

CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, November 25th, 2008 @ 7:30 PM

City of Winters Council Chambers

318 First Street

Winters, CA 95694-1923

Community Development Department

Contact Phone Number (530) 795-4910 #112

Email: jen.michaelis@cityofwinters.org

Chairman: Albert Vallecillo

Vice Chairman: Pierre Neu

Commissioners: Joe Tramontana, Wade Cowan,

Bruce Guelden, Corinne Martinez, Glenn DeVries

Administrative Assistant: Jen Michaelis

Community Development Director: Nelia Dyer

I CALL TO ORDER 7:30 PM

II ROLL CALL & PLEDGE OF ALLEGIANCE

III COMMUNICATIONS:

1. Staff Reports
Current Projects List (page 1-4)
2. Commission Reports

IV CITIZEN INPUT: Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. NOTICE TO SPEAKERS: Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

V CONSENT ITEM

Approve minutes of the October 28th, 2008 regular meeting of the Planning Commission. (page 5-8)

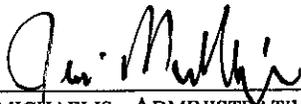
VI DISCUSSION ITEMS:

- A. Public Hearing to take action on proposed Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49). (page 9-114)
- B. Public Hearing to take action on proposed Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50). (page 115-254)
- C. Public Hearing To Take Action On Proposed Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33). (page 255-384)
- D. Public Hearing To Take Action On Proposed Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program. (page 385-418)
- E. Public Hearing to Take Action on Proposed Resolution 2008-47 Establishing Fees for Sidewalk Cafes (page 419-425)
- F. Public Hearing to Take Action on Proposed Resolution 2008-48 Establishing a Formal Procedure for Processing General Plan Amendment Proposals. (page 426-431)

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT ADMINISTRATIVE ASSISTANT OF THE COMMUNITY DEVELOPMENT DEPARTMENT POSTED THE AGENDA FOR THIS MEETING ON TUESDAY, NOVEMBER 18TH, 2008.



JEN MICHAELIS - ADMINISTRATIVE ASSISTANT

APPEALS: ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING.

OPPORTUNITY TO SPEAK, AGENDA ITEMS: THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA, HOWEVER, TIME LIMITS MAY BE IMPOSED BY THE CHAIR AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

REVIEW OF TAPE RECORDING OF MEETING: PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

COPIES OF AGENDA, AGENDA REPORTS AND OTHER MATERIALS: PRIOR TO EACH MEETING, COPIES OF THE AGENDA ARE AVAILABLE, AT NO CHARGE, AT CITY HALL DURING NORMAL WORKING HOURS. IN ADDITION, A LIMITED SUPPLY WILL BE AVAILABLE ON A FIRST COME, FIRST SERVED BASIS, AT THE PLANNING COMMISSION MEETINGS. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF \$25.00 FOR A SINGLE PACKET AND \$250.00 FOR A YEARLY SUBSCRIPTION.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT

Current Projects List as of November 18, 2008, 2008
 (530) 795-4910, extension 112, www.cityofwinters.org

PROJECT	DESCRIPTION & PROCESS	LAST ACTION	NEXT ACTION
(1) Winters Highlands, Granite Bay Holdings, LLC, Larry John (916) 960-1656	Application filed to develop 413 single-family and 30 multi-family residential units in northwestern part of city.	Planning Commission approved Design Review for Phase I residences on June 26, 2007.	Amend Development Agreement, applicant submittal of Final Map and Improvement Plans.
(2) Winters Village, Bob Thompson (West project) (707) 372-9355	Proposal to develop 10 attached single-family residences on the southwest corner of East Main and East Baker Streets.	Applicant in October 2007 decided to defer construction of the project.	Project not active.
(3) Callahan Estates, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 120 single-family residential lots in northwest part of city.	Planning Commission approved Site Plan (landscaping) on December 21, 2005.	Amend Development Agreement, applicant submittal of Final Map and Improvement Plans
(4) Creekside Estates, Lynda Fletcher (530) 902-4288	Proposal to develop 40 single-family residential lots at southwest part of city.	City Council approved Tentative Subdivision Map on April 19, 2005.	Amend Development Agreement, applicant submittal of Final Map and Improvement Plans
(5) Hudson-Ogando, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 72 single-family residential lots in northwest part of city.	Planning Commission approved Site Plan (landscaping) on December 21, 2005.	Amend Development Agreement, applicant submittal of Final Map and Improvement Plans
(6) Cottages at Carter Ranch Phase 2, Sacramento Pacific Development, Mark Wiese (916) 853-9800	Proposal to develop 6 single-family residential affordable lots (moderate-income households) north of Rancho Arroyo Detention Facility.	Planning Commission approved Tentative Subdivision Map on November 23, 2004.	Applicant submittal of Final Map and Improvement Plans.
(7) Casitas at Winters, Napa Canyon LLC, Mark Power (707) 253-1339	Proposal for 5-unit tentative subdivision map at a site on West Grant Avenue east of Tomat's restaurant. Tentative Subdivision Map, Planned Development Overlay, and PD Permit.	City Council at its January 15, 2008 meeting took final action by approving the Rezone Ordinance.	Applicant submittal of Final Map and Improvement Plans.

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<p>(8) Winters II, Community Housing Opportunities Corporation, Ben Rosen (530) 757-4444</p>	<p>Proposal to develop 34-unit apartment complex for low- and very low-income households at 110 East Baker Street.</p>	<p>City issued certificate of occupancy for units and community center on December 18, 2007.</p>	<p>Project complete for City.</p>
<p>(9) Mary Rose Gardens, DAS Homes, Inc., Dave Snow (530) 666-0506</p>	<p>Proposal to develop 26 single-family homes and one duplex unit on the north side of West Grant Avenue west of Cemetery Lane. Tentative Subdivision Map, Planned Development Overlay, PD Permit, Rezoning, Inclusionary Housing Agreement, and Development Agreement.</p>	<p>Applicant declined option to purchase project property.</p>	<p>Project not active.</p>
<p>(10) Anderson Place, Eva Brzeski (415) 887-9300</p>	<p>Proposal to develop up to 28 mostly attached single-family residences and 9 commercial spaces at 723 Railroad Avenue. Interim use of C2 portion of the site for boat and RV storage, sales and repair.</p>	<p>First Amendment to Development Agreement adopted by City Council on June 19, 2007 CUP for boat & RV storage, sale & repair approved by Planning Commission on 5/27/08</p>	<p>Applicant to demo building and establish interim boat & RV storage, sales and repair. Applicant submittal of Final Map and Improvement Plans.</p>
<p>(11) Pearce Parcel Map, Thomas Pearce (530) 795-5901</p>	<p>Proposal for 4-unit parcel map at the south end of Third Street.</p>	<p>Planning Commission on October 9, 2007 approved project.</p>	<p>Applicant submittal of Final Map and Improvement Plans.</p>
<p>(12) Winters Commercial, Granite Bay Holdings, LLC, Tyler Wade (916) 580-1855</p>	<p>Proposal to develop 4.52 acres on south side of Grant Avenue directly west of Round Table Pizza complex for 49,500 square feet of commercial and office uses. Site Plan. Application submitted on August 17, 2007 and deemed complete on October 22, 2007.</p>	<p>Design review, tentative map, CUP for Bank Drive –thru, and Mitigated Negative Declaration approved by Planning Commission on 12/11/07. City Council approved East Street closure at Grant Avenue and Encroachment Permit for diagonal parking and landscaping on East Baker Street on 12/18/07.</p>	<p>Applicant submittal of Final Map, Improvement Plans, and building plans.</p>
<p>(13) Valadez, Frank Valadez, Trustee, 530-674-5102</p>	<p>Proposal to change General Plan and Zoning designations for the 1.421-acre parcel (APN 003-391-05) located east of the Winters Cemetery from Parks</p>	<p>City Council at its October 7, 2008 meeting took final action by approving the GPA and the</p>	

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	and Recreation to residential (R-2) use.	rezone	
(14) Winters Estates Annexation, Winters Estates LLC, Helmut Sommer 707-678-9000	Proposal to annex 80 acres (APNs 030-210-05 & 08) adjacent to County Road 88 and within the City's General Plan Area.	City issuance of incomplete application letter on February 1, 2008.	Applicant response to City's February 1, 2008 incomplete application letter.
(15) Orchard Village, CVCAH/Pacific West Communities, Shellian Miller (208) 461-0022 Ext. 3033	Proposal to construct 74 multifamily (workforce housing) units on 10.6 acres between Railroad Ave, and Dutton Street extension, north of East Grant Ave. To include 1-, 2-, 3-, and 4-bedroom units + a community center.	Application was filed on 6-10-08 and deemed complete on 7/10/08.	City to prepare CEQA document for public/agency review and comment.
Safe Routes to School	Installation of sidewalks at Winters HS and Waggoner Elementary School	Notice of Exemption filed 5/7/08	City Staff awaiting authorization to proceed with pre-construction nesting survey prior to tree removal.
Abbey Street Partial Abandonment	Partial abandonment of East Abbey St to allow for Monticello development	PC accepted GP consistency report and recommended to Council 4/22/08. Actual vacation decision to take place following approval of DDA	Council hearing tbd once Development Agreement is approved.
Monticello Mixed-Use Project	Application for Site Plan Review and Design Review, and Conditional Use Permit for the construction of a mixed-use project (commercial/retail, office and residential) on 0.42 acre on the east side of Railroad Ave. between Abbey St. and Main St, in downtown Winters CBD.	CDA at its September 2, 2008 meeting approved the DDA for the project	
Public Safety Facility	Application for Site Plan Review and Design Review, Conditional Use Permit and Variance for the construction of the City's public safety facility on 2.78 acres of the Ogando-Hudson Subdivision (Grant Ave @West Main Street)	Planning Commission hearing on 7/22/08 - PC approved project subject to Conditions of Approval presented in staff report.	City to prepare Lot Line Merger. Applicant submittal of improvement and building plans

AFFORDABLE HOUSING UNITS

CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT

**Current Projects List as of November 18, 2008, 2008
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- Project #1:** 26 units for very low-income, 25 units for low-income, and 15 units for moderate-income households.
- Project #2:** 2 units for low-income households.
- Project #3:** 7 units for very low-income, 7 units for low-income, and 4 units for moderate-income households.
- Project #4:** 1 unit for very low-income, 2 units for low-income, and 1 unit for moderate-income households.
- Project #5:** 11 units for very low-income households.
- Project #6:** 6 units for moderate-income households.
- Project #7:** Not known whether residential units will be constructed.
- Project #8:** 34 units for very low-income and low-income households.
- Project #9:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households.
- Project #10:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households.
- Project #11:** Not applicable.
- Project #12:** Not applicable.
- Project #13:** Not known at this time.
- Project #14:** Not known at this time.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON
TUESDAY, OCTOBER 28, 2008**

Chairman Vallecillo called the meeting to order at 7:30 p.m.

PRESENT: Cowan, Guelden, Neu, and Chairman Vallecillo

ABSENT: DeVries, Martinez, Tramontana

STAFF: City Manager John Donlevy, Community Development Director
Nellie Dyer, Administrative Assistant Jen Michaelis.

Commissioner Cowan led the Pledge of Allegiance.

COMMUNICATIONS:

Staff Report: City Manager Donlevy noted the Current Projects List, and welcomed Nellie Dyer to the staff and noted her background and experience.

Commission Report: None

CONSENT ITEM

Approve minutes of the July 22, 2008 regular meeting of the Planning Commission.

Commissioner Guelden made a motion to approve the minutes for the July 22, 2008 meeting of the Planning Commission. Seconded by Commissioner Neu.

AYES: Cowan, Guelden, Neu, and Chairman Vallecillo

NOES: None

ABSTAIN: None

ABSENT: DeVries, Martinez, Tramontana

Motion carried unanimously with DeVries, Martinez, and Tramontana absent.

ACTION ITEM

1. Public Hearing and Consideration of a Sidewalk Café Ordinance.

Chairman Vallecillo stepped down due to proximity of his property to the Ordinance area.

Community Development Director Dyer gave an overview of the staff report.

Cowan asked if Cody's and Putah Creek Café are permitted at this time. Dyer responded no, and explained the need for the Ordinance to keep tabs on those restaurants using the sidewalk as seating area for patrons.

Cowan asked about fees proposed for the Ordinance.

Dyer responded that staff would need to bring back fee proposals; none are available at this time.

Guelden asked if this Ordinance was in response to the recent downtown streetscape improvements.

Dyer responded that it was.

City Manager Donlevy added that a permit is needed only when dining is not on the restaurants private property.

Neu stated that he does not want to make it harder for businesses to operate.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON
TUESDAY, OCTOBER 28, 2008**

Donlevy replied that the process is not difficult and staff will be there to guide the businesses.

Neu opened the Public Hearing at 7:45PM, hearing no comments Neu closed the Public Hearing at 7:45PM.

Cowan moved to recommend approval of the Sidewalk Café Ordinance.
Seconded by Guelden.

AYES: Cowan, Guelden, Neu
NOES: None
ABSTAIN: Vallecillo
ABSENT: DeVries, Martinez, Tramontana

Motion carried unanimously with DeVries, Martinez, and Tramontana absent and Vallecillo abstaining.

Vallecillo returned to his commissioner seat.

DISCUSSION ITEM

1. Presentation and Requested Feedback regarding non-conforming uses fronting Railroad Avenue between Grant Avenue and Niemann Street.

Dyer provided background on the item and presented the staff report.

Neu provided concerns that either option (an overlay zone or mixed-use zoning) would set a precedent for others coming forward in the future asking for such zoning in other areas of the City.

Dyer responded that this policy applies only to this specific scenario.

Guelden asked if this was a way to fine tune what can be put there, or as a tool to use in other locations.

Dyer responded that specifically there are concerns about the Railroad Avenue vicinity, and this would provide the flexibility needed for current uses.

Guelden asked Dyer to explain the specific concerns and complaints.

Dyer responded that one particular use in operation, adjacent to residential areas, complaints have been received about the intensity of that use.

Cowan asked if this would force that business to stop.

Dyer responded no, but it may limit the intensity of uses.

Guelden added that he does not support PD overlays in residential areas.

Vallecillo asked if this would provide for conditions similar to what Winters faces on Railroad Avenue, in your research did you find that to be the case?

Donlevy responded that the City is trying to find a solution.

Vallecillo asked if this is similar to the "right to farm" ordinance.

Donlevy responded that no, it was not, and that we have a need to come up with a framework to make the situation as solid as possible.

Dyer offered to bring back the item with more detail and a draft section of the Zoning Ordinance. Commissioners concurred.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON
TUESDAY, OCTOBER 28, 2008**

2. Presentation and Requested Feedback regarding the preparation of formal policies and procedures for processing General Plan amendment proposals.

Dyer provided background and an overview of the staff report. Vallecillo stated that this is pretty much making a schedule in advance of receiving applications, so that timing is correct. Commissioners concurred.

COMMISSION/STAFF COMMENTS:

None

The meeting was adjourned at 8:50 p.m.

ATTEST:

Jen Michaelis, CDD Admin

Albert Vallecillo, Chairman



**PLANNING COMMISSION STAFF REPORT
November 25, 2008**

TO: Chairman and Planning Commissioners

FROM: Kate Kelly – Contract Planner *KK*

SUBJECT: Public Hearing To Take Action On Proposed Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions:

- 1) Receive the staff report;
- 2) Conduct the public hearing;
- 3) Recommend to the City Council approval of the proposed Amendment to the Callahan Estates Development Agreement

BACKGROUND: In April 2005, the City Council approved the Callahan Estates project and its accompanying Development Agreement (DA) which would result in 120 single family residential lots and associated infrastructure.

Since that time the housing market has rapidly declined and recently the economy has plummeted. It has become difficult for developers, builders, and homebuyers to obtain financing. As a result, most development projects cannot be implemented at this time. Because of these factors the applicant has been forced to delay the development of Callahan Estates. Given the changed economy and delayed development, the project timing and funding structure in the DA is obsolete. This is not a circumstance limited to the Callahan Estates project. In light of the changed real estate market and economy, the City Council approved an amendment to the Anderson Place DA earlier this year and is currently processing amendments to Hudson-Ogando Subdivision and Winters Highlands DAs to address timing and funding structure issues.

