

The applicant shall develop and submit to the City of Winters a written plan that describes the actions to be taken to identify an appropriate site to construct 2.16 acres of seasonal wetlands, the construction procedures and a monitoring plan with performance criteria to document that the constructed seasonal wetlands achieve the desired habitat conditions. The format of the plan shall follow the format prescribed by the Corps of Engineers for wetland mitigation and monitoring plans. The plan shall contain the following sections:

- Detailed description of the proposed mitigation site, including the location, ownership status, presence of any jurisdictional areas, topography and hydrology of the proposed site, soils (subsurface soil information to confirm that the soils are appropriate for wetland construction), vegetation and wildlife habitat and use of the proposed site, present and historical uses of the proposed mitigation site, and present and planned use of areas adjacent to the proposed mitigation site.

- Description of the seasonal wetland habitat to be created, including the mitigation ratio, long-term goals, anticipated future site topography and hydrology, vegetation, and anticipated wildlife habitat on the proposed mitigation site.

- Performance criteria and monitoring protocol to document that the constructed seasonal wetland habitat are meeting or exceeding the performance criteria, including a detailed description of the monitoring methods and justification of the methods, the monitoring schedule and other means of documenting the development of the mitigation (e.g., photo documentation).

- An implementation plan that describes in detail the physical preparation of the site, the planting plan, irrigation (if necessary) and the implementation schedule. The surface soils at the seasonal wetlands at the Project site that support primarily native species shall be collected and used to inoculate the constructed pools, especially the three largest pools at the Project site.

- A maintenance plan that describes the actions to be taken to address or prevent adverse conditions, such as invasion by undesirable vegetation, control of erosion of bare ground. This plan shall present a maintenance schedule and identify the party responsible for the maintenance, which will be the applicant unless another party agreeable to the City of Winters is selected.

- A contingency plan that identifies measures to be taken if the constructed seasonal wetlands are not performing according to the established standards. This plan shall be adaptive and identify how monitoring data will be used to define future actions to achieve the performance criteria. The contingency plan shall also identify the funding mechanism for the initial monitoring period and the endowment that will be provided by the applicant for the long-term management of the site.

The applicant shall work with the City of Winters to identify an acceptable third-party entity (e.g., Yolo Land Trust, Wildlife Heritage Foundation) to manage the mitigation site once the initial monitoring period has been completed. The applicant will be responsible for the site until the performance criteria have been met and will work with the third-party entity to develop the long-term management endowment.

44. **Mitigation Measure 4.3-6(a):** The applicant shall mitigate for potential Project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the Project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters.

    If active raptor nests are found during the preconstruction survey, a 500-foot buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

    If an active Swainson's hawk nest is encountered during the pre-construction surveys, the buffer zone shall be 0.25 miles (1,320 feet) and it shall be fenced. This exclusion zone shall remain active until fledglings have left the nest or until such time that the biologist determines that the nest is no longer active.

45. **Mitigation Measure 4.3-9(a):** The applicant shall prepare and submit to the City for its approval a riparian restoration plan for restoring riparian trees and shrubs along a 50-foot section of Dry Creek on either side of where the outlet from the Highlands Canal is constructed. This plan shall be similar in content to the wetland mitigation and monitoring plan described for Mitigation Measure 4.3-5(a) and shall be approved by the City prior to issuance of the grading permit. The proposed modifications to Dry Creek shall be coordinated with representatives of the California Department of Fish and Game, U.S. Army Corps of Engineers, and Central Valley Regional Water Quality Control Board, as necessary, to obtain the required permits and authorizations.

Development Review Committee

46. Excess dirt from the site shall be imported to the regional park site and the regional park site shall be rough graded pursuant to the terms of the Development Agreement.

Community Development

47. All lots within 500 feet of the northwest corner of the project site shall have a deed disclosure regarding nearby agricultural uses and practices as well as the City's Right to Farm regulations. The wording and verification of the disclosure shall be approved by the City Attorney.

48. If a second well is required, the well site shall be located at or near the northwest corner of Lot V.

49. All lots adjoining the park site shall have a deed disclosure regarding typical operational and maintenance aspects of the park. The wording and verification of the disclosure shall be approved by the City Attorney.

50. To the extent feasible all builders shall engage in "green" construction practices. This shall be demonstrated to the City in conjunction with each design review.

51. Construction activities shall be limited to 7:00 am to 7:00 pm, Monday through Friday only (holidays excluded) in compliance with the City's Noise Ordinance and Standard Specifications. The applicant shall submit a Construction Noise Control Plan for review and approval by the City prior to acceptance of final map. This plan shall address job site noise control and establish protocols for addressing noise complaints. Job site signage with 24-hour contact information for noise complaints shall be included.

52. The developer shall obtain the following approvals from the Central Valley Regional Water Quality Control Board, as appropriate: 1) coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities; 2) compliance with post construction storm water Best Management Practices pursuant to the NPDES General Permit for Small Municipal Separate Storm Sewers Systems; 3) 401 Water Quality Certification for wetlands impacts; 4) Dewatering Permit under Waste Discharge Requirements General Order for Dewatering and Other Low Threat Discharges to Surface Waters Permit.

53. There shall be an onsite, resident manager at the apartment complex. This shall be recorded against the property and disclosed to all future owners. Form and substance of the disclosure and recording shall meet the prior approval of the City Attorney. Evidence that this condition has been satisfied shall be provided to the City prior to occupancy of the first unit.

54. All construction, new or remodeling, shall conform to the most currently adopted California Building Code and Winters Municipal Code.

55. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.

56. The main electrical panel for each residence shall be located at the exterior of the residence and capable of total electrical disconnect by a single throw.

57. All address numbering shall be clearly visible from the street fronting the property. All buildings shall be identified by either (4) inch high illuminated numbers or six (6) inch high non-illuminated numbers on contrasting colors. For residences on alleyways, the address numbering shall appear on the front and rear of the structure. Naming of streets and address numbering shall be completed by a Street Naming Committee comprised of the Community Development Department, the Fire District, the Police Department, and the Postal Service.

58. The applicant shall pay all development impact fees, fees required by other entities, and permit fees.

59. The applicant shall be responsible for any additional costs associated with the processing of this project including but not limited to: plan check, inspections, materials testing, construction monitoring, and other staff review and/or oversight including staff time necessary to ensure completion/satisfaction of all conditions of approval and mitigation measures. The applicant shall, on a monthly basis, reimburse the City for all such costs. Project applicant shall pay all development impact fees adopted by the City Council and shall pay fees required by other entities.

Design Review

60. Prior to recordation of the Final Map, a deed restriction shall be recorded against each property that precludes conversion of garage area to livable areas.

61. In order to achieve architectural diversity, the developer shall offer five floor plans and 25 elevations (five per plan).

62. A minimum of half of the required elevations shall include brick or stone veneer installed to a minimum height three feet from grade, with no more than a four-inch opening at the base between the grade and the start of the masonry. The veneer shall wrap around all sides of the structure visible from the front and sides so that it terminates at a point where the yard fencing begins.

63. Each elevation for a particular floor plan shall be distinctive, with a unique roof design, architectural detailing, and application of exterior materials. Single story and two-story plans shall be varied.

64. The same (or substantially similar) elevation may appear no more than twice on one side of a block, or three times on either side of facing blocks, and may not be opposite or kitty-corner from the same elevation on the opposite side of the block. In addition, no more than ten percent of the homes can share the same elevation within a development.

65. A minimum of 50 percent of all detached units shall have useable front porches (minimum 6-feet by 8-feet). The remaining 50 percent shall have other prominent useable architectural features such as courtyards, balconies, and/or porticoes.

66. Units on opposing sides of a street shall be compatible in terms of design and color.

67. Lights along local streets shall not exceed 20-feet in height and shall be spaced to meet illumination/safety requirements. Lights along collector and arterial streets shall be as low as feasible in order to maintain pedestrian scale. Historic-style street lamps shall be used along all streets.

68. Entry walks to individual residences shall be separated from the driveway by a landscaped area.

69. Exterior colors on residential units shall not be restricted.

70. Single family structures shall be consistent with applicable development standards identified in Tables 3A and 4, and Section 8-1.5302, of the Zoning Ordinance unless otherwise modified through the PD Permit in subsequent Design Review approvals.

71. The apartment project shall be consistent with Section 8-1.5306 of the Zoning Ordinance.

72. Fencing and parking shall be consistent with the applicable requirements of Section 8-1.6001 and 8-1.6003 of the Zoning Ordinance.

73. Landscaping and signage shall be consistent with the applicable requirements of Section 8-1.6004 and 8-1.6005 of the Zoning Ordinance.

74. A separate site plan approval and design review approval is required for the apartment project.

75. A separate site plan approval and design review is required for the on-site park.

76. Universal design features shall be incorporated as an option in residential units. These features shall include first floor passage doors and hallways, a handicap accessible path of travel from either the driveway or sidewalk to the entrance of the residential units, and other features determined by the Community Development Department.

77. The applicant shall ensure that lots along West Main Street receive special design and architectural treatment to showcase neo-traditional principles along this new segment of the City's original Main Street. Front doors for all lots that adjoin West Main Street (front-on or side-on) shall open onto West Main Street. Side-on homes shall include wrap around porches. There shall be no driveways onto West Main Street.

78. A site plan for Lots Z-1 and Z-2 and landscaping plans for the entire project shall be submitted for design review and approval by the City prior to acceptance of the final map.

79. Landscaping improvements shall be developed at the same time as adjoining lots, and shall be completed to the City's satisfaction prior to occupancy of adjoining lots.

80. The following lots shall have wrap-around porches with front doors facing the park: 154, 168 (east), 169, 188, 221 (east), 240 (east), 262, 263, 288, 289, and 312 (east). The following lots shall have wrap-around porches with front doors facing the park and driveways on the local street: 155, 220, 239, and 311.

81. Details for side yard fencing along West Main Street and Taylor Street shall be provided for City review and approval as a part of subsequent Design Review for the project. Height, materials, setback, and landscaping shall be considered in light of the visibility of those areas from proposed bicycle trails along those streets.

82. Alley loaded garages shall have rear lighting that illuminates the alley. Style and wattage of fixtures shall be subject to City review and approval for both safety and aesthetic purposes as a part of subsequent Design Review for the project. Project CC&Rs shall specify the requirement for these fixtures to be maintained, and kept lit during evening hours, by the resident.

83. Duplex lots shall driveways and front doors on opposite street frontages.

Affordable Housing

84. Prior to recordation of the Final Map, an inclusionary housing agreement shall be prepared and executed for the identified income-restricted units/properties. Deed restrictions shall be recorded against each income-restricted lot (including Lot A) property to ensure permanent affordability.

85. Of the 66 affordable units, 26 shall be restricted to very low income occupants and 40 shall be restricted to low/moderate income occupants (comprised of 25 low income units and 15 moderate-income units). These lots shall not be the same lots as those identified to meet the City's local builder requirement. The low/moderate split shall be determined by the City.

86. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.

87. Fifty percent of the affordable for-sale (single family) units shall have 3 bedrooms and 2 baths and fifty percent shall have 4 bedrooms and 2 baths. The same requirements shall apply to the affordable apartment units.

88. Pursuant to Policy II.A.13 of the Housing Element, the affordable units shall be visually indistinguishable from the market-rate units.

Street Improvements

89. All proposed roads within the subdivision shall comply with the City's Public Works Improvement Standards and Construction Specifications, dated September 2003.

90. West Main Street:

a) Full improvements shall be constructed from the northern terminus of existing West Main Street to the proposed Moody Slough Road with the first final map on the project. Applicant shall acquire the necessary right of way on the Callahan property prior to approval of the first final map.

b) The proposed West Main Street cross-section was previously approved with the Callahan Estates Subdivision as an 80-foot right-of-way comprised as follows: a 10-foot Class I bikeway with 2-feet of clearance and 14-foot landscape strip on the west side, an 8-foot parking lane on both sides, a 12-foot travel lane on both sides, and an 8-foot landscape strip with 6-foot sidewalk on the east side.

c) The project proponent shall install a traffic signal at the Grant Avenue and West Main Street intersection prior to the issuance of the 50th building permit. Signal is currently being designed and constructed by the Callahan Development. If signal is not constructed by the Callahan

Development, the Signal is to be constructed at applicant's expense subject to a reimbursement from the City Development impact fees.

d) Applicant shall provide all necessary right-of-way and construct a traffic roundabout at the intersection of West Main Street and Niemann Street as approved by the City Engineer.

91. Taylor Street:

a) If the Callahan property is not developed prior to the development of Phase III and IV of the Winters Highlands Project, then the Applicant will be required to acquire the land on the Callahan property in order to facilitate the full construction of Taylor Street as shown on the Tentative Map. Applicant shall acquire the needed right-of-way prior to final map on Phase III and Phase IV.

b) Taylor Street, along the east side of the linear park, is a "Secondary Collector" with a 66-foot cross-section comprised as follows: 3-feet of the 10-foot Class I bikeway plus a 10-foot landscape strip one the west side, a 7-foot parking lanes on both sides, a 13-foot travel lane on both sides, and an 8-foot landscape strip and 5-foot sidewalk on the east side. The remaining 7 feet of the Class I bikeway is proposed to be located within the linear park, immediately adjoining the street right-of-way.

c) At the intersections of Taylor Street/Niemann Street and Taylor Street/Anderson Avenue, each corner will "bulb out" and the pedestrian crossings will be raised, textured concrete.

92. Valley Oak Drive:

a) Valley Oak Drive shall be extended within the limits of the Winters Highlands Property. The proposed alignment involves location of a portion of the roadway on property owned in fee by PG&E. Applicant shall obtain approval by the Public Utilities Commission (PUC) and shall acquire all necessary easements and rights of way across the PG&E property prior to the first final map approval on the project. It is anticipated that connection to existing Valley Oak Drive will occur with the final phase of the project. However, this connection shall be constructed sooner if required by the City Engineer.

b) Traffic calming measures shall be constructed on Valley Oak Drive. Applicant shall submit a traffic-calming plan prior to approval of first final map for the project.

c) Valley Oak Drive is proposed as a "Modified Primary Collector" with a 64-foot cross-section comprised as follows: a 10-foot Class I bikeway with 2-foot clearance, 6-foot landscaping strip, and 14-foot travel lane on the west side, and a 12-foot travel lane, 7-foot parking lane, 8-foot landscape strip, and 5-foot sidewalk on the east side.

93. Moody Slough Road: For the segment west of West Main Street, Moody Slough Road is proposed as a "Primary Collector". The Applicant shall construct the ultimate cross-section to 93-feet comprised of a 5-foot sidewalk on the south side, 8-foot landscape strips on both sides, 8-foot parking lanes on both sides, 15-16-foot travel lanes on each side, a 12-14-foot median, and a 10-foot Class I bike path with 2-feet of clearance on the north side. To allow for the Ped/Bike pathway to connect to the subdivision, an interim street cross section will not be allowed for this segment of Moody Slough Road.

For the segment east of West Main Street, Moody Slough Road is proposed as a "4-Lane Arterial". The ultimate cross-section shall be 126-feet comprised of a 10-foot landscape strip on the south side and 6-foot sidewalk on the south side, 8-foot landscape strips on both sides, 6-foot bike lanes on both sides, two 13-foot travel lanes on each side, a 14-foot median, and a 10-foot Class I bike path with 2-feet of clearance on the north side. An interim cross-section of 81- feet is proposed comprised of a total of 18-feet of landscaping, a 6-foot sidewalk, and a 6-foot bike lane on the south, 33-feet of pavement on the south, and a 13-foot travel lane and 5-foot shoulder on the north.

94. Niemann Street: Niemann Street is shown to extend from the existing Niemann Street at the east property line to proposed Valley Oak Dr. Within the project boundaries, Niemann Street shall be constructed in conjunction with the appropriate phase of the project. Niemann Street is a "Secondary Collector" with a 76-foot cross-section comprised of a 5-foot sidewalk on the south side, an 8—foot landscape strip on the south and an 11-foot landscape strip on the north, a 7-foot parking lane on both sides, a 13-foot travel lane on both sides, and a 10-foot Class I bikeway with 2-feet of clearance on the north side. The extension of Niemann Street from W. Main Street to the westerly terminus of existing Niemann Street will be extended with the first phase (Final Map) of development. if the Callahan Property is not developed prior to the development of Phase III of the Winters Highlands project then the Applicant will be required to extend Anderson Ave. to the west to connect to W. Main Street.

95. Anderson Avenue: Anderson Ave. from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the first phase (first Final Map) of the Winters Highlands project to serve the existing Middle School on Anderson Ave. In addition, if the Callahan Property is not developed prior to the development of Phase III of the Winters Highlands project then the Applicant will be required to extend Anderson Ave. through the Callahan Property to the west to connect to W. Main Street. Applicant shall acquire the needed right-of-way prior to approval of the final map for Phase III. Anderson Street is a local residential street with a 66-foot cross-section to account for the proposed Class I bikeway. The cross-section shall be comprised of the following: a 10-foot Class I bikeway with 2-foot clearance and 8-foot landscape strip on the south side, a 7.5-foot parking lane on each side, a 10-foot travel lane on both sides, and a 6-foot landscape strip with 5-foot sidewalk on the north side.

96. "D" Street: Between Taylor Street and West Main Street, the Applicant shall be required to acquire the land on the Callahan property prior to approval of a final map for Phase I, in order to facilitate the full construction of "D" Street as shown on the Tentative Map during Phase I of the project. "D" Street between Taylor and Valley Oak Drive shall be constructed to Local Street standards no later than the completion of Phase III development

97. G" Street: G Street is proposed to be a standard local City street with a 57-foot cross-section. South of the park however, it should be noted that the City will require an expanded cross-section to be determined by the City Engineer.

98. J Street, which would run along the west side of the linear park, will be a standard local City street with a 57-foot cross-section.

99. Intersection Enhancement Details: Island Planters and crosswalks shall be constructed of colored brick pavers, stamped concrete or other enhanced feature as approved by the City Engineer.

100. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA.