Amendments to DAs are provided for under California Government Code Section 65868 and Chapter 15.72.210 of the City of Winters Municipal Code. The following amendments are proposed for the Callahan Estates DA:

1. Extending term of DA to 12/31/2016.

2. Updating the subject property's Assessor Parcel Numbers
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from October 30, 2005 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Affirmation that issuance of building permits shall be governed by the DA.
7. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every five market rate units.
8. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
9. Deferred payment of impact fees for building permits issued on or before June 30, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
10. Shifting conveyance of land for Public Safety Center from filing of final map to within 30 days of effective date of the First Amendment of the DA.
11. Shifting payment of park fees from filing of final map to a pro-rata basis at building permit and the valuation date for the park land appraisal from recording of DA to recording date of the First Amendment DA.
12. Shifting payment of police, fire and general municipal facilities fees from filing of final map to either concurrently with issuance of first building permit for all 120 residential units or payment with each building permit at the then current fees.
13. Shifting payment to library fund from final map to issuance of the first building permit.
14. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50th market rate building permit.
15. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.

DISCUSSION: Given the extraordinary economic climate, Staff supports the amendments to the DA. The amendments maintain substantial public benefit provided to the City by the DA, allow time for the housing market and economy to adjust and provide needed flexibility for the applicant to meet the changed economic climate. Without these amendments the DA would be in default and the significant public benefits diminished.

This situation is not unique to the Callahan Estates project or even Winters. The development community as a whole is struggling and the City is in the process of amending the development agreements for several of our projects.

The proposed Amendments have been generated by City and applicant. The way all types of projects are financed in the future is forever changed. The proposed Amendments enable the applicant to be better positioned to move forward in more feasible economic times.

Staff has advanced these to provide for significant City infrastructure needs and economic goals. The Amendments reflect a new financial and economic reality.

The projects advance the City's General Plan and will serve as catalysts for improving the community. The proposed Amendments preserve the entitlements for quality projects for which the City, developer and community have made significant investment. Literally thousands of hours and millions of dollars have been spent toward these projects.

The proposed Amendments enable key infrastructure to move forward during an advantageous economic period for doing so. All projects of moderate size which will bring economic development and to the City are contingent on Well #7 being completed and brought on-line. The development of the Public Safety Facility and Water Well #7 will be more cost effective by building now while the bidding climate is advantageous for the City.

The proposed Amendments also set the stage for the construction of affordable housing construction.

APPLICABLE REGULATIONS: This project is subject to several regulations:

- State Planning and Zoning Law
- City of Winters General Plan
- City of Winters Municipal Code
- City of Winters Zoning Ordinance

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, November 13, 2008, and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to the November 25, 2008 Planning Commission hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, November 20, 2008.

ENVIRONMENTAL ASSESSMENT: A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-08) was adopted on April 5, 2005 for the Callahan Estates Development Agreement. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably

foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

RECOMMENDATION: Staff recommends approval of the project by making an affirmative motion as follows:

Move that the City of Winters Planning Commission recommend APPROVAL to the City Council of Ordinance 2008-13 - First Amendment To Development Agreement By And Between The City Of Winters And Winters Investors, LLLC [Callahan Estates] (APN 030-220-49).

ALTERNATIVES: The Commission can elect to not recommend approval of the DA amendment and provide reasons for its position to the City Council.

ATTACHMENTS:

1. Location Map for Project
2. Proposed Amendment to the Callahan Subdivision Development Agreement.
3. Proposed Draft Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).
4. Callahan Estates Development Agreement – recorded June 3, 2005
5. Public Hearing Notice (published and mailed copies)

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF WINTERS
AND
WINTERS INVESTORS, LLC
[CALLAHAN ESTATES]**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "**First Amendment**") is entered into as of January _____, 2009 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and WINTERS INVESTORS, LLC, a California limited liability company (the "**Developer**").

Recitals

A. The City and the Developer have heretofore entered into a Development Agreement, executed as of _____, 2006 (the "**Development Agreement**"), providing for the residential development of certain real property commonly referred to as the Callahan Property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this First Amendment shall have the meanings given in the Development Agreement.

B. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer has threatened the economic viability of the Project.

C. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City and the Developer desire to enter into this First Amendment to make certain modifications to the Development Agreement as set forth herein.

D. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.

E. On _____, 2008, the City of Winters Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On _____, 2008, the City of Winters City Council adopted its Ordinance No. _____ approving this First Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on _____, _____.

Agreement

Section 1. Amendment to Sections 1.4 and 2.2 "Property"

Sections 1.4 and 2.2 of the Development Agreement are amended by replacing the old Yolo County Assessor's Parcel Number 030-220-22 with the new Yolo County Assessor's Parcel Number 030-220-49 to reflect updated Yolo County Assessor's Parcel Numbers. The project acreage remains the same.

Section 2. Amendment to Section 2.3, Agreement to be Recorded; Effective Date; Term.

Section 2.3, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The term of this Agreement shall expire on December 31, 2016, unless extended by mutual consent of the Parties. It may be terminated as provided in Article 5 of the Development Agreement.

Section 3. Amendment to Section 2.7, Whole Agreement; Conflict with Municipal Code.

Section 2.7, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The provisions of Title 15, Chapter 15.72 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 4. Amendment to Section 3.4, Rights Retained by the City.

Section 3.4, paragraph a., shall be amended to reference section 3.3, instead of section 3.2 in the first line.

Section 5. Amendment to Section 3.6, Commencement of Development.

Section 3.6, paragraph a. and b., of the Development Agreement are replaced in their entirety and shall read as follows:

The Developer shall have sole discretion to determine when the final map for the Callahan Estates Subdivision, or first phase thereof, and accompanying subdivision improvement plans, are submitted for City review and approval.

Section 6. Amendment to Section 3.7, Maximum Number of Building Permits Per Year; Non-Market Rate Units.

Section 3.7. of the Development Agreement is replaced in its entirety and shall read as follows:

a. To provide for orderly growth within the City of Winters, the Developer shall be entitled to apply for and receive no more than the following number of single family residential building permits per year for the 102 market rate residential units (including the twelve (12) units to be offered for sale to local builders) in the Callahan Estates Subdivision. For purposes of this section, the first year commences upon the date that the first final map is recorded.

1. Year 1: 51
2. Year 2: 51
3. Year 3: 25
4. Year 4: 25
5. Year 5: 25
6. Year 6: 27

The total of the above number of units is not reflective of the total number of residential units within the Callahan Estates Subdivision.

b. 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, unless and until the City and Developer enter into a subsequent Development Agreement. This provision shall survive the termination of this Agreement.

c. Eighteen (18) deed restricted affordable housing units shall be constructed in the Callahan Estates Subdivision pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the term of the Agreement, provided however, that not less than one (1) affordable unit shall be built and completed for every five (5) market rate units, until all eighteen (18) units have been constructed. The permits for the affordable housing units are in addition to, and not part of, the number of units per year set forth in Section 3.7, paragraph a., above.

d. 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, as allowed per section 3.7 and within the Callahan Estates Subdivision and within other properties, does not exceed the number which can reasonably be served with municipal and educational services without unduly impacting those existing units which receive such services.

e. In order to allow the Developer the flexibility to adjust to changing economic conditions, or other circumstances, and notwithstanding the provisions of Section 3.8, paragraph b., the Developer may advance or defer up to fifty percent (50%) of its allocation of building permits in any one (1) year. For example, if Developer selects Year 3, then, up to 12 units can be advanced to Year 2 or deferred to Year 4.

Section 7. Addition of Section 3.14, Deferral of Impact Fees.

Section 3.14 of the Development Agreement is added to read as follows:

In order to assist the Developer during these critical economic times, and to encourage the Developer to proceed with construction of new affordable and market rate housing within the City of Winters, except as otherwise provided for herein, City hereby agrees to defer all development impact fees imposed by the City on building permits issued on or before June 30, 2010, such that fifty percent (50%) of the impact fees shall be due at time of issuance of the building permit, and fifty percent (50%) shall be due at time of issuance of a certificate of occupancy. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval.

Section 8. Amendment to Section 4.2, Conveyance of 1.39 +/- Acres of Land.

Section 4.2 of the Development Agreement is replaced in its entirety and shall read as follows:

Within thirty (30) days of the Effective Date of this First Amendment, Developer shall grant to the City, free and clear of all encumbrances, a 1.39 +/- acre parcel of land. This parcel of land is a portion of a parcel of land consisting of 2.15 +/- acres. This 2.15 +/- acres parcel, when combined with other property, shall be used for a City Public Safety Facility by the City. A map showing the location of the parcel to be conveyed is attached as Exhibit F to the Agreement. If required by the City Engineer, the Developer shall have a metes and bounds legal description prepared and submitted to the City Engineer.

Section 9. Amendment to Section 4.3, 2.7 Acre Park.

Section 4.3, paragraph c.1, of the Development Agreement is amended to read as follows:

1. At the time of the issuance of a building permit for each unit within the Callahan Estates Subdivision, by paying a pro-rata share of the amount calculated by the City Engineer as set forth in Section 4.3.e., below.

Section 4.3, paragraph e.1, of the Development Agreement is amended to read as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to the Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City prior to the recordation of the final map for the Callahan Estates Subdivision, or first phase thereof. The appraisal shall determine the fair market value of 2.7 +/- acres of the Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this First Amendment to Development Agreement.

Section 10. Amendment to Section 4.4, Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility.

Section 4.4 of the Development Agreement is replaced in its entirety and shall read as follows:

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel, a portion of which is shown on Exhibit F of the Development Agreement. In order to provide sufficient funds for the City to construct this facility, the Developer agrees to pay to the City the police facilities fee, the fire facilities fee, and the general municipal facilities fee for the Callahan Subdivision in either of the following manners, at the option of the Developer: (1) concurrently with the issuance of the first building permit, pay the above development impact fees at the then current rates for all 120 residential units, or (2) concurrently with the issuance of a building permit, pay the above development impact fees at the then current rates for only that unit.

b. If the Developer elects to pay the development impact fees for all 120 residential units concurrently with the issuance of the first building permit, then each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit. If at the time of the issuance of a subsequent building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 11. Amendment to Section 4.6, Payment to Library Fund.

Section 4.6 of the Development Agreement is amended by replacing the old phrase "Prior to recording of the final map" with the new phrase, "Concurrently with the issuance of the first building permit."

Section 12. Amendment to Section 4.8, Urban Water Management Plan.

Section 4.8, paragraph a., of the Development Agreement is amended by replacing the old phrase “no later than the date upon which the final map for Callahan Estates (or the first phase, as the case may be) is recorded” with the new phrase, “no later than the issuance of the 50th market rate building permit.”

Section 13. Amendment to Section 4.9; Water Well.

Section 4.9 of the Development Agreement is replaced in its entirety and shall read as follows:

- a. A water well is required to be constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision and other developing properties.
- b. Conditions of Approval Nos. 119 and 45- (Mitigation Measure 18), in part, requires Developer to advance the costs for the design and construction of a water well, subject to pro rata reimbursement in accordance with the provisions of section 3.10.
- c. The City Engineer has determined that the water well, referred to as "Well No. 7", shall be located at the southern portion of the Hudson-Ogando Subdivision. Developer has completed the first phase of construction of Well No. 7, which includes the actual development of the well. Acceptance of these improvements by the City is contingent upon (1) conveyance of the property by Developer to City in accordance with Section 4.2, and (2) assignment by Developer to City of all design plans (including a well site plan and facilities elevations) for the construction of the second phase of Well No. 7.
- d. City intends to fund, but is not obligated to fund, the construction of the second phase of Well No. 7, which includes the pump station and site improvements, subject to the availability of funds. Should the City fund the construction of Well No. 7 from sources other than water development impact fees, the City shall be reimbursed from water development impact fee funds, when available, and prior to the reimbursement of any costs incurred by Developer. Funding of the second phase of Well No. 7 by the City is contingent upon (1) available funding, (2) conveyance of the property by Developer to City in accordance with Section 4.2, and (3) assignment by Developer to City of all design plans for the construction of the second phase of Well No. 7.
- e. City acknowledges that Developer has advanced funding for partial construction of Well 7 in the amount of \$xxx,000, which shall enable fee credits, in accordance with section 3.10(f) of the agreement. Developer acknowledges and agrees that it will be required to pay the full amount of water development impact fees at the time of issuance of subsequent building permits for the development, which shall be used, in part, to reimburse City for the costs of constructing Well No. 7.

f. The amount and timing of reimbursement for funds advanced by Developer and related to the construction of Well No. 7 shall be set forth in a separate Credit and Reimbursement Agreement in accordance with the provisions of section 3.10(f) of the Agreement.

g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Callahan Estates Subdivision until the construction of Well No. 7 is completed, accepted and placed in service by City. In the event that the City does not fund the construction of the second phase of Well No. 7, Developer will be required to fund and construct the second phase of Well No. 7 prior to the issuance of building permits, if it desires to proceed with the development of the Callahan Estates Subdivision .

Section 14. Force and Effect

The effective date of this First Amendment shall be the date that this First Amendment is signed by the City as written above. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the date first above written.

CITY:	DEVELOPER:
CITY OF WINTERS _____ Mayor	WINTERS INVESTORS, LLC a California limited liability company By: _____ Its: _____
APPROVED AS TO FORM: _____ JOHN C. WALLACE CITY ATTORNEY	

<p>ATTEST:</p> <hr/> <p>NANCI MILLS CITY CLERK</p>	
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CITY OF WINTERS

ORDINANCE NO. 2008-13

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WINTERS ADOPTING A FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT FOR THE CALLAHAN ESTATES**

The City Council of the City of Winters hereby ordains as follows:

Section 1: Recitals

- A. To strengthen the public planning process and encourage private participation in comprehensive planning, the Legislature of the State of California adopted Section 65864 *et seq.*, of the Government Code ("Development Agreement Statute"), which authorizes the City of Winters and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in property subject to a development agreement.
- B. On _____, 2006, the City of Winters and Winters Investors, LLC, a California limited liability company ("the Developer"), executed a development agreement ("Development Agreement") providing for the residential development of certain real property commonly referred to as the Callahan Property (the "Project") located at Yolo County Assessor's Parcel No. 030-220-22 within the boundaries of the City of Winters (the "Property").
- C. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer has threatened the economic viability of the Project.
- D. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City of Winters, and the Developer desire to enter into an amendment to the Development Agreement ("First Amendment") to make certain modifications to the Development Agreement, pursuant to Section 65868 of the Government Code and Chapter 15.72.210 of the City of Winters Municipal Code.
- E. The City of Winters Planning Commission conducted a noticed public hearing on the First Amendment on _____, and has recommended the approval of the First Amendment.
- F. The City Council of the City of Winters has given the required notice of its intention to adopt the First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.

- G. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- H. The First Amendment has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

Section 2: Approval

Pursuant to the provisions of Government Code §65864 *et seq.* and Chapter 15.72 of Title 15 of the Winters Municipal Code, the City Council of the City of Winters hereby:

1. Adopts and approves that certain document entitled, "First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC" relating to the development of the Property commonly know as the "Callahan Estates," attached hereto as Exhibit A and incorporated herein by reference.
2. Authorizes and directs the Mayor to sign the document on behalf of the City after the effective date of this Ordinance and after it has first been signed by the duly authorized representatives of Winters Investors, 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.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Winters hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 4. Effective Date.

This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be posted and published in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2009 and was passed and adopted at a regular meeting of the City Council held on _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

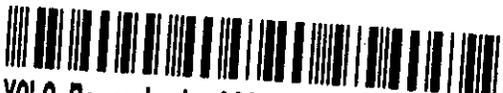
Mayor

ATTEST:

City Clerk

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
City of Winters
318 First Street
Winters, CA 95694
Attn: Community Development Department


YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2005-0026332-00
Acct 118-Winters - NC
Friday, JUN 03, 2005 10:44:00
Ttl Pd \$0.00
Nbr-0000568553
FRT/R6/1-83

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
WINTERS INVESTORS, LLC
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CALLAHAN PROPERTY

CONFORMED COPY
NOT COMPARED
WITH ORIGINAL

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
WINTERS INVESTORS, LLC
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CALLAHAN PROPERTY

THIS AGREEMENT is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and WINTERS INVESTORS, LLC, a California limited liability company, a company associated with THE HOFMANN LAND DEVELOPMENT COMPANY, a California corporation (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.