101. Alleys: All Alleys shall be 26' wide back of curb to back of Curb. Final pavement structural shall require City Engineer approval, but in no case shall the section be less than that specified in the City of Winters Improvement Standards with the addition of Type A Asphalt Concrete

102. All Asphalt Concrete Pavement shall be Type A and Aphalt Grade shall be AR-8000 or equivalent Performance Grade.

103. Tentative Map Street Cross-Sections, Conditions and Changes shall be made as follows:

a) Street Section (Local): Add all street names to the detail heading.

b) ADD NEW STREET CROSS SECTION- Moody Slough Road (East of Project Boundaries): Street cross section shall clearly depict primary collector improvements to be constructed per the conditions of approval for Moody Slough Road.

c) ADD NEW STREET CROSS SECTION- Niemann Street (East of West Main Street): Depict full improvements

d) ADD NEW STREET CROSS SECTION- Anderson Avenue (East of West Main Street): Depict full improvements

e) Street Cross section details, including all intersection geometric design, complying with the conditions of approval, shall be revised on tentative map, submitted to the City, and approved by the City Engineer prior to submitting a final map and improvement plans.

f) Additional traffic studies shall be performed for subsequent phases as required by the City Engineer. The City has the option to perform the studies at Applicant's expense.

g) A signing and striping, and stop sign plan is required and shall be approved by the City Engineer. All signing and stripping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.

h) Street light types shall be those historic types as approved by the City. Applicant shall fund the analysis for designing standards and details for spacing historic lights. Improvement plans shall be designed to those standards once approved.

Storm Drainage and Site Grading

104. A comprehensive storm drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to existing downstream facilities and to prevent additional flooding at off-site downstream locations. All necessary calculations and assumptions and design details shall be submitted to the City Engineer for review and approval. The design features proposed by the applicant shall be consistent with the most recent version of the City's Storm Drainage Master Plan criteria and City Public Improvement Standards. The plan shall incorporate secondary flood routing analysis and shall include final sizing and location of on-site and off-site storm conduit channels, structures. The Storm Drainage Plan shall be submitted for approval prior to submittal of the first final map and/or construction drawings for checking. The applicant shall pay the cost associated with all improvements required by the plan and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement.

105. A topographic survey of the entire site and a comprehensive grading and drainage plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading and drainage plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

106. The Tentative map Grading and Drainage plan showing grading and drainage information including topographic information, drainage routing, pipe slopes and sizing and locations and excluding topographic information, and overland drainage routing are preliminary only and do not constitute approval in any way. Final approval for the grading and Drainage Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.

107. To accommodate the Winters Highlands Flood Overlay area into the existing Rancho Arroyo Pond the applicant shall be required to construct a pump station in the pond that would consist of an approximate sized 14.5 cfs of pumping capacity. The applicant would also be required to fund and

construct all storm drainage piping to accommodate flows from their project area to include a new inlet structure to the Rancho Arroyo detention pond and the abandonment of the existing inlet structure on the Cottages at Carter Ranch property. In addition, the existing 0.8 cfs detention pond pump and standpipe would be removed. Applicant shall be required to construct these improvements with the first final map. Applicant shall be required to acquire necessary land and for and right of entry agreements for the construction of new improvements and abandonment of existing improvements. The cost of work performed in and for the improvement of the Detention Basin shall be subject to fee credits and/or reimbursement, as determined by the City. If the improvements are already constructed by others, the Applicant shall pay its pro-rata share of costs, as determined by the City, prior to approval of the first final map.

108. By allowing the project General Plan Flood Overlay Area to be redirected into the Rancho Arroyo Pond with improvements to the pond, does not eliminate the requirement for the Project to pay into the Flood Overlay Area Storm Drainage Fee. The proposal to develop in the Flood Overlay Area, and remove portions of the development from the Flood Overlay Area will require City Council approval, and amendment to the General Plan and Rancho Arroyo Drainage Shed.

109. Applicant shall be required to coordinate with FEMA through the City's Floodplain Administrator to determine if a CLOMR or LOMR is needed for the project as a result of possible impacts to Dry Creek or Putah Creek Flood Plain. Applicant shall obtain all necessary permits and CLOMRs/LOMRs as required prior to First Final Map approval.

110. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls.

111. Drainage fees shall be paid prior to issuance of a building permit.

112. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.

113. If disposal and sharing of the excavated soil from the construction of the Development occurs, prior to approval of the first Final Map, Applicant shall prepare a written agreement with the other participating property owners and submit to the City.

114. All projects shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.

115. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.

116. Applications/projects disturbing less than one acre of soil shall implement BMP's to prevent and minimize erosion. The improvement plans for construction of less that 1 acre shall include a BMP to be approved by the City Engineer.

117. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP). .

118. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.

119. Landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.

120. Applicants for projects draining into water bodies shall obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the Regional Water Quality Control Board prior to commencement of grading.

121. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.

122. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.

123. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.

124. Construction equipment and engines shall be properly maintained.

125. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.

126. Construction practices will minimize vehicle idling.

127. Potentially windblown materials will be watered or covered.

128. Construction areas and streets will be wet swept.

Wastewater and Sewer Collection System

129. The applicant shall obtain a no-cost Wastewater Discharge Permit from the Public Works Department prior to the issuance of a Building Permit.

130. The property shall be connected to the City of Winters sewer system, with a separate sewer lateral required for each parcel, in accordance with City of Winters Public Improvement standards and Construction Standards.

131. A Tentative Map Sewer comprehensive Collection System Master Plan shall be submitted for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. A registered civil engineer for project shall prepare the sewer collection system plan. The plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate those developments.

132. The applicant shall pay the cost associated with all improvements required by the study, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

133. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.

134. The Applicant shall be obligated to advance fund the construction of the off-site sewer pump station identified on West Main Street Adjacent to the entrance to the Rancho Arroyo Detention Pond. The City has the option of requiring the Applicant to design and construct the Pump Station or have the City design and construct the pump station at the Applicant's expense. An appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on

a pro rata basis per the Project level Development Agreement. Applicant shall be required to acquire the needed right-of-way prior to approval of the first final map for the project. If the improvements are already constructed by others, the Applicant shall pay its pro-rata share of costs, as determined by the City, prior to approval of the first final map.

135. Prior to approval for use of the City's existing force main pipe, Applicant shall assess the capacity and physical condition of the force main and obtain City Engineer approval for use on the project. If the force main cannot be used, the Applicant shall be required to construct a new force main to the WWTP.

136. The Developer acknowledges and agrees that, notwithstanding any provision contained in the Development Agreement, the Land Use Entitlements or the Conditions of Approval to the contrary, the City shall not be required to approve or record a Final Map for any Phase of the Winters Highlands Subdivision until and unless the City Engineer determines, in his/her sole and absolute discretion, that the WWTP has adequate capacity to serve all residential units and other buildings to be constructed within that Phase of the Winters Highlands Subdivision.

137. Construction of deep sewer mains shall be connected to laterals by a parallel mains and connections at Manholes.

Water Infrastructure

138. All materials and installation of the water system shall be at the applicant's expense per City of Winters Public Improvement Standards and Construction Standards.

139. If required, per SB221, project Applicant shall obtain a Water Verification (WV) prior to approval of final ma p that addresses the following:

    a. Actual water service to the subdivision will be predicated upon satisfaction of terms and conditions set by the water supplier

    b. The WV is non-transferable, and can only be used for the specific tentative map for which it was issued.

    c. The WV shall expire along with the tentative map subdivision map if a final map is not recorded within time allowed under law

    d. Until such time as actual service connections are approved for the subdivision, the water agency may withhold water service due to a water shortage declared by the water agency.

140. Based on City water modeling, a new well is needed to serve the first phase of development. A new well is being constructed by the Callahan Estates Development. Developer shall pay its fair share obligation in accordance with the Development Agreement. If a second well is required, Developer shall advance fund the construction of a second water well and required water system conveyance pipelines with the project. Developer shall enter into a reimbursement agreement in accordance with the terms of the Development Agreement for reimbursement of costs above its fair share obligation for funding the design and construction of a second well. Per Mitigation Measure **#15**, the applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units..

141. The Applicant shall submit a well site plan with facility elevations for City approval with the first final map application.

142. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. Applicant shall pay for all required water modeling for identifying water infrastructure needs to serve its development and shall construct offsite water improvements to connect to the City water distribution system.

143. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection Fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the City Engineer.

144. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the City Engineer or his designated agent.

145. Per the City of Winters Cross Connection Control Program, fire protection systems are required to maintain approved backflow prevention, at the applicant's expense. Required location, service size and flow-rate for the fire protection system must be submitted. Actual location is subject to the review and approval of the Public Works Department, Fire Department, and Community Development Department.

146. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.

147. FINAL PLANS, PERIODIC TESTS FOR FIRE HYDRANTS: All final plans for fire hydrant systems and private water mains supplying a fire hydrant system shall be submitted to the City of Winters Fire Department for approval prior to construction of the system. All fire protection systems and appurtenances thereto shall be subject to such periodic tests as required by the City of Winters Fire Department.

148. WATER PRESSURE: All water lines and fire hydrant systems must be approved by the Fire Chief and operating prior to any construction taking place on the site. Prior to issuance of building permits, water flow must be measured and certified for adequacy by the Winters Fire District. The following minimum water flows, with 20 PSI residual pressure, shall be acceptable unless otherwise determined due to the type of construction material used.

149. REFLECTORS FOR FIRE HYDRANTS: Any fire hydrant installed will require, in addition to the blue reflector noted in Standard Drawings, an additional blue reflector and glue kit that is to be supplied to the Winters Fire Department for replacement purposes.

150. MEDIANS, FIRE HYDRANT PLACEMENT: When Median strip is to be installed in the center of a street; the fire hydrant will be spaced not more that 300 feet on both sides of the divider on the curb side of the street. Final approval and approval of any changes is the responsibility of the City Engineer.