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 Callahan Property, 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 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 vested rights to develop the Callahan 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.

THE PARTIES AGREE AS FOLLOWS:

TABLE OF CONTENTS

This Agreement is divided into articles, sections, and subsections as set forth below. The title of an article, section, or sub-section is for the convenience of the Parties only and a title is not intended to alter the content or meaning of any article, section or subsection.

- Article 1. Definitions
- Article 2. General Provisions
- Article 3. Development of the Property
- Article 4. Special Development Obligations
- Article 5. Default, Remedies, and Dispute Resolution
- Article 6. Hold Harmless and Indemnification

ARTICLE 1
DEFINITIONS

The following words and 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.

Section 1.1 "Agreement" means this agreement.

Section 1.2 "Application fees" means the amount paid by the Developer for the processing of any land use entitlement or for an amendment to this Agreement.

Section 1.3 "Building Permit" means the ministerial permit issued for the construction of a residential housing unit upon the payment of all applicable fees.

Section 1.4 "Callahan Property" or "The Property" means the real property which is the subject of this Agreement. It is legally identified as

Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.

Section 1.5 "Callahan Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for The Property concurrently with the approval of this Agreement in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Callahan Estates Tentative Subdivision Map is attached as Exhibit C.

Section 1.6 "Callahan Estates" means the single family residential development created by the Callahan Estates Tentative Subdivision Map.

Section 1.7 "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.)

Section 1.8 "City of Winters" means the physical boundaries of the City of Winters.

Section 1.9 "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.

Section 1.10 "Conditions of Approval" means the conditions placed on the approval of the Callahan Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

Section 1.11 "Developer" means the Winters Investors, LLC, a California limited liability company, the members of which are associated with The Hofmann Land Development Company, a California corporation, and/or its successor(s) in interest.

Section 1.12 "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.

Section 1.13 "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.

Section 1.14 "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of The Property for such things as the expansion of the Wastewater Treatment Plant, traffic circulation, sewer and water conveyance facilities, and similar matters.

Section 1.15 "Land Use Entitlement" means either a discretionary or ministerial approval issued to The Property by the City under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or

federal law, which permits development on The Property. Examples: zoning; a conditional use permit; a tentative or final subdivision map; a building permit; a sewer or water connection.

Section 1.16 "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.

Section 1.17 "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.

Section 1.18 "Off-site improvement" means a public improvement constructed outside the physical boundaries of The Property.

Section 1.19 "On-site improvement" means a public improvement constructed within the physical boundaries of The Property.

Section 1.20 "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.

Section 1.21 "Phase" means a portion of the Callahan Estates Tentative Subdivision Map which is reduced to a final subdivision map.

Section 1.22 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on The Property. Examples: roads; sewer and waterlines ; traffic signals.

Section 1.23 "Vesting law" means any State or federal law which gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

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 Callahan Property, Yolo County Assessor's Parcel No. 030-220-22. A map showing the location and boundaries of the property is attached as Exhibit A and a legal description describing the property is attached as Exhibit B. In this Agreement the Callahan 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.

b. The term of this Agreement is six (6) years, commencing on the date it is recorded. The term may be extended by mutual consent of the Parties. It may be terminated as provided in Article 5.

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 Callahan Estates have any rights under this Agreement.

Section 2.5 Right to Assign; Non-severable obligations.

a. 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 Callahan Estates 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 special development conditions set forth in Article 4 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; Alternative Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. Any litigation concerning its meaning shall be venued in 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, UPS Overnight, and California 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.

c. 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

d. Notices to the Developer shall be given as follows

Winters Investors, LLC
c/o The Hofmann Land Development Company
1380 Galaxy Way
P.O. Box 758
Concord, CA 94522
Attn: Jim Hildenbrand
Telephone (925) 682-4830
FAX (925) 682-4771

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements; One or More Final Subdivision Maps.

a. The Property will be developed under the following land use entitlements, all of which are approved contemporaneously with the recording of this Agreement:

1. This Agreement as adopted by Ordinance No. 2005-01 adopted April 5, 2005 and effective upon recording.

2. An exclusion for The Property from the West Central Master Plan.

3. A rezoning to add a Planned Development (PD) overlay zone to allow for a subdivision in which the average lot size does not meet the minimum requirement of the zone (7,000 square feet) and to allow for one lot (Lot 1) which does not meet the width requirement (60 feet).

4. The approval of a Planned Development Permit for an unlimited term pursuant to the requirements of Section 8-1.5117.E. 1 and .2 of the Zoning Ordinance and the Conditions of Approval.

5. An amendment to the Circulation Master Plan (May 19, 1992) and Standard Cross-Sections (adopted October 2, 2001) to remove the requirement for on-street Class II bike lanes on West Main Street and replace with off-street Class I bike path.

6. An amendment to the Bikeway System Master Plan (November 19, 2002) text and Figure 3 to identify a Class I bike path along West Main Street and Class II bike lanes along Anderson Avenue.

7. Approval of Callahan Estates Tentative Subdivision Map, together with the Conditions of Approval, dividing 26.4 acres into 120 single-family lots; Parcels A and D (exchange lots); Parcels E, F, and G (open space lots); and Parcel X (detention pond/potential well site). The 120 single-family lots will be built with:

a) 102 market rate units, of which 12 must be made available to local builders as defined by the City's land use regulations; and

b) 18 deed-restricted, below market rate units (seven (7) very low income, seven (7) low income, and four (4) moderate income).

8. A lot line adjustment on the north property line to exchange Parcel D for Parcel C from the adjoining Winters Highlands property.

9. A lot line adjustment on the south property line to exchange Parcel A for Parcel B from the adjoining Ogando/Hudson property.

10. Subsequent discretionary approvals (such as design review) pursuant to the City's generally applicable land use regulations.

b. The Developer may apply for and receive one final subdivision map for Callahan Estates, or the Developer may choose to file separate final maps for various phases of Callahan Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in Section 3.8.

c. Under the provisions of Government Code § 66452.6(a), the life of the Callahan Estates Tentative Subdivision Map is co-terminus with the life 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.

Section 3.3 Vested Rights of Developer.

a. The Developer shall, solely with respect to The Property, have the right to the following land use entitlements regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City.

1. The right to the number of single family residential lots, dwelling units, and the density of development (dwelling units per acre) of those units, as shown on the Callahan Estates Tentative Subdivision Map.

2. Exclusion from:

a) the West Central Master Plan; and

b) subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established in the Conditions of Approval for the Callahan Estates Tentative Subdivision Map.

5. The Mitigation Measures.

b. Subdivision a. does not apply to changes effecting development of The Property as mandated by State and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will

permit the development of The Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained by the City.

a. Except as specifically provided in section 3.2, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. Discretionary approvals. (The only discretionary approval contemplated at this time is design review pursuant to the Zoning Code.)

2. Subdivision standards in effect when a final subdivision map is approved.

3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, 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.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to The Property under its general police

power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

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 (§ 65864 *et seq.*) and Development Rights [vesting tentative maps] (§ 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 shall be made 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 of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred fifty (150) days after this Agreement is recorded, submit for approval by the City the final map for Callahan Estates (or the first phase, as the case may be) 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, inclement weather, acts of God, natural disasters, 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.

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

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 no more than the following number of single family residential building permits per year for the 102 market rate residential units (including the 12 units to be offered for sale to local builders) in Callahan Estates. For purposes of this section, the first year commences on the date the first Final Map is recorded or September 1, 2005, whichever is earlier.

1. Year 1: 51
2. Year 2: 51
3. Year 3: 25
4. Year 4: 25
5. Year 5: 25
6. Year 6 : 27

b. 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.

c. There are 18 deed restricted, below market rate units to be built in Callahan Estates pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the life of this Agreement. The 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 prior to the expiration of this Agreement.

d. 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 Callahan Estates and on other properties, does not exceed the number which can reasonably be served with municipal and education services without unduly impacting those existing units which receive such services.

e. 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 adjust the schedule accordingly. For purposes of this subsection e., "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.

a. 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 Callahan Estates. When the final map for all of Callahan Estates (or a phase, as the case may be), is approved, the Developer shall enter into a separate written agreement with the City by which it contracts to build and dedicate the public improvements required either in all of Callahan Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by law.

b. If the Developer proceeds by filing final maps for various phases of Callahan Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase (both on-site and off-site of the entirety of Callahan Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

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 Callahan Estates Tentative Subdivision Map, acquire the property rights necessary to construct or

otherwise provide the public improvements contemplated by this Agreement.

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 final subdivision map for Callahan Estates (or the first phase as the case may be) 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 b) if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire the property interests. 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, and for purposes of eminent domain, 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, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Callahan Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

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 to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of the payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the prorata

share to be borne by The Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing properties or from mitigation fees as described in subsection b.

1. When reimbursement is from impact fees, such 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.)

2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

3. If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its 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 deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of \$1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of \$20,000, then the Developer will be credited with having paid that fee for 20 building permits.)

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 approvals in the same manner as any other person applying for land use entitlements from the City. All application fees then applicable for the type of land use entitlement(s) sought 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.

Reviews 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 § 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.

ARTICLE 4

SPECIFIC DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

a. The Developer acknowledges and agrees that the mitigation of the impact of Callahan Estates 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 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 agreement is attached as Exhibit E.

b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement, a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified

School District ("School District"). That agreement shall provide, in addition to such other matters as the parties to it may agree, that the Developer will pay to the School District, at the time of the issuance of a building permit:

1. for each of the 120 residential units in Callahan Estates, fees designated as "Level 2" fees as that term is commonly used in the K-12 education community; and

2. for all units in Callahan Estates, except the very low income and low income affordable units, "Level 3" fees as those terms are commonly used in the K-12 education community.

c. The Developer acknowledges receipt of the document dated October 2004 adopted by the School District entitled "School Facility Needs Analysis" prepared by Government Financial Strategies, Inc. This document will be used by the Developer and the School District in reaching the agreement referred to in subsection b.

Section 4.2 Conveyance of 1.39 +/- Acres of Land.

Contemporaneously with the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be), the Developer shall grant to the City, free and clear of all encumbrances, a 1.39 +/- acre portion of a parcel of land consisting of 2.15 +/- acres. The 2.15± acre parcel borders a parcel of land consisting of 1.3+/- acres currently owned by the City. A map showing the location of the parcel to be conveyed and the City-owned parcel is attached as Exhibit F. If required by the City Engineer, the Developer shall have a metes and bounds legal description prepared and submitted to the City Engineer along with the final map.

Section 4.3 2.7 Acre Park.

a. Developer shall provide a 2.7 +/- acre neighborhood park ("the Park Obligation"). The Park Obligation consists of three components:

1. Providing land.
2. Providing infrastructure.
3. Planning, developing, and equipping the park.

b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 2.7 acre park within Callahan Estates. The payment of the Park Obligation by the Developer is in lieu of the payment of any park impact fees as provided by City ordinance.

c. Developer agrees to satisfy the Park Obligation as follows.

1. At the time of filing the final map for Callahan Estates (or the first phase thereof, as the case may be) a payment of one hundred percent (100%) of the amount calculated by the City Engineer as set forth in e., below.

2. An additional fifty percent (50%) of the amount calculated under 1., above, payable as follows:

- a) The additional fifty percent (50%) shall be divided by the number of market rate units in Callahan Estates (102 units). The resulting amount shall be paid each time a building permit is issued for one of the 102 market rate units.

- b) If at the end of thirty (30) months from the recording of the final map for Callahan Estates (or the first phase thereof, as the case

may be), the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of being notified by the City to do so. (Example: If at the end of thirty (30) months, the Developer has obtained eighty (80) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining twenty-two (22) market rate units.)

d. Once all amounts owed under c. above have been paid, the Developer will have satisfied the Park Obligation.

e. The Park Obligation shall be computed by the City Engineer as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to The Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City within ninety (90) days thereafter, unless the Parties agree to a different date. The appraisal shall determine the fair market value of 2.7 +/- acres of The Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this Agreement.

2. The estimated cost of the infrastructure improvements will be calculated by the City Engineer using the per acre cost of Sixty Thousand Dollars (\$60,000).

3. The estimated cost of the development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer using the per acre cost of Two Hundred Twenty-Nine Thousand Five Hundred Dollars (\$229,500).

4. To the total determined by adding the costs determined under 1., 2., and 3., above, shall be added five percent (5%) for administration, including, but not limited to, the use of eminent domain by the City as necessary to acquire park land.

Section 4.4 Advance Funding of Fees For Construction of Police/Fire/Corporation Yard Facility.

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be), pay to the City development fees as follows:

1. A police facilities fee at its then current rate for all 120 residential units in Callahan Estates.

2. A fire facilities fee at its then current rate for all 120 residential units in Callahan Estates.

3. A general municipal facilities fee at its then current rate for all 120 residential units in Callahan Estates.

b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit.

c. If, at the time of the actual issuance of a building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

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 Callahan Estates per the Economic & Planning Systems report titled "City of Winters Fiscal Impact Analysis Callahan Estates Subdivision", dated August 20, 2003. 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. Subject to the provisions of b.3., 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 Eight Thousand Six Hundred Eighty Dollars(\$8,680.00).

2. 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 Callahan Estates.

3. The amount of Eight Thousand Six Hundred Eighty Dollars (\$8,680.00) will be adjusted with the first closing of a residential unit to a third party and on or before April 30 of each subsequent year to take into account rising assessed values resulting from increased new home prices within Callahan Estates, if any. The formula for making this adjustment is set forth in Exhibit G.

c. At the end of the third year after the recording of this Agreement, the City will prepare an updated fiscal analysis. The amount set forth in subsection b. 4., as may be amended from time to time by the formula set out in Exhibit G, shall be modified according to the results of that analysis.

Section 4.6 Payment to Library Fund.

Prior to recording of the final map for Callahan Estates (or the first phase, as the case may be) the Developer shall pay to the City the sum of Sixty-seven Thousand Four Hundred Fifty-nine Dollars (\$67,459.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

Section 4.7 Wastewater Treatment Plant Expansion.

a. Wastewater (sewage) from Callahan Estates will be treated in an expanded and upgraded Wastewater Treatment Plant ("WTP") to be built by the City using sewer fees collected from the developers of property within the City of Winters. Wastewater from Callahan Estates will eventually flow to the expanded and upgraded WTP through conveyance facilities to be constructed to the north of The Property across adjacent property commonly referred to as Winters Highlands.

b. The Developer shall be required to pay all applicable sewer impact fees.

c. Neither the WTP expansion and upgrade, nor the facilities through Winters Highlands, are expected to be completed by the time the first residential unit of Callahan Estates requires sewer treatment. To facilitate the treatment of sewage from Callahan Estates pending the expansion and upgrade of the WTP and the construction of facilities across Winters Highlands, the Developer may, at its sole cost and expense and without reimbursement or fee credit from the City, connect to the City's existing sewage collection facilities located to the south of The Property on Grant Avenue. This will be an interim connection only. All necessary improvements to the Grant Avenue facilities as determined by the City Engineer will be paid by the Developer.

d. When the WTP is expanded and upgraded, and the facilities across Winters Highlands are installed, sewage from Callahan Estates will be redirected to the new facilities. This will be the permanent connection. The cost of disconnecting the interim connection and connecting to the permanent connection will be paid by the Developer. Since the time for construction of the new facilities described above is unknown, the City Engineer may require the Developer to post security in the amount determined to be the cost of connecting to the permanent connection. Such security, if required, will be posted at the time of the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be).

e. If the Developer chooses not to construct the interim connection to the south of The Property, then the Developer shall install all wastewater conveyance facilities to the north of The Property as determined by the City

Engineer to be necessary to serve the Callahan Estates, subject to a *pro rata* reimbursement as provided by section 3.10. Such facilities include, but are not limited to, the installation of a regional pump station at Niemann St./Railroad Avenue.

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

Section 4.8 Urban Water Management Plan.

a. The Developer shall pay the cost for preparation of a City Urban Water Management Plan ("Management Plan"). Payment shall be due and payable no later than the date upon which the final map for Callahan Estates (or the first phase, as the case may be) is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan to be paid by other developments benefiting from the Management Plan, but only those commonly identified as Winters Highlands and Hudson-Ogando, as provided by section 3.10.

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

Section 4.9 Water Well.

a. A water well will be constructed at the location to be determined by the City Engineer according to the design and specifications approved by the City. A potential well site is shown as Parcel X on the Callahan Estates Tentative Subdivision Map. The Developer understands and agrees that the

well may, at the direction of the City Engineer, be built in some location other than Parcel X. Provision for the construction of the well and security for its construction shall be included in the agreement for the installation of public improvements which is entered into between the City and the Developer in connection with the recording of the final map for Callahan Estates (or the first phase, as the case may be). The City Engineer, in his sole discretion, shall determine whether the well will be built by the Developer or whether it will be built by a third party under contract with the City. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the water well to be paid by other developments benefiting from it, including, but not limited to, those commonly identified as Winters Highlands, Hudson-Ogando, and Creekside, as provided by section 3.10.

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

Section 4.10 Pedestrian Circulation and Safety Improvements.

a. Subject to the provisions of Section 3.8, the Developer shall construct pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street according to one of the four options selected by the City Engineer as those options are described in the Morgan Street Area Circulation Study, July 1999.

b. The Developer may receive, but is not guaranteed, a *pro rata* reimbursement for these improvements from other developments benefiting from it, including, but not limited to those commonly identified as Winters Highlands, Hudson-Ogando, and Creekside, as provided by section 3.10.

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

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 City's Remedies

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 Callahan Estates 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. A action for damages as provided in subsection d.

b. Default by the Developer.

1. Notice of Default. With respect to a default by the Developer under this Agreement, the City shall 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. Procedure After Failure to Cure Default. 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. Modification or Termination of Agreement. 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. Specific Performance. 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 dedicate and properly complete 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 Callahan Estates.

Section 5.3 Developer's Remedies.

a. The Developer's 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 Callahan Estates 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. Default and Notice of Default. 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. Waiver of Damage Remedy. 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 Callahan Estates 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 the operations of the Developer in the development of Callahan Estates under the terms of this Agreement or otherwise.

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 this section or to collect damages for any breach of it.

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.

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.

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. However, nothing herein obligates the Developer,

should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.

**DEVELOPER
WINTERS INVESTORS, LLC**

By: Th. A. Walsh
Its: Managing Partner
Dated: April 5, 2005

CITY OF WINTERS

By: [Signature]
Mayor
Dated: 4/5/05

Attest:

[Signature]
City Clerk

Approved as to form:

[Signature]
John Wallace, City Attorney

[Signature]
Joel Ellinwood, AICP
Abbott & Kindermann, LLP, Attorneys for Developer

.....

This Agreement was adopted by Ordinance No. 2005-01 of the City Council of the City of Winters. Ordinance No. 2005-01 was adopted on April 5, 2005 and is effective on the date it is recorded with the Yolo County Recorder.

LIST OF EXHIBITS:

- EXHIBIT A Map of Callahan Property
- EXHIBIT B Legal Description of Callahan Property
- EXHIBIT C Callahan Estates Tentative Subdivision Map
- EXHIBIT D: Conditions of Approval, including Mitigation Measures
- EXHIBIT E School Agreement
- EXHIBIT F Map of 2.6 +/- Parcel
- EXHIBIT G Annuity Adjustment Formula

should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.

**DEVELOPER
WINTERS INVESTORS, LLC**

By: Thomas A. Walsh
Its: Managing Partner
Dated: April 5, 2005

CITY OF WINTERS

By: [Signature]
Mayor
Dated: 4/5/05

Attest:

[Signature]
City Clerk

Approved as to form:

[Signature]
John Wallace, City Attorney

[Signature]
Joel Ellinwood, AICP
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

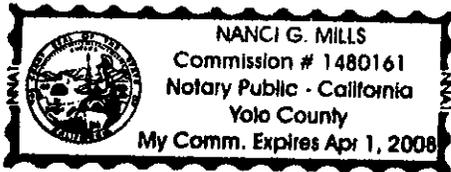
State of California

County of Yolo } ss.

On 4/15/05 before me, Nanci G. Mills
Date Name and Title of Office (e.g., "Jane Doe, Notary Public")
 personally appeared Thomas A. Whalen
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nanci G. Mills
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

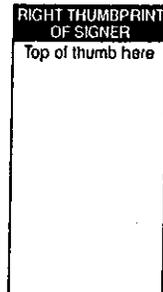
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

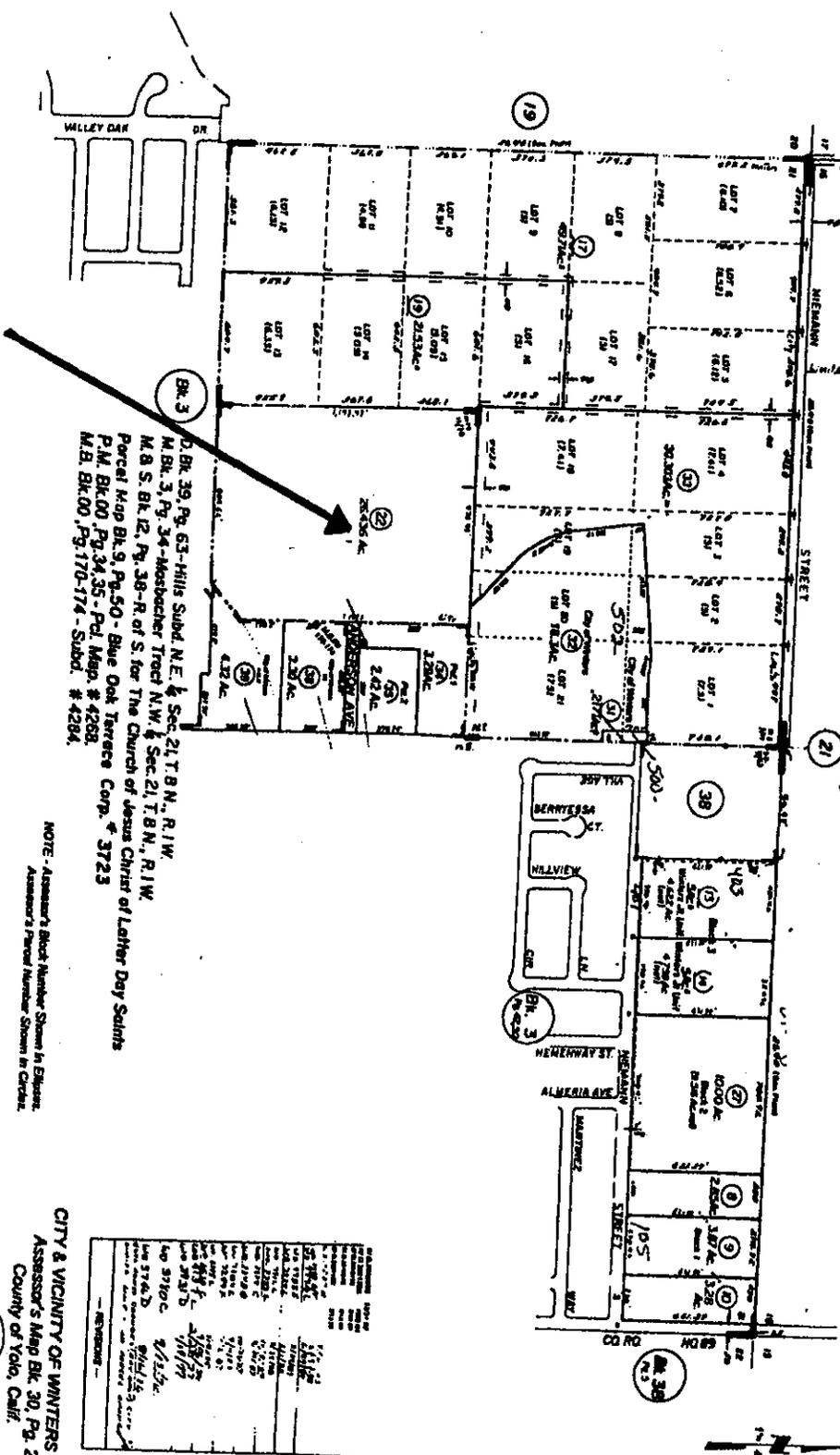
Signer is Representing: _____



FOR N 1/2 SEC. 21, T 8 N., R 1 W., M. D. B. & M.

CAUTION - These maps ARE NOT to be used for legal descriptions.

30-22



SUBJECT PROPERTY,
APN 030-220-22

D. Bk. 39, Pg. 65 - Hills Subd. N.E. & Sec. 21, T. 8 N., R. 1 W.
 M. Bk. 3, Pg. 34 - Mosbacher Tract N.W. & Sec. 21, T. 8 N., R. 1 W.
 M. B. S. Bk. 12, Pg. 38 - R. of S. for The Church of Jesus Christ of Latter Day Saints
 Parcel Map Bk. 9, Pg. 50 - Blue Oak Terrace Corp. # 3723
 P.M. Bk. 00, Pg. 34, 35 - Pal Mesa # 4268
 M.B. Bk. 00, Pg. 170-174 - Subd. # 4284.

NOTE - Assessor's Block Number Shown in English.
 Assessor's Parcel Number Shown in Arabic.

CITY & VICINITY OF WINTERS
 Assessor's Map Bk. 30, Pg. 22
 County of Yuba, Calif.

APN	ACRES	AREA	PERCENTAGE	REMARKS
030-220-22	2.42	2.42	100%	Subd. # 4284
030-220-23	2.42	2.42	100%	Subd. # 4284
030-220-24	2.42	2.42	100%	Subd. # 4284
030-220-25	2.42	2.42	100%	Subd. # 4284
030-220-26	2.42	2.42	100%	Subd. # 4284
030-220-27	2.42	2.42	100%	Subd. # 4284
030-220-28	2.42	2.42	100%	Subd. # 4284
030-220-29	2.42	2.42	100%	Subd. # 4284
030-220-30	2.42	2.42	100%	Subd. # 4284
030-220-31	2.42	2.42	100%	Subd. # 4284
030-220-32	2.42	2.42	100%	Subd. # 4284
030-220-33	2.42	2.42	100%	Subd. # 4284
030-220-34	2.42	2.42	100%	Subd. # 4284
030-220-35	2.42	2.42	100%	Subd. # 4284
030-220-36	2.42	2.42	100%	Subd. # 4284
030-220-37	2.42	2.42	100%	Subd. # 4284
030-220-38	2.42	2.42	100%	Subd. # 4284
030-220-39	2.42	2.42	100%	Subd. # 4284
030-220-40	2.42	2.42	100%	Subd. # 4284
030-220-41	2.42	2.42	100%	Subd. # 4284
030-220-42	2.42	2.42	100%	Subd. # 4284
030-220-43	2.42	2.42	100%	Subd. # 4284
030-220-44	2.42	2.42	100%	Subd. # 4284
030-220-45	2.42	2.42	100%	Subd. # 4284
030-220-46	2.42	2.42	100%	Subd. # 4284
030-220-47	2.42	2.42	100%	Subd. # 4284
030-220-48	2.42	2.42	100%	Subd. # 4284
030-220-49	2.42	2.42	100%	Subd. # 4284
030-220-50	2.42	2.42	100%	Subd. # 4284

RECORDING REQUESTED BY

First American Title Company of Napa

AND WHEN RECORDED MAIL TO

Name WINTERS INVESTORS LLC
Street
Address P.O. Box 758
City, State, Concord, CA
Zip 94522

Order No 00121441-LF



YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2004-0029149-00

Acct 103-First American Title

Wednesday, JUN 30, 2004 15:44:00

Ttl Pd \$5,815.00

Nbr-0000496636

VRB/R6/1-2

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED MF \$10 CITY \$3850.00

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
APN(S) 030-220-22-1

Documentary Transfer Tax is \$1,925.00
 computed on full value of interest or property conveyed, or
 full value less value of liens or encumbrances remaining at
the time of sale

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SANDRA D. CALLAHAN, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY
hereby GRANT(s) to

WINTERS INVESTORS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

the following real property in the City of Winters, unincorporated area of the
County of Yolo, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF
AND DESIGNATED AS EXHIBIT "A"

Dated: June 29, 2004

SANDRA D. CALLAHAN

STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

On 6-29-04, before me, LARRY S. FRATTINI

FOR NOTARY SEAL OR STAMP

a Notary Public in and for said County and State, personally
appeared SANDRA D. CALLAHAN personally known to me
(or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the
instrument.



WITNESS my hand and official seal.

Signature

029149 JUN 30 2004

MAIL TAX STATEMENTS AS DIRECTED ABOVE

(grndef) (07/08/03)

2

EXHIBIT "A"

Escrow Number: 00121441-LF

LEGAL DESCRIPTION

Real property in the City of Winters, County of Yolo, State of California, described as follows:

The South half of the Northwest quarter of Section 21, Township 8 North, Range 1 West, M.D.&M.

Except the following parcels of land:

- (1) That portion conveyed by Stephen Hill to H. A. Hill, by Deed dated January 29, 1886, and recorded in Book 39 of Deeds, at Page 597.
- (2) That portion conveyed by Stephen Hill to Winters and Ukiah Railway Company, by Deed dated August 18, 1887 and recorded in Book 42 of Deeds, at Page 197.
- (3) That portion conveyed by Frederick H. Deakin to William A. Morehead, by Deed dated May 16, 1891, and recorded in Book 47 of Deeds, at Page 306.
- (4) 10.5 acres lying in South half of said Northwest quarter and being the Easterly 10 1/2 acres of that certain tract of land more particularly described in Deed from B.F. Chadwick, et ux., and Margaret B. Wilson to A.L. Sage on March 10, 1924, and recorded in Book 107 of Deeds, at Page 163.
- (5) All that portion that lies within the boundaries of Mosbacher Tract No. 1, recorded November 5, 1919, in Map Book 3, Page 34, Yolo County Records.
- (6) 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 300 feet (300') 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 three hundred feet below the surface thereof, but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within three hundred feet (300') vertical distance below the surface thereof, as reserved by J. Cameron Smith, et al in Deed recorded January 13, 1978, in Book 1289, Page 550, Official Records.

Said land is purported to be shown on a Map filed July 2, 1987 in Book 12 of Maps and Surveys, Page 38.

APN: 030-220-22-1

END OF DOCUMENT

029149 JUN 30 8

2

ADVICE:
 OWNER: [Name]
 ENGINEER: [Name]
 SURVEYOR: [Name]
 RECORDING DATE: [Date]

NOTICE:
 THIS MAP IS SUBJECT TO THE APPROVAL OF THE CITY ENGINEER AND THE BOARD OF SUPERVISORS. IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF THE ENGINEER'S KNOWLEDGE AND BELIEF.