151. All Construction, new or remodeling, shall conform to the most current Uniform Fire Codes, the Winters Fire Prevention Code, and section of the National Fire Codes that the Winters Fire Chief or his/her agent may find necessary to apply.

152. Prior to approval of the first final map, a comprehensive on-site water system master plan shall be prepared by a registered civil engineer for project, and shall be submitted to the Public Works

Director for review and approval. The master plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate the plan area. The applicant shall pay the cost associated with all improvements required by the study, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

153. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.

154. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.

155. When the fire protection facilities are in the City of Winters, the developer shall contact the Winters Fire District Chief or his/or agent prior to construction for a pre-construction meeting.

156. All required fire accesses that are to be locked shall be locked with a system that is approved by the Fire Chief or his/her agent.

157. Submit three sets of plans for each fire suppression sprinkler system to the Fire Department for review and approval prior to the issuance of each building permit.

158. All residences shall have fire suppression sprinkler systems meeting or exceeding NFPA 13-D and local Fire Department standards. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems.

General Public Works and Engineering Conditions

159. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City; state and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.

160. The applicant agrees to adhere to the terms of the of the ordinance (Ordinance No. 96-02) adopted by the City Council to address impact fees to be paid for development of property within the Rancho Arroyo Drainage District, to offset costs associated with drainage improvements.

161. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

162. A subdivision map (Final or Parcel) shall be processed and shall be recorded prior to issuance of a Building Permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the final map from the County, prior to issuance of the first building permit.

163. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.

164. A registered landscape architect shall design landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.

165. Applicant shall make every attempt to submit joint trench/utility/composite plans for review, prior to approval of the final map and improvement plans. Construction will not be allowed to proceed prior to submittal of the joint trench/utility/composite plans for City review.

166. All existing and proposed utilities (Electric, phone/data, and cable) shall be installed underground per the subdivision ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers.

167. Street lighting location plan shall be submitted and approved by the Department of Engineering, prior to approval of improvement plans and final recordation of Map.

168. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City of Winters City Engineer and Fire Department

169. Occupancy of residential units shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings, unless otherwise approved by the City Engineer and Community Development Director. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.

170. If relocation of existing facilities is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.

171. A Subdivision Improvement Agreement shall be entered into and recorded prior construction of improvements, issuance of any building permits, or recordation of a final map.

172. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the final map.

Easements and Right of Way

173. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.

174. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.

175. A ten (10) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City and may be required elsewhere as requested by the utility companies and approved by the City.

176. Per the project level Development Agreement, prior to approval of first set of improvement plans and final map, Applicant shall acquire all rights of way and easements necessary to construct off-site and on-site improvements associated with the tentative map.

Reimbursements for Applicant Install Improvements

177. Applicant shall pay appropriate reimbursements for benefiting improvements installed by others, in the amount and at the time specified by existing reimbursement agreements.

Landscaping and Lighting

178. Project proponents shall enter into the City wide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of parks, open space, street lighting, landscaping, sound walls, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to the sale of any buildable lots or parcels within the project area.

179. Applicant of multi-family residential, commercial and industrial project shall provide refuse enclosure detail showing bin locations and recycling facilities to the approval of the Public Works Department.

180. Prepare, and submit for approval, a utility site plan prior to preparation of full improvement plans.

181. Prepare improvement plans for any work within the public right-of-way and submit them to the Public Works department for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Developer shall provide, to the City Engineer, one Mylar original and four sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer.

182. Each residence in the cul-de-sac must be able to accommodate parking for 3 vehicles: either (3) on site parking spaces or two (2) on site spaces and (1) on street space. The on street space shall be along the frontage of the subject property with no more than a 10-foot overlap across the frontage of adjacent parcels.

183. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.

184. Existing public and private facilities damaged during the course of construction shall be repaired by the subdivider, at his sole expense, to the satisfaction of the City Engineer.

185. The area of each lot, in square feet, shall be calculated and shown on the Final Map.

186. Encroachment permits if necessary from will be acquired from Yolo County, Cal-Trans, and PG&E.

187. All utility poles that are to be relocated in conjunction with this project shall be identified on the improvement plans, with existing and proposed locations indicated.

188. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.

189. Prior to recording of the final map, if required, provide evidence of payment for the Habitat Mitigation Fee. This fee is paid to the Yolo County Planning Department.

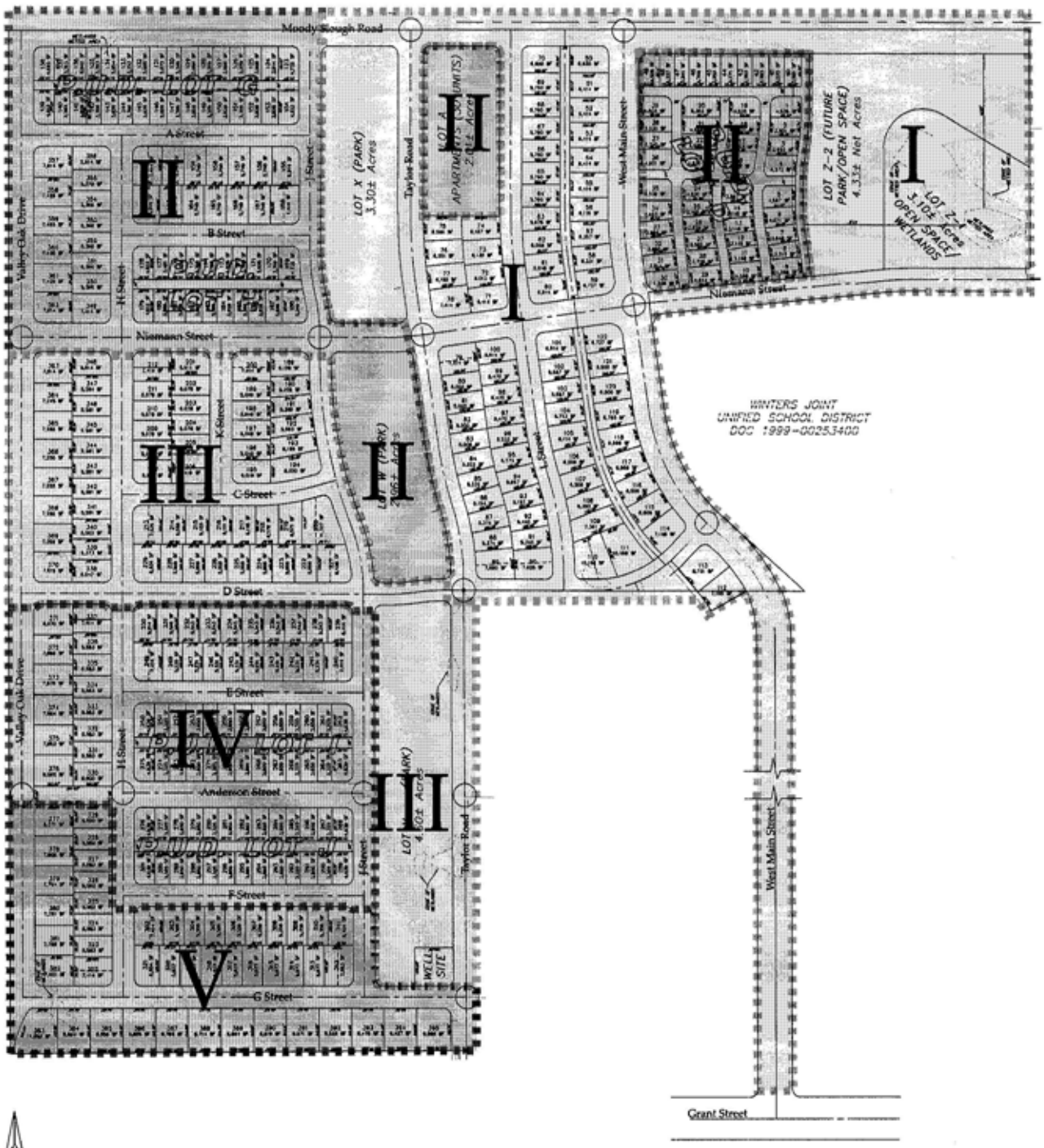
190. If improvements are constructed and/or installed by a party or parties other than the Applicant, which improvements benefit Applicant's property, prior to issuance of a building permit (approval of the final map) on Applicants property, Applicant shall pay a proportionate share of the costs of said improvements, including interest, prior to the issuance of building permit(s) (approval of the final map) to Applicant.

191. Moisture sensors shall be installed on the 14-foot parkway strips located along West Main Street.

WINTERS HIGHLANDS

Winters, CA
Granite Bay Holdings, LLC.

PHASING MAP



February 2006

Winters Higlands Phasing Schedule	
Year	Number of Dwelling Units Per Year
1	69
2	127
3	54
4	83
5	44
6-10	25 Per Year

7003

NOV 07 2005

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Reply to: Laguna Hills Office
Our File No. 25.27

November 4, 2005

VIA U.S. MAIL

Mr. Mark Mudgett, Project Manager
Granite Bay Holdings, LLC
4230 Douglas Boulevard, Suite 100
Granite Bay, CA 95746

Re: GBH-Winters Highlands and Winters Joint Unified School District

Dear Mr. Mudgett:

Enclosed is the Mutual Benefit Agreement and Memorandum between GBH-Winters Highlands and Winters Joint Unified School District District. Please have these documents signed and notarized. Upon completion please return to this office and we will secure our client's signature and provide you a conformed copy.