WINTERS HIGHLANDS
 TENTATIVE MAP NO. 4507

OGANDO/HUDSON
 TENTATIVE MAP NO. 4684

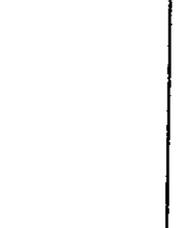
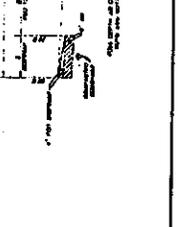
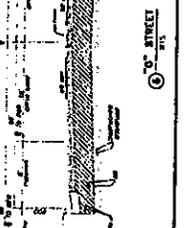
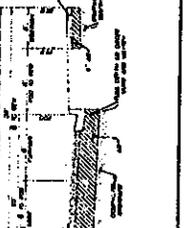
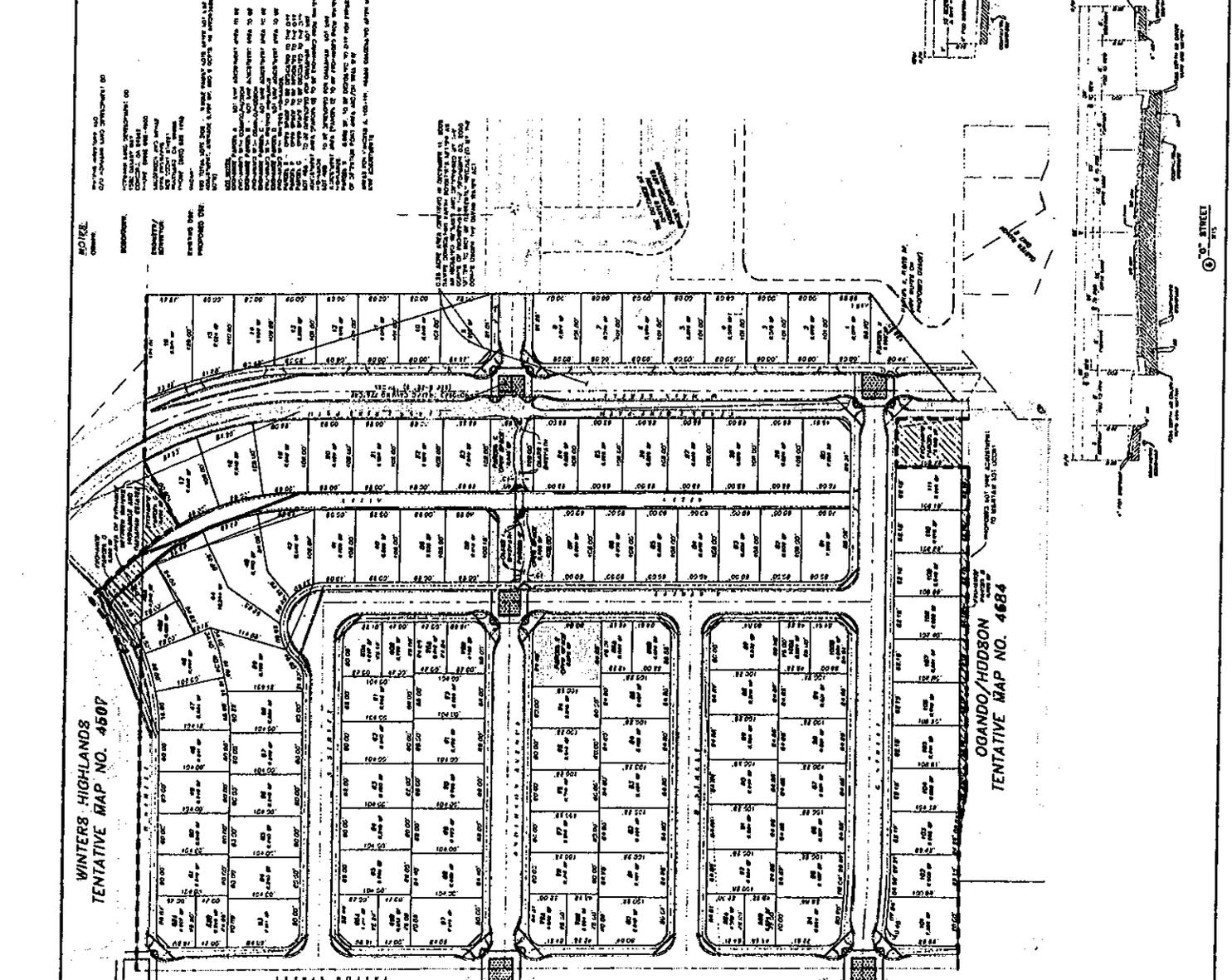
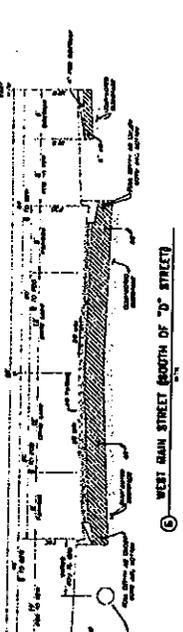
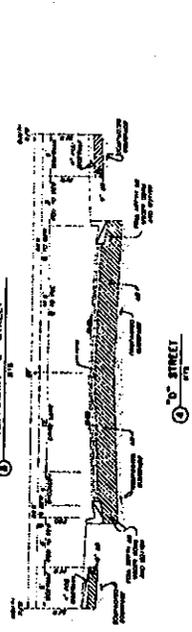
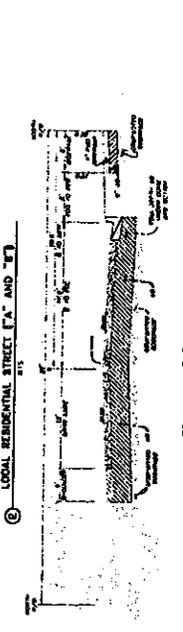
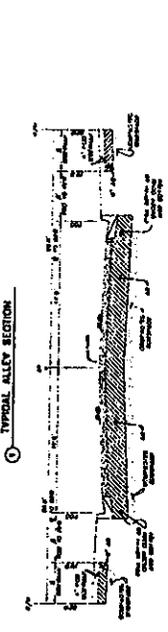
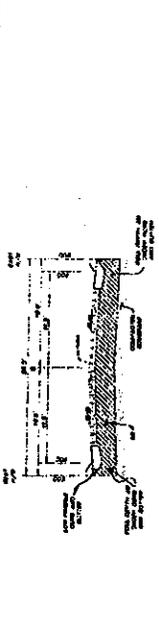
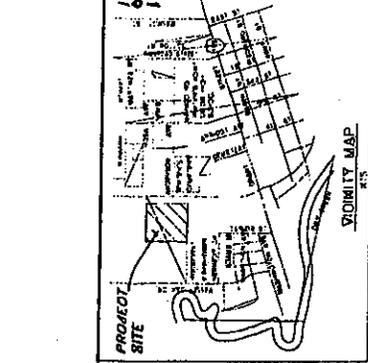
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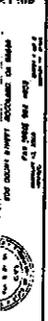
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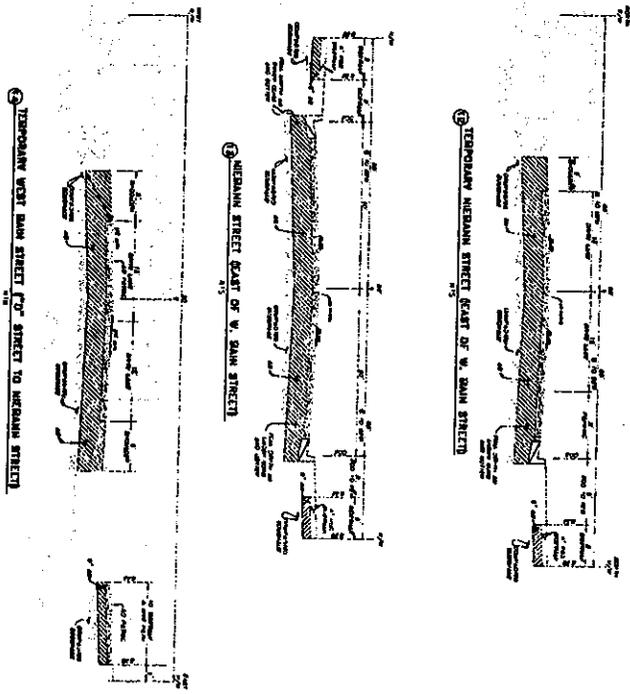
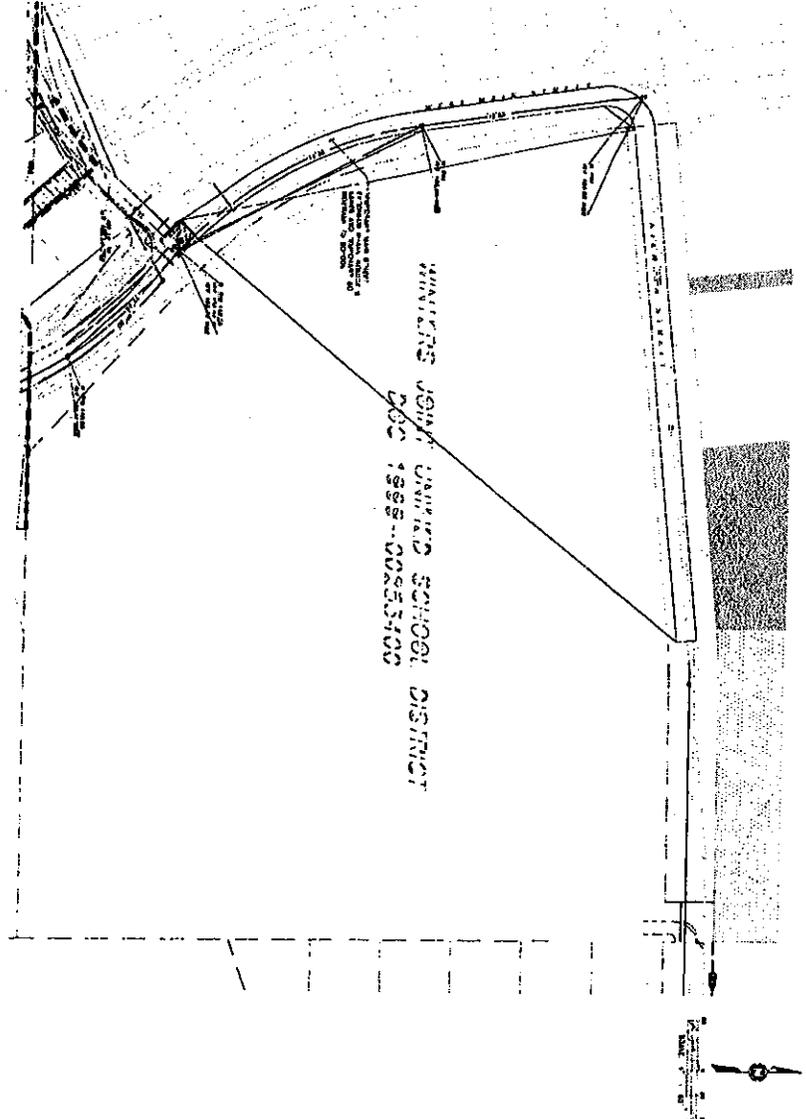
WINTERS HIGHLANDS
 TENTATIVE MAP NO. 4507



TENTATIVE MAP FOR SUBDIVISION 4688 DALLAM



TENTATIVE MAP FOR SUBDIVISION 4688 DALLAM



INITIATIVE MAP
 FOR
 SUBDIVISION NO. 6888
 IN THE CITY OF LINCOLN,
 NEBRASKA
 PREPARED BY
L.M. LINDSEY & COMPANY, INC.
 ENGINEERS AND ARCHITECTS
 1001 F STREET, SUITE 100
 LINCOLN, NEBRASKA 68502
 DATE: 1988

FINDINGS OF FACT AND CONDITIONS OF APPROVAL FOR CALLAHAN ESTATES SUBDIVISION PROJECT (March 15, 2005 Winters City Council -- Final)

FINDINGS OF FACT

Findings for Adoption of Mitigated Negative Declaration

1. The City Council has considered the proposed Mitigated Negative Declaration (original and revised) before making a decision on the project.
2. The City Council has considered comments received on the Mitigated Negative Declaration during the public review process.
3. The City Council finds that the environmental checklist/initial study identified potentially significant effects, but: a) mitigation measures agreed to by the applicant before the mitigated negative declaration and initial study were released for public review would avoid the effects or mitigate the effects to a point where clearly no significant impact would occur; and b) there is no substantial evidence, in light of the whole record before the City, that the project as revised to include the mitigation measures may have a significant effect on the environment.
4. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Winters.
5. The Mitigated Negative Declaration has been prepared in compliance with CEQA and the State CEQA Guidelines, and as amended/revised is determined to be complete and final.
6. The custodian of the documents, and other materials, which constitute the record of proceedings is the Community Development Director. The location of these items is the office of the Community Development Department at City Hall, 318 First Street, Winters, California 95694.
7. The Revised Mitigation Monitoring Plan is hereby adopted to ensure implementation of mitigation measures identified in the Mitigated Negative Declaration. The City Council finds that these mitigation measures are fully enforceable as conditions of approval of the project, and shall be binding on the applicant, future property owners, and affected parties.
8. The City Council hereby adopts the Callahan Estates Subdivision Mitigated Negative Declaration.

Findings for Exclusion from West Central Master Plan

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 parcel.

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 Tentative Subdivision Map (G.C. 66474) and Lot Line Adjustments

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. All conditions identified herein shall be fully satisfied prior to acceptance of the first final map unless otherwise stated.
3. The project is as described in the January 25, 2005 Planning Commission staff report. The project shall be constructed as depicted on the maps and exhibits included in the January 25, 2005 Planning Commission staff report, except as modified by these conditions of approval. Substantive modifications require a public hearing and Council action.

General Plan Requirements

4. Pursuant to General Plan Policy II.A.19, a minimum of ten percent of the single-family lots (12 lots) shall be offered for sale to local builders or owner-builders. These lots shall not be the same lots as those identified to meet the City's affordable housing requirement.
5. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. At a minimum this shall include: maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution" (attached), and attainment of EPA Energy Star Standards in all units; low emission furnaces; avoidance of dark colored roofing; and a minimum of 10 percent solar photovoltaic homes. The applicant shall provide written evidence from each buyer that they were provided with a solar energy option on their home.
6. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to the first occupancy of the project.
7. Pursuant to General Plan Policy IV.A.4 (second sentence), the developer shall pay in-lieu fees for the increment of parkland not provided on site, or at the City's discretion may construct needed improvements according to City specification in lieu of paying the fees.

8. 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, drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat.
9. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.
10. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.
11. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.
12. 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.
13. Deleted.
14. 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 and shall be included as a part of the required construction mitigation plan for the project.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. Deleted.

Negative Declaration Mitigation Measures

22. 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 submitted for approval 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.

23. 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.

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.

24. Mitigation Measure #2.1: Homes constructed as a part of the Callahan project shall contain only low-emitting EPA certified wood-burning appliances or natural gas fireplaces.

25. Mitigation Measure #3: The project proponent 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 special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-feet) 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.

26. Mitigation Measure #4: The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.
27. Mitigation Measure #5: The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee shall be collected by the City of Winters for impacts to 26.4 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 annually and the project proponent shall be charged at the rate per acre at the time of project approval. 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.
28. Mitigation Measure #5.1: (a) If the project can avoid ground disturbing activities that would affect the hydrology of the wetland or avoid fill into the wetland, then no mitigation for impacts to special status invertebrates is required. A buffer around the seasonal wetland would be required to ensure that any possibility of take is avoided. The amount of this buffer would be determined by a qualified biologist based on a site-specific determination of hydrology and shall not be less than 20-feet. If impacts to the wetland will not be avoided, then consultation and on-site inspection with USFWS shall determine whether the Service will require protocol surveys to be conducted to determine presence or absence of the listed species. If as a result of the consultation or protocol level surveys it is determined that the species are absent, then no mitigation is required. If the species are present, or if the project proponent decides to assume presence by not conducting the surveys if such surveys are required by USFWS, then compensatory mitigation will be required. If compensatory mitigation is required and there is no federal regulatory lead agency (as is the case with this project), the project proponent, through coordination with the USFWS, would prepare a project-level Habitat Conservation Plan under Section 10 of the federal Endangered Species Act. The project-level HCP will identify specific actions including the amount of compensation that is required. Typically, impacts on these species require replacement of the habitat acreage at a 3:1 ratio (1:1 preservation and 2:1 creation). The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit.

(b) Notwithstanding the Corps' determination, the California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and should be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species.

Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

29. Mitigation Measure #5.2: (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or 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 at the wetlands site in the northeast corner of the Winters Highlands property. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.
- (b) Additional field investigation shall be undertaken by a qualified wetlands specialist to establish the condition of the Highland Canal and to determine the potential for it to be subject to CDFG jurisdiction. The following information shall be provided: the source and terminus of the drainage, whether the feature is natural or artificial, and what its current and historical purpose is relative to water delivery. Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over habitat or species within the Highland Canal and comply with all requirements, if any, established by CDFG arising from this consultation with the Department. If the Highland Canal is found to be subject to CDFG jurisdiction, it shall also be included in the calculation of total loss of habitat for which City General Plan Policy VI.C.2 requires 1:1 mitigation.
30. Mitigation Measure #6: 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.
31. Mitigation Measure #7: Grading of the site, design of foundations for proposed structures and construction of other related facilities on the property shall follow the criteria identified in the Geotechnical Investigation (Terrasearch Inc, June 6, 2003) prepared for the project.
32. Mitigation Measure #8: Prior to development of the property, two soils samples in the southwest area of the site shall be tested for organochloride pesticides and metals (arsenic, lead, and mercury), following the protocol recommended in the Environmental Site Assessment (ESA) (Terrasearch, July 14, 2003). Other recommendations of the ESA shall be followed during grading and site preparation activities.
33. Mitigation Measure #9: 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.
34. Mitigation Measure #10: 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.
35. Mitigation Measure #11: 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, or other acceptable mechanisms.

36. Mitigation Measure #12: The applicant shall pay park mitigation fees to satisfy the obligation for 2.70 acres of developed parkland. The applicant is responsible for the value of the land plus the value of the improvements that would have otherwise been required in order to satisfy the General Plan goal.
37. Mitigation Measure #13: 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").
38. Mitigation Measure #13.1: a) 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** b) 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.
39. Mitigation Measure #13.2: 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 Highlands, Ogando, or Creekside (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents").
40. Mitigation Measure #13.3: 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.
41. Mitigation Measure #14: The applicant shall be required to complete all 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. The applicant shall be required to construct right-of-way improvements on Niemann Street to West Main Street, Anderson Avenue to West Main Street, and extend West main Street from the extension of Niemann Street to the existing northerly terminus of West Main Street within the Carter Ranch development. All roadway improvements at the Main Street and State Route 128 (Grant Avenue) intersection shall meet applicable Caltrans highway standards.
42. Mitigation Measure #15: The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map.
43. Mitigation Measure #16: A separate CEQA analysis shall be conducted to clear the proposed sewer pump station site for construction and to clear the construction of any offsite infrastructure needed outside of existing roadways and for which a prior CEQA clearance can not be used.
44. Mitigation Measure #17: 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. If expansion of the WWTP is required for the project, 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.
45. Mitigation Measure #18: 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. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.

Community Development

46. 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.
- 46.1 Construction on Lot 1 shall implement the recommendations of a plan-specific noise study to address potential noise from a municipal well operating on Parcel X.
47. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.
48. Address numbering shall be plainly visible from public view using lettering that is a minimum of four inches in high with contrasting colors. Naming of streets and address numbering shall be completed by a committee comprised of the Community Development Department, the Fire District, the Police Department, and the Postal Service.
49. The applicant shall pay all development impact fees, fees required by other entities, and permit fees.
50. 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.
51. MAP CORRECTIONS (all sheets): a) The "Notes" on the tentative map describing proposed Parcel X shall be modified to correctly refer to the parcel as "Parcel X" rather than "Lot X" and the square footage shall be modified to "3,939" rather than "3, 913". b) The "Notes" shall also be modified to reflect the true "owner" and "subdivider" as represented by the applicant. c) The "Notes" and the map shall be modified to identify Parcels E, F, and G as "open space" lots proposed to be dedicated to the City. d) The tentative map shall be modified for Lots 1 through 16 to remove the references to a "common driveway". This feature, if allowed, will be addressed during the subsequent Design Review process for these lots. e) Proposed Parcel C, which would be an exchange parcel from Winters Highlands to Callahan Estates, shall be increased in size on the tentative map from 1,884 square feet as shown to include the half-street cross-section frontage right-of-way on D Street to the east side of the alley and the full cross-section right-of-way for the alley to the centerline of D Street. f) Insets 8A, 8B, and 8c on Sheet 2 that depict lot setbacks are not approved and shall be removed from the map. g) The bike path on Parcels F and G shall be dimensioned and labeled as a Class I facility. h) The south boundary of Lot 38 shall align with the south boundary of Lot 23. The extra area will go into Lot F as a part of the open space.
52. Pursuant to Section 8-1.6015.C and Section 8-1.6015.I of the Zoning Ordinance related to the required CEQA Mitigation Monitoring Plan, sign-off on the completion of each mitigation measure in the adopted Mitigation Monitoring Plan (MMP) shall constitute the required "Program Completion Certificate".
53. The Mitigation Monitoring Plan shall be adopted pursuant to the requirements of Section 8-1.6015.F and implemented pursuant to Section 8-1.6015.G and Section 8-1.6015.H, of the Zoning Ordinance.
54. Pursuant to the Mitigation Monitoring Plan (MMP), the applicant shall fund the costs of implementing the MMP including the payment of fees specified in Section 8-1.6015.J of the Zoning Ordinance.

55. Pursuant to Section 8-1.6015.E of the Zoning Ordinance related to the required CEQA Mitigation Monitoring Plan (MMP), the following items shall apply and shall be amended into the MMP:

a) The adopted MMP shall run with the real property that is the subject of the project and successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted Plan.

b) Prior to any lease, sale, transfer, or conveyance of any portion of the real property that is the subject of the project, the applicant shall provide a copy of the adopted Plan to the prospective lessee, buyer, transferee, or one to whom the conveyance is made. This does not apply to sales of individual single-family lots to homebuyers.

c) The responsibilities of the applicant and of the City, and whether any professional expertise is required for completion or evaluation of any part of the Plan, shall be as specified in the Plan and as determined by the Community Development Director or designated Project Monitor in the course of administering the MMP.

d) Cost estimates for the implementation of this Plan and satisfaction of each measure are not known or available, but shall be developed by the applicant in the course of implementing each mitigation measure.

e) Civil remedies and criminal penalties for noncompliance with the adopted MMP are as specified in Section 8-1.6015.K, 8-1.6015.L, and Section 8-1.6015.M of the Zoning Ordinance.

55.1 The West Main Street (South of "C" Street) cross-section (Inset #6) shall be deleted. The map shall be modified to show the West Main Street ("C" Street to "D" Street) cross-section (Inset #5) as extending south of C Street. Lots 101 through Exchange Parcel A shall be shifted eastward 15 feet. Lot 101 shall be modified to show the widening of Taylor by 15 feet to accommodate a Class I trail system.

Design Review

56. 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.

57. Repetition of facades within builder tracts (subdivisions) shall be avoided. Abrupt changes in facades between builders shall be avoided.

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

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.

59. 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.

60. 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.

61. Units on opposing sides of a street shall be compatible in terms of design and color.
62. 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.
63. Entry walks to individual residences shall be separated from the driveway by a landscaped area.
64. Exterior colors on residential units shall not be restricted.
65. 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.
66. Fencing and parking shall be consistent with the applicable requirements of Section 8-1.6001 and 8-1.6003 of the Zoning Ordinance.
67. Landscaping and signage shall be consistent with the applicable requirements of Section 8-1.6004 and 8-1.6005 of the Zoning Ordinance.
- 67.1 **UNIVERSAL DESIGN:** 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.
- 67.2 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.
- 67.3 Site plans and landscaping plans for Parcels E, F, and G shall be submitted for design review and approval prior to issuance of residential building permits. These parcels 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.
- 67.4 Specifications and landscaping for the special treatment proposed at the intersection of Anderson Avenue and West Main Street shall be submitted for design review and approval prior to issuance of residential building permits.
- 67.5 Homes on lots along Taylor Street shall be oriented to face Taylor Street, rather than to the local streets. Design for these homes shall include wrap-around porches with front doors facing Taylor Street.

Affordable Housing

68. The tentative map and affordable housing plan shall be modified to denote the obligation to deed restrict 18 lots as affordable. Of the 18 affordable units, 7 shall be restricted to very low income occupants and 11 shall be restricted to low/moderate income occupants. These lots shall not be the same lots as those identified to meet the City's local builder requirement.
69. 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 property to ensure permanent affordability.
70. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.
71. 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.

Street Improvements

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

72.1 The project proponent shall install a traffic signal at the Grant Avenue and Interstate 505 northbound off ramp per Mitigation Measure #13. The signal is to be constructed at applicant's expense subject to a reimbursement from the City Development impact fees through a reimbursement agreement.

73. West Main Street:

- a) Full improvements shall be constructed from the northern terminus of existing West Main Street to the Northern terminus of this Tentative Map with the first final map on the project. Applicant shall acquire the necessary right of way for this purpose on the Winters Highlands property prior to approval of the first final map.
- b) The extension of West Main Street from the northern terminus of the tentative Map to the proposed Niemann Street shall be constructed with the first Final Map on the project. Interim street improvements may be approved by the City Engineer. If approved by the City Engineer, the minimum interim roadway improvements shall consist of two 12-foot lanes with 6-foot shoulders on each side and a temporary 10 foot wide asphalt concrete Class 1 pedestrian/bike lane on east side or west side (to be determined during design) of roadway. The structural street cross section shall meet City design and construction standards. Approval of any request for deviation in the minimum roadway improvements shall be at the sole discretion of the City Engineer. Applicant shall acquire the necessary right of way on the Winters Highlands property prior to approval of the first final map. Interim improvements that are of a temporary nature shall be constructed at the sole expense of the Applicant. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.
- 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. The signal is to be constructed at applicant's expense subject to a reimbursement from the City Development impact fees through a reimbursement agreement.

74. Taylor Street:

a) If the Winters Highlands property is not developed prior to the development of the Callahan Project, then the Applicant shall acquire the land on the Winters Highlands property in order to facilitate the interim or full construction of Taylor Street as shown on the Tentative Map. Applicant shall acquire the needed right-of-way prior to approval of final map on Project for any phase having lots which front on Taylor Street. Interim street improvements may be approved by the City Engineer. The minimum interim roadway improvements shall consist of two 12-foot lanes with an 8-foot parking lane on the east side. The structural cross section shall meet City-design and construction standards. Approval of any request for deviation in these minimum roadway standards shall be at the discretion of the City Engineer. Interim improvements that are of a temporary nature shall be constructed at the sole expense of the applicant. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.

75. Niemann Street: Niemann Street from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the Callahan project. Improvements shall consist of full improvements on the south side of Niemann with the addition of a 12-foot travel lane and 4-foot shoulder on the north side of Niemann. The extension of Niemann Street shall be constructed with the first Final Map of development. Improvements subject to reimbursement shall be reimbursed subject to the terms of a reimbursement Agreement.

76. Anderson Avenue:

a) Anderson Avenue from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the first Final Map of the Callahan project to serve the existing Middle School on Anderson Avenue. Applicant shall construct full roadway improvements. Applicant shall acquire the needed right-of-way prior to approval of the final map. Improvements subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.

b) Anderson Avenue from Taylor Street to A Street shall include enhanced sidewalk landscape corridor. The 10-foot sidewalk along Anderson Avenue from Taylor Street to A Street shall not be classified as a bike path. Sidewalk within driveway locations shall have a minimum 6-inch PCC section.

c) Anderson Avenue shall be 46-feet from curb-to-curb. The cross-section shall include 6-foot parkway strips and 5-foot sidewalks on both sides.

77. "D" Street: The Applicant shall acquire the land on the Winters Highlands property prior to approval of a final map in order to facilitate interim or full construction of "D" Street as shown on the Tentative Map. Interim street improvements may be approved by the City Engineer. The minimum interim roadway improvements shall consist of two 12-foot lanes with an 8-foot parking lane on south side. The structural street cross section shall meet City design and construction standards. Approval of any request for deviation in the minimum roadway improvements shall be at the sole discretion of the City Engineer. Interim improvements that are of a temporary nature shall be constructed at the sole expense of the Applicant. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.
78. The tentative map shall be modified to make C Street a secondary collector (62-foot right-of-way) from West Main Street to Taylor Street.
79. Parcel X and City Drainage Pond Access Property- Parcel X and City owned drainage Pond Access property shall be landscaped to the satisfaction of the Community Development Director and City Engineer. This location may also be utilized for public works infrastructure improvements, such as water wells, and pump stations. The City Engineer will have final approval.
80. Lot "A", "B", "C", and "D" Areas of Exchange: Applicant shall execute lot line adjustment for lots C and D between the Callahan property and the Winters Highlands property prior to submittal of the first final map and improvement plans. The net result will be that Lot "C", fronting "D" Street, will be incorporated as part of the Callahan tentative map and Lot "D", fronting West Main Street, shall be incorporated as part the Winters Highlands tentative map.
81. 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.
82. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA. All sidewalks at driveway locations shall be 6-inch PCC.
83. Tentative Map Street Cross-Sections, Sheet 1 of 1, dated January 13, 2005). Conditions and Changes shall be made as follows:
- a) 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.
- b) A signing and striping, and stop plan is required and shall be approved by the City Engineer. All signing and striping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.

c) 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

84. 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 oversized improvements on a pro rata basis per the Project level Development Agreement.
85. Deleted
86. 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.
87. 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.
88. To accommodate the storm water project run-off and pass-through run-off from project 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 acquire necessary land 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.
89. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).
90. 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.

91. 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. Deviation from this condition may be allowed subject to approval by the City Engineer.
92. Drainage fees shall be paid prior to issuance of a building permit.
93. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.
94. 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.
95. 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.
96. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.
97. 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 than 1 acre shall include a BMP to be approved by the City Engineer.
98. Deleted.
99. 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.
100. Where possible landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. All other slopes shall comply with the City of Winters Public Works Improvements Standards. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.
101. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
102. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
103. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
104. Construction equipment and engines shall be properly maintained.
105. 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.
106. Construction practices will minimize vehicle idling.
107. Potentially windblown materials will be watered or covered.

108. Construction areas and streets will be wet swept.

Wastewater and Sewer Collection System

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

110. 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.

111. 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.

112. The applicant shall pay the cost associated with all improvements, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for reimbursable improvements. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

113. 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.

114. As an interim connection, Developer shall have the option to direct its sewer flows south into the existing Grant Ave. sewer system as an interim connection on the condition that Developer fund all necessary new improvements and upgrades to the existing sewer system as required by the City at its own expense, which will not be subject to reimbursement. The current estimate for these improvements is approx. \$1.5M. Once infrastructure is constructed to the north, the development shall be required to make that connection and disconnect from the Grant Ave sewer system. In addition, Callahan/ Ogando-Hudson shall be required to pay the full citywide sewer impact fee that funds the WWTP expansion that would still serve their development and associated sewer conveyance pipelines and regional pump station that would have served their development should the development have elected to continue to direct its development flows north through the Winters Highlands Development to the new proposed regional pump station at Neimann Street/ Railroad Ave. Should the development elect not to direct its flows south and fund the estimated \$1.5M improvements, it would be required direct their flows north through the Winters Highlands property, advance funds for those improvements, and construct the conveyance pipe line system and regional pump station in order to connect to the WWTP and comply with all conditions of approval. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.

115. 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 or other acceptable alternative approved by the City Engineer.

116. Deleted.

117. Construction of sewer mains deeper than 16-feet at the bottom of the pipe shall be connected to laterals by a parallel mains and connections at Manholes

Water Infrastructure

118. Deleted.

119. If required, per the Subdivision Map Act , project Applicant shall obtain a Water Verification (WV) prior to approval of final map 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.

119.1 Based on City water modeling, a new well is needed to serve the first phase of development. Developer shall advance fund the construction of a new water well and required water system conveyance pipelines with the project. Per Mitigation Measure #18, 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.

120. The Applicant shall fund a well site plan with facility elevations with the first final map application subject to fee credits.

121. 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.

122. 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.

123. 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.

124. 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.

125. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.
126. 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.
127. 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.
128. 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 City of Winters Fire Department for replacement purposes.
129. 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.
130. 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.
131. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.
132. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.
133. 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.
134. 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.
135. 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.
136. All residences shall have fire suppression sprinkler systems meeting or exceeding NFPA 13-D. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems.

General Public Works and Engineering Conditions

137. 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.

138. 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.
139. 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.
140. 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.
141. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.
142. A registered landscape architect shall design public landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.
143. 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.
144. 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.
145. 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.
146. 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
147. 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.
148. 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.
149. 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.
150. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform to 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

151. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.
152. 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.
153. A five (5) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City. Additional easements shall be dedicated as requested by the utility companies and approved by the City.
154. 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 that set of improvement plans and final map.

Reimbursements for Applicant Install Improvements

155. 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

156. 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.
157. 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.
158. Prepare, and submit for approval, a utility site plan prior to preparation of full improvement plans.
159. 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.
160. 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.
161. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.
162. 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.
163. The area of each lot, in square feet, shall be calculated and shown on the Final Map.
164. Encroachment permits if necessary from will be acquired from Yolo County, Cal-Trans, and PG&E.