Please call me if you have any questions. Thank you.

Very truly yours,

PARHAM & RAJCIC

Pamela A. Dempsey
Attorney at Law

PAD/mp
Enclosures

7003.12.16

When Recorded, Return to:

Winters Joint Unified School District
909 West Grant Avenue
Winters, CA 96594

Exempt: Government Code §5103

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2006-0005313-00
Check Number 2640
REQD BY PARHAM & ASSOC INC
Wednesday, FEB 08, 2006 10:12:00
Ttl Pd $34.00 Nbr-0000623372
LUP/R8/1-10

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT
BETWEEN GBH-WINTERS HIGHLANDS, LLC., AND
WINTERS JOINT UNIFIED SCHOOL DISTRICT

This Memorandum of Mutual Benefit Agreement is entered into on this 18th day of November, 2005, by and between Winters Joint Unified School District, of Yolo County, California, a body politic, with an office at 909 West Grant Avenue, Winters, California, (hereinafter referred to as "District"), and GBH-Winters Highlands, LLC ("Developer") the owner and developer of certain real property hereinafter referred to as the Granite Bay Parcel (Yolo County Assessor's Parcel No. 030-220-17-1, 030-220-19-1, 030-220-33-1, 030-361-01-1) and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

1. District and Developer entered into a Mutual Benefit Agreement ("Agreement") on the 18th day of November, 2005, for the purpose of reaching an agreement covering developer-mitigation impact fees necessitated by the expected impact on the District by the proposed construction and occupancy occurring on, in or about the property described on Exhibit "A." All of the foregoing is set forth in the Agreement.

2. The term of the Agreement is indefinite with no termination date.

3. The Property which is the subject of the Agreement is described in Exhibit "A" attached hereto.

4. The duties, promises and covenants set forth in the Agreement are binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Mutual Benefit Agreement as of the day and year first above written.

Winters Joint Union School District

By: Dale J. Mitchell
Name: Dale J. Mitchell
Title: Superintendent

GBH-Winters Highlands, LLC

By:
Name: Larry J. John D. Rick Cheney
Title: Managing Members

11/3/2005

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MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

State of California
County of Placer

On Nov. 18, 2005, before me, Melinda G. Brovelli, Notary Public, personally appeared arry J. John and Rick Cheney, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Melinda G. Brovelli (SEAL)
Notary Public

My commission expires: April 6, 2008

MELINDA G. BROVELLI
Commission # 1481138
Notary Public - California
Sacramento County
My Comm. Expires Apr 6, 2008

State of California
County of Yolo

On 12/6/05, before me, Laura M. Smith Notary Public, personally appeared Dale J. Mitchell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Laura M Smith (SEAL)
Notary Public

My commission expires: Feb 24, 2008

LAURA M. SMITH
Commission # 1472156
Notary Public - California
Yolo County
My Comm. Expires Feb 24, 2008

802300v1 04691/0011

005313 FEB -8 06

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED PARTIALLY IN THE UNINCORPORATED AREA AND PARTIALLY IN THE CITY OF WINTERS, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 1 THROUGH 21, INCLUSIVE, MOSBACHER TRACT NO. 1, FILED November 5, 1919, IN BOOK 3 OF MAPS, PAGE 34, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED IN THE DEEDS TO THE CITY OF WINTERS, RECORDED January 25, 1990, IN BOOK 2091 OF OFFICIAL RECORDS, PAGE 446 AND 450.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED IN THE DEED TO WINTERS JOINT UNIFIED SCHOOL DISTRICT, RECORDED AUGUST 13, 1999, INSTRUMENT NO. 25340, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE FOLLOWING:

A) 50% OF ALL OIL, GAS, MINERALS RIGHTS LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF SAID LAND FOR EXPLORING/ EXTRACTING OR ANY OTHER PURPOSE, AS RESERVED IN THE DEED EXECUTED BY CECIL MOSBACHER, ET AL., RECORDED AUGUST 25, 1976, IN BOOK 1207 OF OFFICIAL RECORDS, PAGE 140.

B) AN UNDIVIDED 12.5% INTEREST IN AND TO ALL OIL, GAS, MINERALS AND MINERAL RIGHTS LYING BELOW A DEPTH 500 FEET FROM THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND FOR EXPLORING, EXTRACTING OR ANY OTHER PURPOSE, AS GRANTED TO DANIEL K. DOWLING IN THE DEED RECORDED November 8, 1977, IN BOOK 1276 OF OFFICIAL RECORDS, PAGE 611.

C) AN UNDIVIDED 12.5% INTEREST IN AND TO ALL OIL, GAS, MINERALS AND MINERAL RIGHTS LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND, BUT WITHOUT HOWEVER, THE RIGHT TO USE THE SURFACE OF THE HEREIN ABOVE DESCRIBED LAND FOR EXPLORING, EXTRACTING OR ANY OTHER PURPOSE, AS GRANTED TO PETER F. ANDERS IN THE DEED RECORDED November 8, 1977, IN BOOK 1276 OF OFFICIAL RECORDS, PAGE 612.

D) AN UNDIVIDED 25% INTEREST IN AND TO ALL OIL, GAS, CASINGHEAD GAS, ASPHALTUM, AND OTHER HYDROCARBONS, AND ALL CHEMICAL GAS, NOW OR HEREAFTER FOUND SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING MORE THAN FIVE HUNDRED FEET (500) BELOW THE SURFACE THEREOF, TOGETHER WITH THE RIGHT TO SLANT DRILL FOR AND REMOVE ALL OR ANY OF SAID OIL, GAS CASINGHEAD GAS, ASPHALTUM AND OTHER HYDROCARBONS AND CHEMICAL GAS LYING BELOW A DEPTH OF MORE THAN AVE HUNDRED FEET (500) VERTICAL DISTANCE BELOW THE SURFACE THEREOF, AS RESERVED IN THE DEEDS EXECUTED BY MELVIN M. NORMAN CONSTRUCTION, INC., ET AL., RECORDED MARCH 26, 1990, IN BOOK 2106 OF OFFICIAL RECORDS, PAGES 251, 253, AND 267.

APN: 030-220-17-1; 030-220-19-1; & 030-220-33-1

0053 13 FEB-8 90

PARCEL B:

A PORTION OF LOT 4, CARPENTER BRO'S. SUBDIVISION OF A PORTION OF SECTION 20, TOWNSHIP 8 NORTH, RANGE 1 WEST, M.D.B. & M., ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED January 2, 1894, IN BOOK 1 OF MAPS, PAGE 22, YOLO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

3

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4, WHICH POINT IS ALSO THE QUARTER SECTION CORNER OF THE EAST LINE OF SAID SECTION 20; RUNNING THENCE WEST, ALONG THE NORTH LINE OF SAID LOT, A DISTANCE OF 42 FEET; THENCE EAST AT RIGHT ANGLES A DISTANCE OF 160 FEET TO THE EAST LINE OF SAID LOT 4; THENCE NORTH ALONG SAID LINE A DISTANCE OF 42 FEET TO THE POINT OF BEGINNING.

APN: 030-361-01-1

APN: 030-220-17-1, 030-220-19-1, 030-220-33-1, 030-361-01-1

005313 FEB -8 05

4

MUTUAL BENEFIT AGREEMENT BETWEEN

GBH-WINTERS HIGHLANDS, LLC

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS MUTUAL BENEFIT AGREEMENT ("Agreement") is entered into this 18th day of November, 2005, by and between

GBH-WINTERS HIGHLANDS, LLC, a California limited liability company,
hereinafter referred to as "*Developer*"

whose address is
4230 Douglas Boulevard, Suite 100, Granite Bay, CA 95746

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter
referred to as "the District"
whose address is
909 West Grant Avenue, Winters, CA 96594

RECITALS:

A. WHEREAS, *Developer* is the owner and developer of certain real property commonly referred to as the Granite Bay Parcel located in the City of Winters, California described on Exhibit "A", attached hereto and incorporated herein by reference (Yolo County Assessor's Parcel Nos. 030-220-17-1, 030-220-19-1, 030-220-33-1, 030-361-01-1) (hereinafter "the Granite Bay Parcel"); and

B. WHEREAS, the Granite Bay Parcel is located within the boundaries of the District; and

C. WHEREAS, *Developer* represents to the District that it proposes to construct residential dwelling units on the Granite Bay Parcel consisting of a total of Four Hundred Thirteen (413) single family residential units and Thirty (30) multifamily residential units. Of these 443 residential units, twenty six (26) shall be constructed for very low-income households and forty (40) shall be constructed for low to moderate-income households; and

11/3/2005

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D. WHEREAS, the District's facilities are currently at capacity and the District has the authority to levy fees on developers to mitigate the impact that future development will have on the District's school facility needs within certain limits prescribed by law; and

E. WHEREAS, the District is currently levying fees pursuant to Government Code section 65995.5 ("Level II fees"); and

F. WHEREAS, *Developer* and the City of Winters ("the City") are intending to enter into a development agreement ("the Development Agreement") concerning the development of the Granite Bay Parcel, which, among other things, will provide for the voluntary payment by *Developer* of additional impact fees to the District of the equivalent of Level III fees on Four Hundred Seventeen (417) residential units in the Granite Bay Parcel; and

G. WHEREAS, *Developer* and the District desire to set forth the agreements between them in writing so that this agreement ("Agreement") may be enforced by the District.

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, the District and *Developer* do hereby agree as follows:

1. *Developer* agrees to mitigate the impact on District facilities as a result of the development of the Granite Bay Parcel by the payment directly to the District of the equivalent of Level III fees in effect as of the date of payment as specifically described herein, which will be payable in two installments as follows:

A. Payment of the equivalent of Level II fees which are in effect at the time Developer seeks issuance of a building permit from the City, covering the square footage of residential construction for each residential unit, to be payable to the District prior to the time a building permit is issued.

B. Payment of additional voluntary fees to be calculated as the difference between the first installment of Level II fees previously paid pursuant to Paragraph A above, and the current Level III fees in effect at the time of payment of the second installment, covering the square footage of residential construction for each residential unit to be payable at the close of escrow on the sale of each single family single family residential unit, or upon issuance of a certificate of occupancy for each multi-family residential unit, or upon receipt of a certificate of occupancy for each multi-family residential unit..

2. The payments described in paragraph 1 shall be paid on the Four Hundred Seventeen (417) market rate and affordable residential units for low to moderate income persons within the Granite Bay Parcel.

3. This Agreement and specifically paragraph 1, shall not apply to the twenty six (26) residential units in the Project constructed specifically for very low income persons, it being acknowledged by the parties that those residential units would remain subject to the statutory

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Level II fees as described in Paragraph E hereof.

4. *Developer* shall not be required to pay directly to the District any fees or charges in addition to the payments described in Paragraph 1. Nothing contained herein shall prevent the District from seeking other means of mitigation or additional funding for school facilities from other sources, but nothing herein obligates the District to do so. In addition, nothing contained herein shall prevent the City from requiring other impact fees from *Developer* for purposes other than school impact mitigation which may also benefit District properties.

5. A. It is anticipated that an executed copy of this Agreement will be attached as an exhibit to the Development Agreement between *Developer* and the City.

B. The District shall provide *Developer* and/or its successors in interest with two appropriate releases within a reasonable time for each residential unit for which *Developer* has paid the fees agreed upon in this Agreement as follows:

1) The first release shall be conditioned upon the payment in full of Level II fees as described in Paragraph 1A and shall serve to authorize the City to issue a building permit.

2) The second release shall be provided after the payment of the fee described in Paragraph 1 B.

C. The City has advised both the District and *Developer* that no building permit will be issued until *Developer* has paid the required Level II fees pursuant to Paragraph 1 A above and the District has notified the City of such payment by delivering a copy to the City of the release specified in B. 1) of this paragraph 5.

D. The District shall provide a release from the recorded memorandum of this Agreement to *Developer*, or to an escrow holder designated by *Developer*, when *Developer* has paid the District the additional fees for a residential unit, described in Paragraph 1 B.

E. No fee shall be required for issuance of a building permit for subdivision improvements (including, but not limited to utilities, curb, gutter, sidewalk, roads, alleys, grading, walls or monuments).

6. *Developer* acknowledges that the payments established in this Agreement are in excess of the Level II fees the District is authorized by statute to impose and agrees that it is entering into this Agreement voluntarily and that it waives any right to protest, challenge or object to the payments as set forth in this Agreement.

7. The District acknowledges that the legal limitations on the amount of payments established in this Agreement may be hereafter be amended or adjusted by legislative or administrative action, or may be invalidated or augmented as a result of court action, and agrees that it waives any right to school impact fees from *Developer*, its successors or assigns, other

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than as provided for in this Agreement

8. This Agreement is for the benefit of the Granite Bay Parcel and is intended to preserve its value and enhance its development. *Developer* agrees that for the benefit of the District, the City, and for itself, that it will construct and pay for any and all road improvements (including, in addition to the traveled way, such items as shoulders, bike lanes, sidewalks, and utilities) along any District property which may be required by the City or otherwise, and that it will not seek reimbursement for such improvements from the District.

9. A. The parties agree that the Granite Bay Parcel shall be held, transferred and encumbered, subject to the provisions of this Agreement, which is for the use and benefit of each and every person or entity who now or in the future owns any portion or portions of said real property. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives. *Developer* shall be permitted to sell or assign all or any portion of the properties described in Exhibit A to any other individual, partnership, corporation, licensed contractor, or limited liability company for purposes of development of residential lots or residences on such lots, subject to said assignee assuming all Developer's obligations hereunder.

B. A Memorandum of this Agreement in the form of Exhibit "B" to this Agreement shall be recorded in the Office of the County Recorder of Yolo County, California. Such Memorandum shall be executed by the parties before a notary, and shall constitute a covenant which shall run with the land; provided however, as to any lot within the Granite Bay Parcel on which a dwelling unit has been constructed, and for which an occupancy permit has been issued, and escrow for the sale to a third party has closed, this Agreement shall be deemed terminated and of no further force or effect.

C. Upon *Developer's* payments as described in Paragraph 1 hereof, District agrees to execute any documents necessary or convenient including, but not limited to a lien release and escrow instructions in order to release any lien existing on said lot by virtue of this Agreement or the Memorandum of Agreement referenced herein.

10. The parties acknowledge that in consideration of the payments as provided in this Agreement, the Granite Bay Parcel will be exempt from and excluded from inclusion in any landowner Mello-Roos Community Facilities District formed by the District for the purposes of financing the acquisition and development of school facilities. This section is not intended to prevent the school district from using State funds under the Leroy Greene Lease Purchase Act or other applicable legislation including, but not limited to, land donations, general obligation bonds, or other sources of funding to finance the acquisition, design, construction, or reconstruction of school facilities.

11. Should any suit brought by either party against the other for the enforcement of any rights of either party against the other pursuant to the provisions of this Agreement, or by reason of any alleged breach of any of the provisions of this Agreement or arising from this Agreement, then the successful party in such action shall be entitled to receive from the

unsuccessful party all costs incurred in connection with such suit, including a reasonable allowance for attorneys' fees incurred by the successful party.

12. All notices or other communications to be given hereunder shall be in writing and shall be deemed received when personally delivered by commercial courier or otherwise, or three business days after deposit in the United States mail, postage prepaid, addressed as follows:

Developer:	GBH-Winters Highlands, LLC 4230 Douglas Boulevard, Suite Granite Bay, CA 95746 Attn: Larry J. John, Managing Member
District:	Winters Joint Unified School District 909 West Grant Avenue Winters, CA 96594 Attn.: Dr. Dale J. Mitchell, Superintendent

13. Should the provisions of State law preclude the District from levying statutory developer fees or remove the statutory limits on developer fees, this Agreement shall be considered a current obligation of *Developer* for each and every residential unit planned for the Granite Bay Parcel whether or not a building permit has been issued notwithstanding any change in the law.

14. *Developer's* obligations to make any payment under the terms of this Agreement is expressly conditioned upon approval by the City of a Development Agreement between the City and *Developer*. Should this condition not be satisfied then this Agreement shall be void, and of no further force and effect. The District shall in that event execute a release of the Memorandum of Agreement.

15. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

16. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives.

17. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all previous negotiations among them. Except as otherwise expressly provided, neither this Agreement nor any of its terms may be amended, modified or waived except by written agreement. This Agreement shall, however, be construed in light of and in conjunction with the Mutual Benefit Agreement between the City of Winters and the District.

18. This Agreement shall be governed and construed in accordance with the laws of

the State of California.

19. This Agreement shall be effective on the same date as the Development Agreement between *Developer* and the City is recorded in the Office of the County Recorder of Yolo County.

Winters Joint Union School District

By: Dale J. Mitchell
Name: Dale J. Mitchell
Title: Superintendent

GBH-Winters Highlands, LLC

By:
Name: D. Rick Cheney Larry J. John
Title: Managing Members

11/3/2005

END OF DOCUMENT

005313 FEB-8 06

City of Winters

Formula for Calculating Adjustment to Annuity - Winters Highlands

		Projected Average Assessed Value per Unit	Projected Property Tax Per Unit	Projected Property Transfer Tax Per Unit	Total Projected Revenue per unit	Sales Price	Property Tax per Unit	Transfer Tax per unit	Total Revenue per unit
Single Family	Low Density	450,000	777.15	247.50	1,024.65		-	-	-
Single Family	Medium Density	392,000	676.98	215.60	892.58		-	-	-
Singel Family	Medium High	325,000	561.28	178.75	740.03				
Multifamily	Very Low	150,000	259.05	82.50	341.55		-	-	-
Singly Family	Low to Mod	258,000	445.57	141.90	587.47		-	-	-
Total Revenues			269,403.37	85,797.25	355,200.62		-	-	-
Average Revenue per Unit(Property Tax & Transfer Tax)					801.81				-
Projected Per unit cost for services					1,930.00				
Increase per State of California				100%					1,930.00
Division of Labor Statistics and Research									
Consumer Price Index Calculator for San Francisco Bay CPI									
All Urban Consumers, April 1-April 1 of each year									
Projected Shortfall from Property & Property transfer tax					1,128.19				1,930.00
Increase/(Decrease) in Annuity Contribution							801.81		

	Average projected Revenue	
(A) (0.02277)		
less fiscal analysis projected revenues	(801.81)	
Increase(decrease) in average projected revenues		XXXX

	Increase in Service Cost per Unit
(1930) (B)	
(Increase) Decrease in Annuity Contribution	XXXX
(Calculated change in average projectd revenues less increase in Service cost per unit)	

A=Average sales price of homes sold April 1-March 31 each year (copies of escrow information must be submitted as documentation to City of Winters
B=Division of Labor Statistics and Research Consumer Price Index Calculator for San Francisco Bay Area CPI All Urban Consumers 4/1-3/31 each year

CITY COUNCIL
ORDINANCE NO. 2006-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS REZONING THE WINTERS HIGHLANDS PROPERTY, PROPERTY TO THE NORTH, AND ADOPTING PLANNED DEVELOPMENT PERMIT 2006-01

(APNs 030-220-17, 030-220-19, 030-220-33, 030-210-005 thru -008)

The City Council of the City of Winters, State of California, does hereby ordain as follows:

1. Purpose. The purpose of this ordinance is to rezone the Winters Highlands property and adjoining properties to the north as specified below and to adopt Planned Development Permit 2006-01.