165. 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.
166. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.
167. 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.
168. 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.

callahan conditions.031505 final.doc

MUTUAL BENEFIT AGREEMENT BETWEEN
WINTERS INVESTORS, LLC
AND
WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS MUTUAL BENEFIT AGREEMENT ("Agreement") is entered into this 16th day of March, 2005, by and between

WINTERS INVESTORS, LLC, a California limited liability company,
hereinafter referred to as "*Developer*"

whose address is
1380 Galaxy Way, Concord, California 94522

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 Callahan Parcel located in the City of Winters, California described on Exhibit "A", attached hereto and incorporated herein by reference (Yolo County APN 030-220-22) (hereinafter "*the Callahan Parcel*"); and
- B. WHEREAS, the Callahan 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 Callahan Parcel consisting of a total of One Hundred Twenty (120) single family residential units. Of these 120 residential units, fourteen (14) shall be constructed for low and/or very low income persons; and
- 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 Callahan 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 One Hundred Six (106) residential units in the Callahan 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 Callahan 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 single family 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 single family residential unit to be payable at the close of escrow on the sale of each single family residential unit.

2. The payments described in paragraph 1 shall be paid on the One Hundred Six (106) market rate and affordable residential units for moderate income persons within the Callahan Parcel.

3. This Agreement and specifically paragraph 1, shall not apply to the fourteen (14) residential units in the Project constructed specifically for low and very low income persons, it being acknowledged by the parties that those residential units would remain subject to the statutory 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

3/15/2005

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 single family 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 single family 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 than as provided for in this Agreement

8. This Agreement is for the benefit of the Callahan 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 Callahan 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 Callahan 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 Callahan 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:

3/15/2005

Developer:

Winters Investors, LLC
1380 Galaxy Way
Concord, CA 94522
Attn:

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 single family residential unit planned for the Callahan 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

Winters Investors, LLC

By: Dale Mitchell
Name: Dale J. Mitchell, Ed.D.
Title: Superintendent

By: A. J. Shaw
Name: A. J. SHAW
Title: MANAGING MEMBER

When Recorded, Return to:

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

Exempt: Government Code §5103

**MEMORANDUM OF MUTUAL BENEFIT AGREEMENT
BETWEEN WINTERS INVESTORS, LLC, AND
WINTERS JOINT UNIFIED SCHOOL DISTRICT**

This Memorandum of Mutual Benefit Agreement is entered into on this 16th day of March, 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 Winters Investors, LLC, ("Developer") the owner and developer of certain real property hereinafter referred to as the Callahan Parcel (Yolo County APN 030-220-22) 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 16th day of March 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

Winters Investors, LLC

By: Dale J. Mitchell
Name: Dale J. Mitchell, Ed.D.
Title: Superintendent

By: A. J. Shaw
Name: A. J. SHAW
Title: MANAGING MEMBER

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

State of California
County of Contra Costa

On March 15, 2005, before me, Sandra K. Curran, Notary Public, personally appeared G.T. Shaw, 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.

Sandra K. Curran
Notary Public

(SEAL)



My commission expires: _____

State of California
County of Yolo

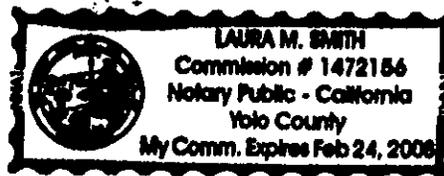
On March 16, 2005, before me, Laura M. Smith Notary Public, personally appeared Dale J. Mitchell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized 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
Notary Public

(SEAL)

My commission expires: Feb. 24, 2008





SCALE: 1" = 100'

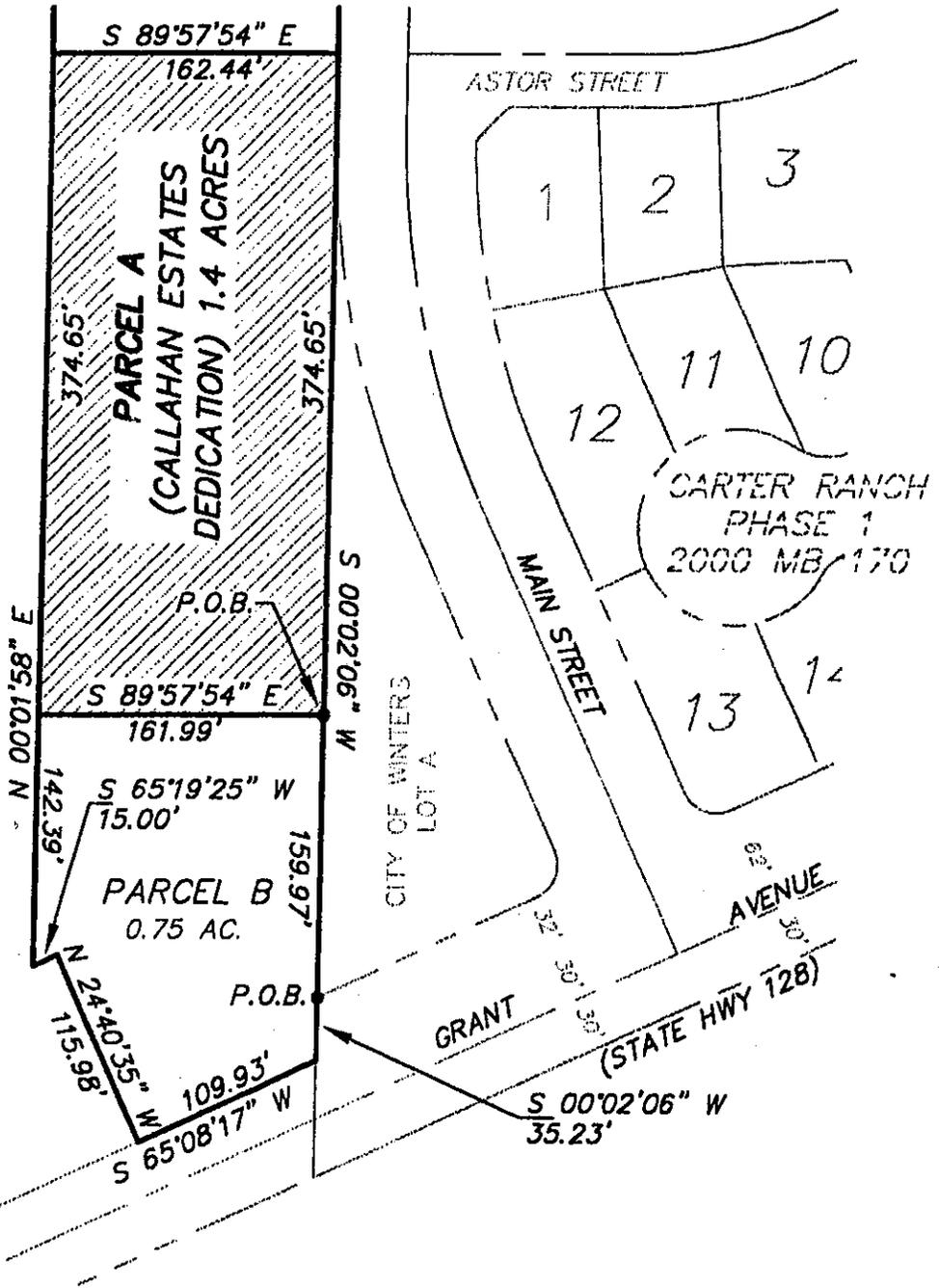


EXHIBIT B
DEDICATION TO THE CITY OF WINTERS
 YOLO COUNTY, CALIFORNIA
 A PORTION OF LOT 3
 BANK OF YOLO SUBDIVISION
 BOOK 3, MAPS & SURVEYS, PAGE 23
 BEING A PORTION OF SECTION 21,
 TOWNSHIP 8 NORTH, RANGE 1 WEST,
 M.D.M.
 MARCH 30, 2005

LM
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
LAUGENOUR AND MEIKLE
 608 COURT STREET, WOODLAND, CA 95695
 PHONE: (530) 662-1755
 FAX: (530) 662-4602

Proj. No. 2260-3

	Projected Average Assessed Value per Unit	Projected Property Tax Per Unit	Projected 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	412,500	712.39	226.88	939.26		-	-	-
Single Family Medium Density	350,000	604.45	192.50	796.95		-	-	-
Single Family Very Low	129,000	222.78	70.95	293.73		-	-	-
Singly Family Low to Mod	258,000	445.57	141.90	587.47		-	-	-
Total Revenues		64,035.43	20,393.45	84,428.88		-	-	-

Average Revenue per Unit(Property Tax & Transfer Tax)

789.05

Projected Per unit cost for services

1,980.00

Increase per State of California

100%

Division of Labor Statistics and Research

1,980.00

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

1,190.95

Increase/(Decrease) in Annuity Contribution

789.05

1,980.00

Average
Projected
Revenue
(789.05)

(A) (0.002277)
Less Fiscal Analysis projected Revenues

Increase (Decrease) in Average projected revenues

xxxxx
Increase
in Service
Cost per
unit

(1980) (B)

(Increase) Decrease in Annuity Contribution
(Calculated Change in Average projected revenues less Increase in
Service Cost per unit)

xxxxx

A = Average Sale 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 of each year

(((Average Sales Price)* 0.18963%)+(\$1069.02*Consumer Price Index)-(1998.35*Consumer Price Index))*-2870%=Cost per Unit

Backup Calculation Using Cost from the EPS Report

Annual Revenues	Total	Per Unit 117	
Property Tax - City General	\$ 70,431.00	\$ 601.97	0.18128% % of Assessed Value aver sales price in EPS \$332,059.83
Real Property Transfer Tax	\$ 3,246.00	\$ 27.74	0.00835% % of Assessed Value with 14.5% turnover
Sales and Use Tax	\$ 14,782.00	\$ 126.34	
Franchise Taxes	\$ 5,770.00	\$ 49.32	
Utility Users Tax	\$ 14,787.00	\$ 126.38	
Municipal Services Tax	\$ 14,076.00	\$ 120.31	
Business Licenses	\$ -		
Motor Vehicle in Lieu	\$ 19,523.00	\$ 166.86	
Fines and Forfeitures	\$ -		
Rents and Concessions	\$ 1,407.00	\$ 12.03	
Indirect Cost Allocation Charges	\$ 43,535.00	\$ 372.09	
Other Revenue	\$ 1,518.00	\$ 12.97	
Citywide Assessment Fund	\$ 9,677.00	\$ 82.71	
	\$ 198,752.00	\$ 1,698.74	
Annual Expenses			
City Council	\$ (2,454.00)	\$ (20.97)	
City Manager	\$ (7,139.00)	\$ (61.02)	
Contingency Appropriation	\$ (13,081.00)	\$ (111.80)	
City Clerk	\$ (345.00)	\$ (2.95)	
City Attorney	\$ (886.00)	\$ (7.57)	
Finance and Treasurer	\$ (7,577.00)	\$ (64.76)	
Police Services	\$ (88,890.00)	\$ (759.74)	
Fire Services	\$ (58,157.00)	\$ (497.07)	
Comm. Development & Building Insp.	\$ (1,148.00)	\$ (9.81)	
Public Works - Admin and Engineering	\$ (27,544.00)	\$ (235.42)	
Building Maintenance	\$ (488.00)	\$ (4.17)	
Recreation	\$ (6,275.00)	\$ (53.63)	
Administrative Service	\$ (8,280.00)	\$ (70.77)	
City Wide Assessment Fund No. 211	\$ (11,543.00)	\$ (98.66)	
	\$ (233,807.00)	\$ (1,998.35)	
	\$ (35,055.00)	\$ (299.62)	2870% This equates to a cost of \$8,600 direct proportional to the per unit cost

2870% This equates to a cost of \$8,600 direct proportional to the per unit cost

(((Average Sales Price)* 0.18963%)+(\$1069.02*Consumer Price Index)-(1998.35*Consumer Price Index))*-2870%=Cost per Unit

(((332059.83*0.0018963)+1069.02*1)-(1998.35*1))*-28.7)=\$8,600

\$ 8,600.00



NOTICE OF PUBLIC HEARING

TO: Interested Parties

FROM: Winters Community Development Department

DATE: November 13, 2008

SUBJECT: ***Notice Of Public Hearing To Take Action On Proposed Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).***

Applicant: City of Winters

Description of the Project: Given the extraordinary economic climate, the City of Winters desires to amend the April 2005 Callahan Estates Development Agreement (DA). The proposed Amendment includes:

1. Extending term of DA to 12/31/2016.
2. Updating the subject property's Assessor Parcel Numbers
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from October 30, 2005 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Affirmation that issuance of building permits shall be governed by the DA.
7. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every five market rate units.
8. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
9. Deferred payment of impact fees for building permits issued on or before June 30, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
10. Shifting conveyance of land for Public Safety Center from filing of final map to within 30 days of effective date of the First Amendment of the DA.
11. Shifting payment of park fees from filing of final map to a pro-rata basis at building permit and the valuation date for the park land appraisal from recording of DA to recording date of the First Amendment DA.
12. Shifting payment of police, fire and general municipal facilities fees from filing of final map to either concurrently with issuance of first building permit for all 120 residential units or payment with each building permit at the then current fees.
13. Shifting payment to library fund from final map to issuance of the first building permit.
14. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50th market rate building permit.
15. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.

Project Location: Western terminus of Anderson Avenue, Assessor Parcel Number 030-220-49.

Environmental Determination: A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-08) was adopted on April 5, 2005 for the Callahan Estates Development Agreement. Per

Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

Public Hearing: A public hearing will be held to consider action on the project on **Tuesday, November 25th, 2008 before the Planning Commission**. This meeting will start at 7:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one-full business day before the start of the hearing.

The City does not transcribe its hearings. If you wish to obtain a verbatim record of the proceedings, you must arrange for attendance by a court reporter or for some other means of recordation. Such arrangements will be at your sole expense.

If you wish to challenge the action taken on this matter in court, the challenge may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission prior to the public hearing.

Availability of Documents: The project file is available for public review at the Community Development Department, Winters City Hall, 318 First Street, Winters, CA 95694. Copies of the Staff Report will be available on the City's website at http://cityofwinters.org/administrative/admin_council.htm

For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

PROOF OF PUBLICATION
(2015.5 C.C.P.)

This space is for the County Clerk's Filing Stamp

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: November 13, 2008. I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 13th day of November, 2008.


Signature

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

Notice Of Public Hearing To Take Action On Proposed Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).

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8. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
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13. Shifting payment to library fund from final map to issuance of the first building permit.

14. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50th market rate building permit.

15. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.

Project Location: Western terminus of Anderson Avenue, Assessor Parcel Number 030-220-49.

Environmental Determination: A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-08) was adopted on April 5, 2005 for the Callahan Estates Development Agreement. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

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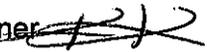
For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

Published Nov. 13, 2008



PLANNING COMMISSION STAFF REPORT
November 25, 2008

TO: Chairman and Planning Commissioners

FROM: Kate Kelly – Contract Planner 

SUBJECT: Public Hearing To Take Action On Proposed Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50).

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions:

- 1) Receive the staff report;
- 2) Conduct the public hearing;
- 3) Recommend to the City Council approval of the proposed second Amendment to the Winters Highlands Subdivision Development Agreement .

BACKGROUND: In April 2006, the City Council approved the Winters Highlands Subdivision project and its accompanying Development Agreement (DA) which would result in 413 single family residential lots, 30 apartments, 10.43 acres of park land, 7.43 acres of open space and wetlands, and associated infrastructure. In December 2006 the City Council approved the first Amendment to the Winters Highlands Subdivision DA which: 1) changed the start of the phasing plan for construction of market-rate residential units from September 1, 2006 to September 1, 2007; 2) advanced the payment of \$1,250,000 for the construction of the new Bobbie Greenwood Community Swimming Pool from March 31, 2007 to January 1, 2007; and 3) limited the financial obligation for expansion of the City's Wastewater Treatment Plant to \$8,000,000.