2. Authority. The City of Winters has authority to adopt this ordinance pursuant to the general police power granted to cities by Article 11, Section 7 of the California Constitution.

3. Rezoning. The subject property is hereby rezoned as shown on Exhibit A, attached hereto and incorporated herein by this reference to accomplish the following:

a) The project site (APNs 030-220-17 [48.1 acres], 030-220-19 [21.0 acres], and 030-220-33 [33.5 acres]) is rezoned as follows: 1) 7.81 acres designated Single Family Residential, 7,000 SF Ave Minimum (R-1) to Single and Multi-Family Residential/Planned Development (R-3/PD); 2) 25.26 acres designated R-1 to Single Family Residential, 6,000 SF Ave Min (R-2); 3) 3.19 acres designated R-2 to R-1; 4) 7.11 acres designated R-2 to R-3/PD; 5) 3.89 acres designated R-2 to Parks and Recreation (P-R); 6) 0.31 acres designated R-2 to High Density Multi-Family Residential (R-4); 7) 11.47 acres from R-1 to P-R; 8) 0.37 acres from R-1 to Public/Quasi-Public (PQP); 9) 4.99 acres from PQP to R-2; 10) 2.39 acres from P-R to R-4; 11) 4.71 acres from P-R to R-2; 12) 0.23 acres from PQP to R-3/PD; 13) 6.66 acres from P-R to R-3/PD; 14) 1.51 acres from OS to P-R; and 15) 1.34 acres from P-R to OS.

b) The adjoining land off-site to the north (APNs 030-210-005 thru -008) is rezoned as follows: 1) 0.22 acres designated Parks and Recreation (PR) to Open Space (OS); 2) 0.02 acres designated Public/Quasi-Public (PQP) to OS; 3) 2.44 acres designated PQP to PR; 4) 0.29 acres designated PQP to Single and Multi-Family Residential (R-3); 5) 3.84 acres designated Single Family Residential, 7,000 SF Ave Minimum (R-1) to PQP; 6) 0.32 acres designated PQP to Neighborhood Commercial (C-1); 7) 0.48 acres from PQP to High Density Multi-Family Residential (R-4); 8) 2.09 acres from PR to R-4; 9) 1.25 acres from C-1 to R-4; 10) 1.94 acres from R-4 to R-1; 11) 4.67 acres from PR to R-1; 12) 0.48 acres from PR to PQP; 13) 0.07 acres from PQP to R-1; and 14) 3.16 acres from Rural Residential (R-R) to R-1.

4. Planned Development Permit. Planned Development Permit No. 2006-01 is hereby adopted as a part of the rezoning to allow for minimum lot area, lot width, and lot depth for specified R-3 lots as shown on Tentative Subdivision Map No. 4507 to fall below the minimums set in the Zoning Ordinance.

4. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Winters.

INTRODUCED at a regular meeting on April 4, 2006 and **PASSED AND ADOPTED** at a regular meeting of the Winters City Council, County of Yolo, State of California, on the 18th day of April 2006, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

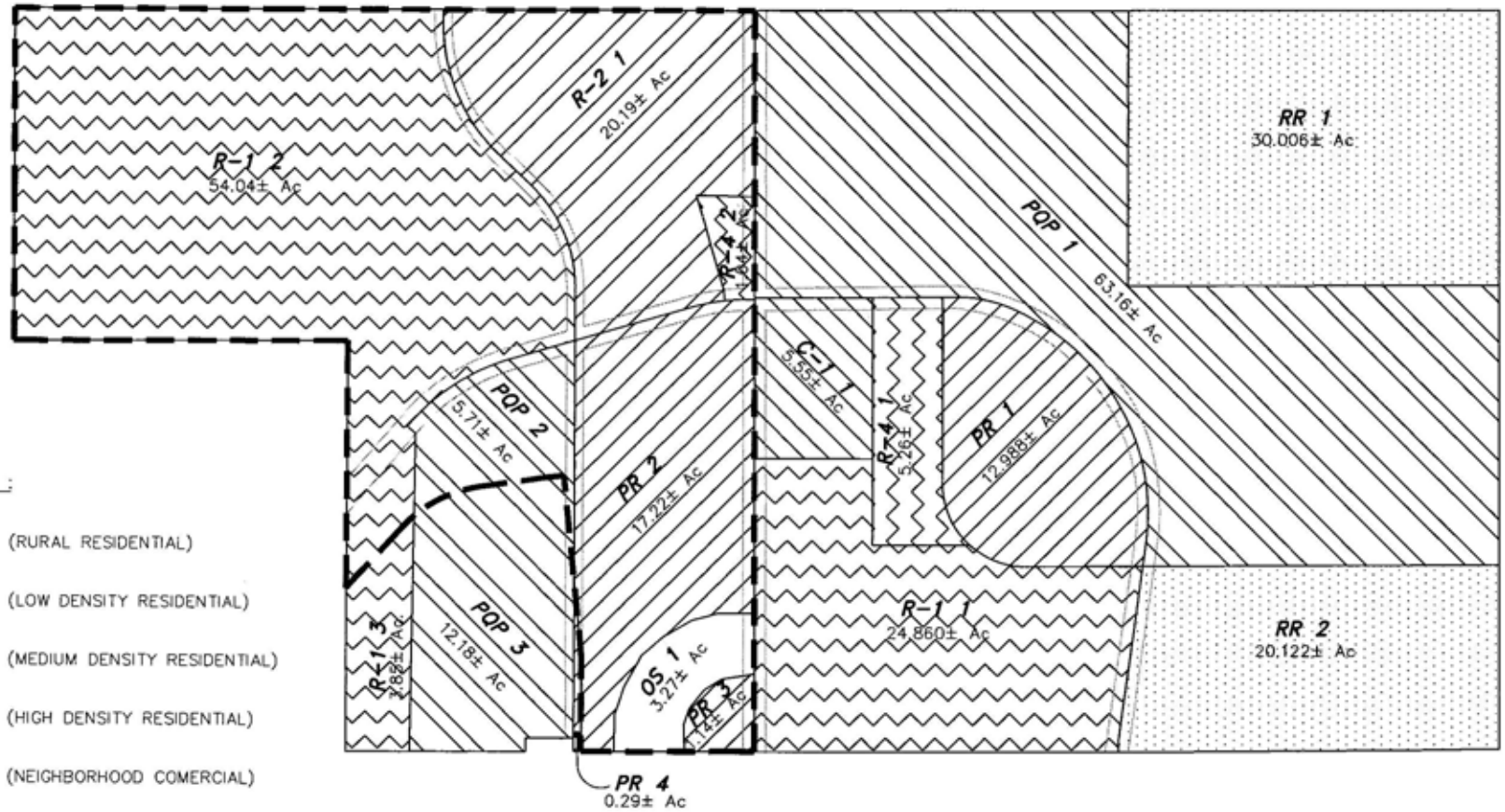
_____
Keith W. Fridae, MAYOR PRO TEM

ATTEST:

_____
Nanci G. Mills, CITY CLERK

Exhibits:
A – Rezoning (3 sheets)

ATTACHMENT 9



LEGEND :

RR	(RURAL RESIDENTIAL)
R-1	(LOW DENSITY RESIDENTIAL)
R-2	(MEDIUM DENSITY RESIDENTIAL)
R-4	(HIGH DENSITY RESIDENTIAL)
C-1	(NEIGHBORHOOD COMERCIAL)
PQP	(PUBLIC/QUASI-PUBLIC)
PR	(PARKS AND RECREATION)
OS	(OPEN SPACE)
— — —	WINTERS HIGHLANDS SITE BOUNDARY

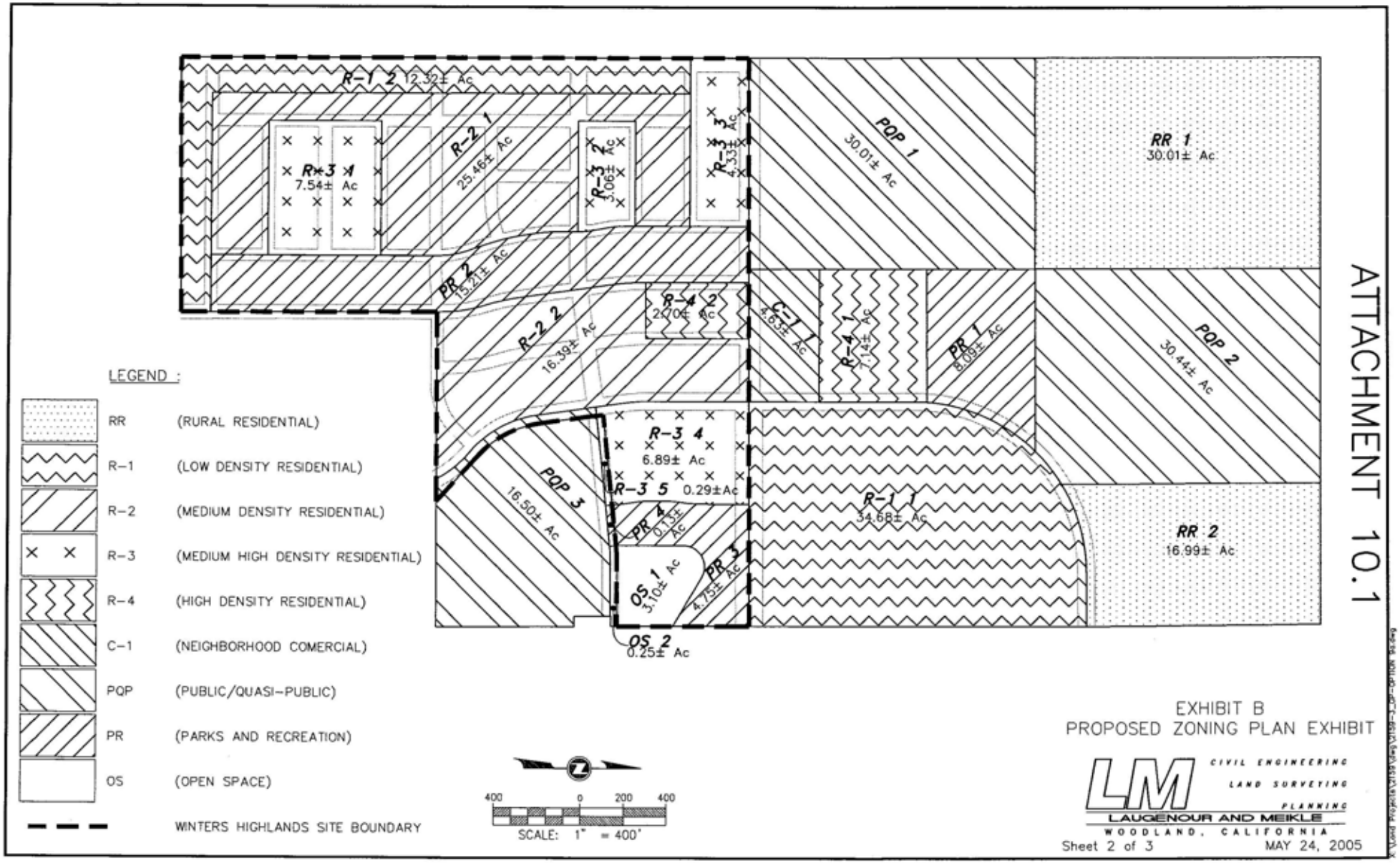
400 0 200 400

SCALE: 1" = 400'

EXHIBIT A
CURRENT ZONING PLAN EXHIBIT

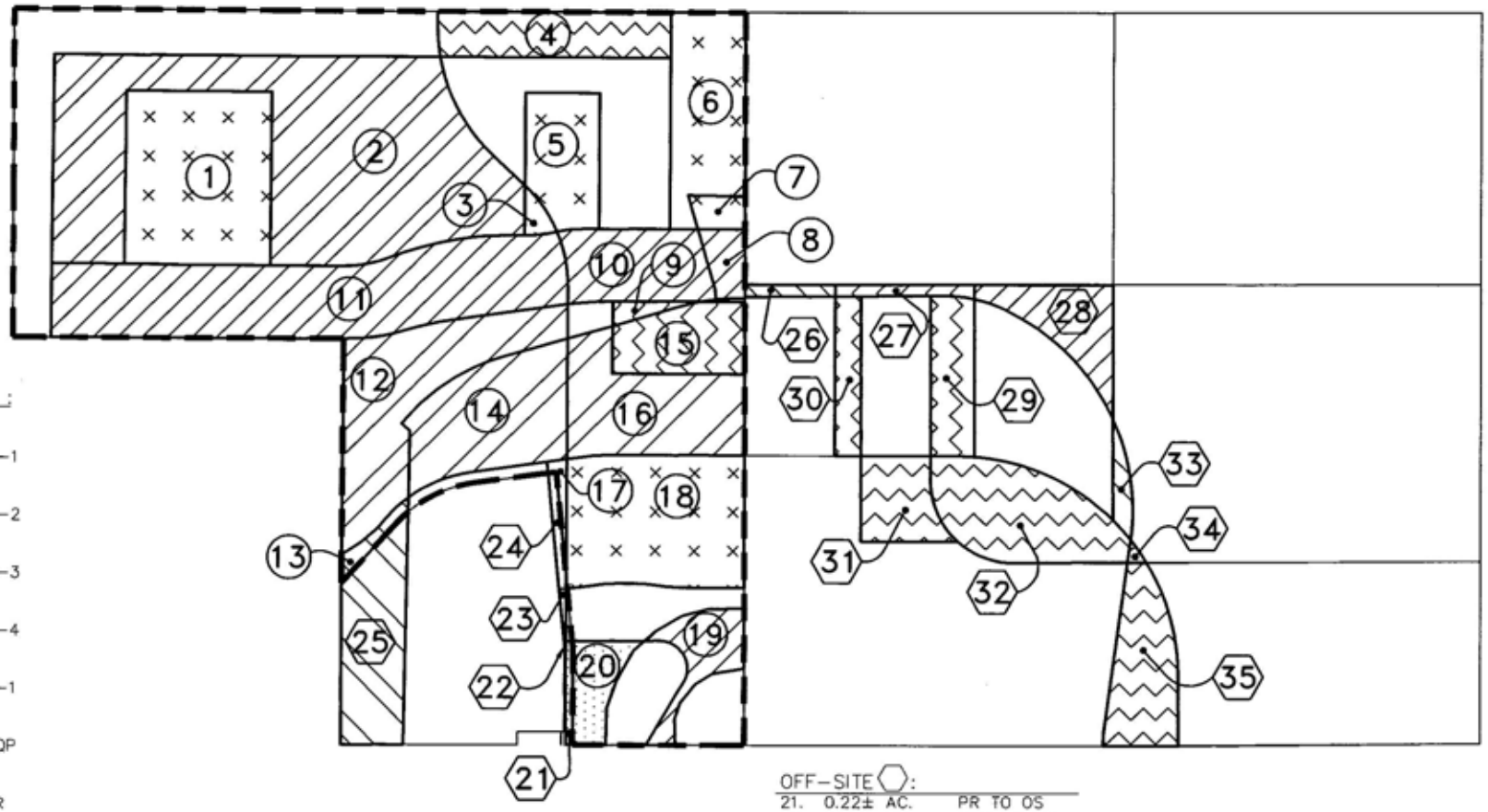
LM CIVIL ENGINEERING LAND SURVEYING PLANNING
LAUGENOUR AND MEIKLE
WOODLAND, CALIFORNIA

Sheet 1 of 3 MAY 24, 2005



ATTACHMENT 10.1

ATTACHMENT 10.2



LEGEND :

- ___ TO R-1
- ___ TO R-2
- ___ TO R-3
- ___ TO R-4
- ___ TO C-1
- ___ TO PQP
- ___ TO PR
- ___ TO OS
- WINTERS HIGHLANDS SITE BOUNDARY

400 0 200 400

SCALE: 1" = 400'

ON-SITE ◯:

1.	7.54± AC.	R-1 TO R-3	11.	11.47± AC.	R-1 TO PR
2.	18.96± AC.	R-1 TO R-2	12.	6.30± AC.	R-1 TO R-2
3.	0.27± AC.	R-1 TO R-3	13.	0.37± AC.	R-1 TO PQP
4.	3.19± AC.	R-2 TO R-1	14.	4.99± AC.	PQP TO R-2
5.	2.78± AC.	R-2 TO R-3	15.	2.39± AC.	PR TO R-4
6.	3.89± AC.	R-2 TO R-3	16.	4.71± AC.	PR TO R-2
7.	0.44± AC.	R-2 TO R-3	17.	0.23± AC.	PQP TO R-3
8.	0.78± AC.	R-2 TO PR	18.	6.66± AC.	PR TO R-3
9.	0.31± AC.	R-2 TO R-4	19.	1.51± AC.	OS TO PR
10.	3.11± AC.	R-2 TO PR	20.	1.34± AC.	PR TO OS

OFF-SITE ⬡:

21.	0.22± AC.	PR TO OS
22.	0.02± AC.	PQP TO OS
23.	0.07± AC.	PQP TO PR
24.	0.29± AC.	PQP TO R-3
25.	3.84± AC.	LDR TO PQP
26.	0.32± AC.	PQP TO C-1
27.	0.48± AC.	PQP TO R-4
28.	2.34± AC.	PQP TO PR
29.	2.09± AC.	PR TO R-4
30.	1.25± AC.	C-1 TO R-4
31.	1.94± AC.	R-4 TO R-1
32.	4.67± AC.	PR TO R-1
33.	0.48± AC.	PR TO PQP
34.	0.07± AC.	PQP TO R-1
35.	3.16± AC.	RR TO R-1

EXHIBIT A
PROPOSED ZONING PLAN
AMENDMENTS

LM CIVIL ENGINEERING LAND SURVEYING PLANNING
LAUGENOUR AND MEIKLE
WOODLAND, CALIFORNIA

Sheet 3 of 3 MAY 24, 2005