Since 2007 the housing market has rapidly declined and recently the economy has plummeted. It has become difficult for developers, builders, and homebuyers to obtain financing. As a result, most development projects cannot be implemented at this time. Because of these factors the applicant has been forced to delay the development of Winters Highlands. Given the changed economy and delayed development, the project timing and funding structure in the DA is obsolete. This is not a circumstance limited to the Winters Highlands Place project. In light of the changed real estate market and economy, the City

Council approved an amendment to the Anderson Place DA earlier this year and is currently processing amendments to Hudson-Ogando Subdivision and Callahan Estates DAs to address timing and funding structure issues. Amendments to DAs are provided for under California Government Code Section 65868 and Chapter 15.72.210 of the City of Winters Municipal Code. The following amendments are proposed for the Winters Highlands Subdivision DA:

1. Extending term of DA to 12/31/2016.
2. Updating the subject property's Assessor Parcel Numbers.
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Shifting filing of final map for Phase I from October June 17, 2007 to the discretion of the developer.
5. Elimination of same number of days extension provision.
6. Revision of building allocation for dwelling units as follows:

Year	Current	Proposed
1	69	118
2	127	132
3	54	83
4	83	44
5	44	25
6 through 10	25 per year	25 per year

Note: The total of the above units is not reflective of the total number of residential units within the Winters Highlands Subdivision.

7. Affirmation that issuance of building permits shall be governed by the DA.
8. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
9. Deferred payment of impact fees for building permits issued on or before June 30, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
10. Provision for the City to provide developer with conceptual design for linear park and well site within 12 months from recordation of the Second Amendment.
11. Shifting completion of linear park construction from December 1, 2009 or Phase I final map to construction concurrently with each Phase of the Subdivision.
12. Shifting payment of \$250,000 for off-site park improvements from recordation of Phase II final map to no later than issuance of the 118th building permit.

13. Shifting payment of police, fire and general municipal facilities fees from filing of final map to either concurrently with issuance of first building permit for all 443 residential units or payment with each building permit at the then current fees.
14. Shifting payment to library fund from Phase I final map to issuance of the first Phase I building permit.
15. Shifting the dates funding is due for the waste water treatment plant (WWTP) expansion from 2007 to 2010 for design costs, from 2008 to 2012 for land acquisition costs, and from 2009 to 2013 for construction costs.
16. Shifting provision of sewer connections for Phases I, II, and III from 2010 to 2014.
17. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 118th market rate building permit.
18. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer of well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.
19. Shifting payment of Miscellaneous Contributions for environmental education programs, Putah Creek Park Development Fund, high school cafeteria, and the evaluation of growth impacts and bringing jobs to the community from recordation of Phase I final map to no later than issuance of 118th building permit.
20. Provision for any payments by Developer to City for economic development projects to be credited against the Miscellaneous Contribution for evaluation of growth impacts and bringing jobs to the community.
21. Revised Exhibit F to reflect location of Public Safety Center.

DISCUSSION: Given the extraordinary economic climate, Staff supports the amendments to the DA. The amendments maintain substantial public benefit provided to the City by the DA, allow time for the housing market and economy to adjust and provide needed flexibility for the applicant to meet the changed economic climate. Without these amendments the DA would be in default and the significant public benefits diminished.

This situation is not unique to the Winters Highlands Subdivision project or even Winters. The development community as a whole is struggling and the City is in the process of amending the development agreements for several of our projects.

The proposed Amendments have been generated by City and applicant. The way all types of projects are financed in the future is forever changed. The proposed Amendments enable the applicant to be better positioned to move forward in more feasible economic times.

Staff has advanced these to provide for significant City infrastructure needs and economic goals. The Amendments reflect a new financial and economic reality.

The projects advance the City's General Plan and will serve as catalysts for improving the community. The proposed Amendments preserve the entitlements for quality projects for which the City, developer and community have made significant investment. Literally thousands of hours and millions of dollars have been spent toward these projects.

The proposed Amendments enable key infrastructure to move forward during an advantageous economic period for doing so. All projects of moderate size which will bring economic development and to the City are contingent on Well #7 being completed and brought on-line. The development of the Public Safety Facility and Water Well #7 will be more cost effective by building now while the bidding climate is advantageous for the City.

APPLICABLE REGULATIONS: This project is subject to several regulations:

- State Planning and Zoning Law
- City of Winters General Plan
- City of Winters Municipal Code
- City of Winters Zoning Ordinance

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, November 13, 2008, and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to the November 25, 2008 Planning Commission hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, November 20, 2008.

ENVIRONMENTAL ASSESSMENT: The proposed amendment to the DA for the Winters Highlands has been reviewed in accordance with the California Environmental Quality Act (CEQA). On April 4, 2006 the City of Winters City adopted Resolution No. 2006-08 approving CEQA findings of fact, adopting a statement of overriding considerations, adopting a mitigation monitoring plan, and certifying the final environmental impact report for the Winters Highlands Project. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

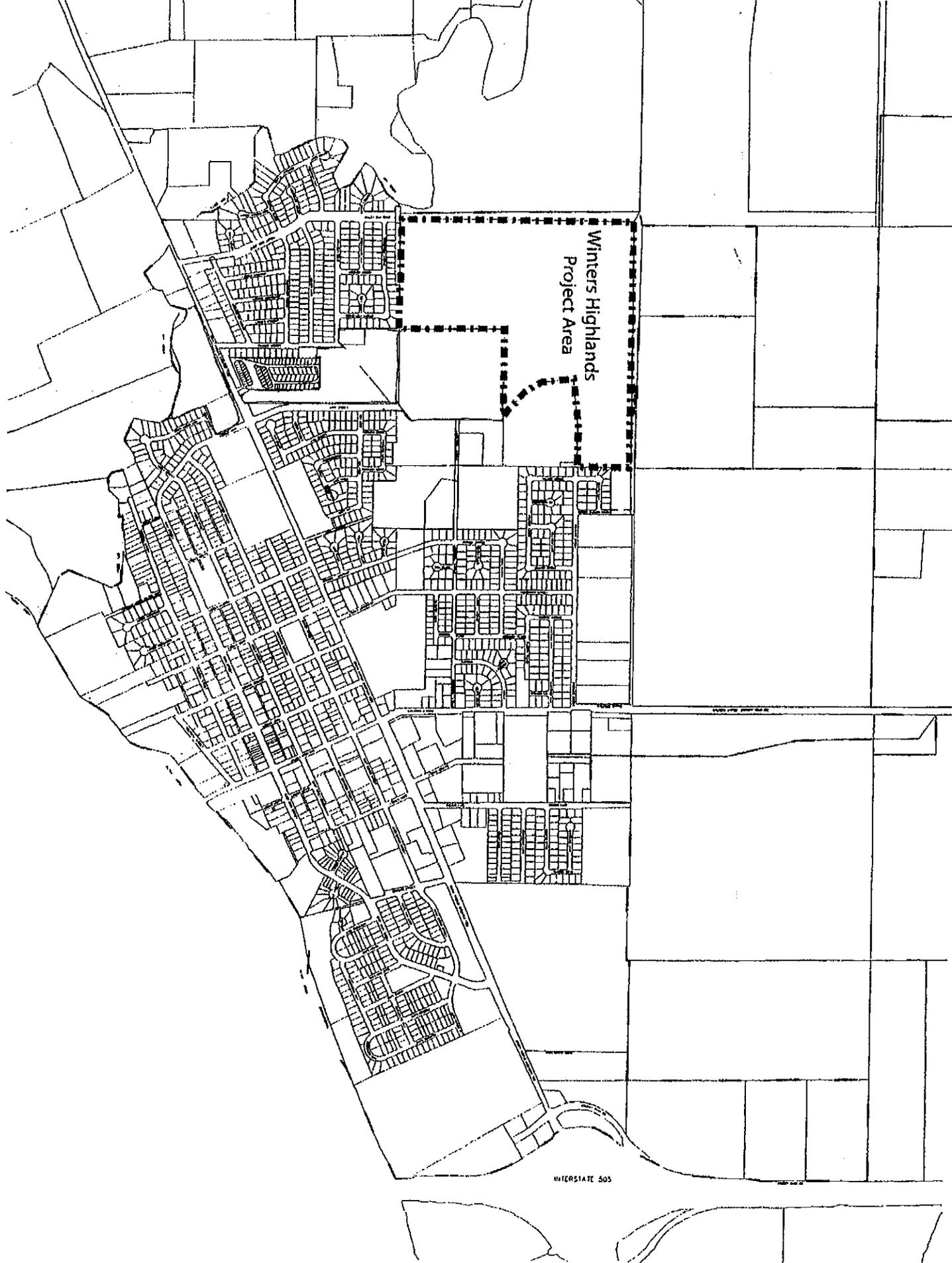
RECOMMENDATION: Staff recommends approval of the project by making an affirmative motion as follows:

Move that the City of Winters Planning Commission recommend APPROVAL to the Winters City Council of proposed Ordinance 2008-15 - Second Amendment to Development Agreement by and between the City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50).

ALTERNATIVES: The Commission can elect to not recommend approval of the DA amendment and provide reasons for its position to the City Council.

ATTACHMENTS:

1. Location Map for Project
2. Proposed Second Amendment to the Winters Highlands Development Agreement
3. Proposed Ordinance 2008-15 – Second Amendment to Development Agreement by and between the City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, and 030-220-50)
4. Winters Highlands Development Agreement – recorded May 30, 2006 and amended January 16, 2007
5. Public Hearing Notice (published and mailed copies)



Winters Highlands
Project Area

INTERSTATE 505

**SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF WINTERS
AND
GBH-WINTERS HIGHLANDS, LLC
[WINTERS HIGHLANDS SUBDIVISION]**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "**Second Amendment**") is entered into as of November _____, 2008 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and GBH-WINTERS HIGHLANDS, LL C, a California limited liability company (the "**Developer**").

Recitals

- A. The City and the Developer have heretofore entered into a Development Agreement executed as of May 25, 2006 (the "**Development Agreement**"), and a First Amendment to Development Agreement executed as of December 21, 2006 (the "**First Amendment**"), providing for the residential development of certain real property commonly referred to as the Winters Highlands property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this Second Amendment shall have the meanings given in the Development Agreement.
- B. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer has threatened the economic viability of the Project.
- C. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City and the Developer desire to enter into this First Amendment to make certain modifications to the Development Agreement as set forth herein.
- D. City has given the required notice of its intention to adopt this Second Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, the City has found that the provisions of this Second Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- E. On _____, 2008, the City of Winters Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Second Amendment. On _____, 2008, the City of Winters City Council adopted its Ordinance No. _____ approving this Second Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on _____, _____.

Agreement

Section 1. Amendment to Sections 1.1.23, 1.1.25, and 2.2 "Property"

Sections 1.1.23, 1.1.25 and 2.2 of the Development Agreement are amended by replacing the old Yolo County Assessor's Parcel Numbers 030-220-17, 030-220-19 and 030-220-33 with the new Yolo County Assessor's Parcel Numbers 030-220-17, 030-220-19, 030-220-49 and 030-220-50 to reflect updated Yolo County Assessor's Parcel Numbers. The project acreage remains the same.

Section 2. Amendment to Section 2.3, Agreement to be Recorded; Effective Date; Term.

Section 2.3, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The term of this Agreement shall expire on December 31, 2016, unless extended by mutual consent of the Parties. It may be terminated as provided in Article 5 of the Development Agreement.

Section 3. Amendment to Section 2.7, Whole Agreement; Conflict with Municipal Code.

Section 2.7, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The provisions of Title 15, Chapter 15.72 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 4. Amendment to Section 3.6, Commencement of Development.

Section 3.6, paragraphs a. and b., of the Development Agreement are replaced in their entirety and shall read as follows:

- a. The Developer shall have sole discretion to determine when the final map for Phase I of the Winters Highlands Subdivision, and accompanying subdivision improvement plans, are submitted for City review and approval.
- b. Deleted.

Section 3.6, paragraphs c. and d., of the Development Agreement shall remain unchanged.

Section 5. Amendment to Section 3.7, Maximum Number of Building Permits Per Year; Non-Market Rate Units.

Section 3.7. of the Development Agreement, as previously amended in the First Amendment, is replaced in its entirety and shall read as follows:

a. To provide for orderly growth within the City of Winters, the Developer shall be entitled to apply for and receive no more than the following number of single family residential building permits per year for the 413 market rate residential units (including the forty-one (41) lots to be offered for sale to local builders) in the Winters Highlands Subdivision. For purposes of this section, the first year commences upon the date that the first final map is recorded.

1. Year 1: 118
2. Year 2: 132
3. Year 3: 83
4. Year 4: 44
5. Year 5: 25
6. Years 6 through 10: 25 per year

The total of the above number of units is not reflective of the total number of residential units within the Winters Highlands Subdivision.

b. 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, unless and until the City and Developer enter into a subsequent Development Agreement. This provision shall survive the termination of this Agreement.

c. Sixty-six (66) deed restricted affordable housing units shall be constructed in the Winters Highlands Subdivision pursuant to the City's land use regulations. Such affordable housing 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 the Agreement, provided however; the Developer must complete the construction of the affordable units within each Phase of the subdivision prior to the issuance of building permits for market rate units within any subsequent Phases. The permits for the affordable housing units are in addition to, and not part of, the number of units per year set forth in Section 3.7, paragraph a., above.

d. 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, within the Winters Highlands Subdivision and within other properties, does not exceed the number which can reasonably be served with municipal and educational services without unduly impacting those existing units which receive such services.

e. In order to allow the Developer the flexibility to adjust to changing economic conditions, or other circumstances, and notwithstanding the provisions of Section 3.8b, the Developer may advance or defer up to fifty percent (50%) of its allocation of building permits in any one (1) year. For example, if Developer selects Year 3, then, up to 41 units can be advance to Year 2 or deferred to Year 4.

Section 6. Addition of Section 3.15, Deferral of Impact Fees.

Section 3.15 of the Development Agreement is added to read as follows:

In order to assist the Developer during these critical economic times, and to encourage the Developer to proceed with construction of new affordable and market rate housing within the City of Winters, except as otherwise provided for herein, the City hereby agrees to defer all development impact fees imposed by the City on building permits issued by the City on or before June 30, 2010, such that fifty percent (50%) of the impact fees shall be due at time of issuance of the building permit, and fifty percent (50%) shall be due at time of issuance of a certificate of occupancy. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval.

Section 7. Amendment to Section 4.2, On-Site Park Improvements.

Section 4.2, paragraphs b. and c., of the Development Agreement are replaced in their entirety and shall read as follows:

b. The City, through a public process, has or will create a conceptual design for the linear park, including improvements to the well site, and will provide the Developer with the conceptual design within twelve months from the recordation of the Second Amendment.

c. The Developer shall improve and construct the linear park concurrently with the construction of each Phase of the Subdivision, such that Lot X shall be developed concurrently with Phase I; Lot W shall be developed concurrently with Phase II; and Lot V shall be developed concurrently with Phase III. The park shall be constructed in accordance with the design provided and approved by the City, and in accordance with 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 actual costs 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.

Section 4.2, paragraphs a. and d., of the Development Agreement shall remain unchanged.

Section 8. Amendment to Section 4.3, Off-Site Park Improvements.

Section 4.3, paragraph b., of the Development Agreement is amended by replacing the old phrase "prior to the recordation of the Final Map for Phase II of" with the new phrase, "no later than the issuance of the 118th building permit for."

Section 9. Amendment to Section 4.4, Funding For Police/Fire/Municipal Facilities.

Section 4.4 of the Development Agreement is replaced in its entirety and shall read as follows:

- a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel, a portion of which is shown on Exhibit F of the Development Agreement. In order to provide sufficient funds for the City to construct this facility, the Developer agrees to pay to the City the police facilities fee, the fire facilities fee, and the general municipal facilities fee for the Winters-Highlands Subdivision in either of the following manners, at the option of the Developer: (1) concurrently with the issuance of the first building permit, pay the above development impact fees at the then current rates for all 443 residential units, or (2) concurrently with the issuance of a building permit, pay the above development impact fees at the then current rates for only that unit.
- b. If the Developer elects to pay the development impact fees for all 443 residential units concurrently with the issuance of the first building permit, then each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit. If at the time of the issuance of a subsequent building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 10. Amendment to Section 4.6, Payment to Library Fund and Community Pool Fund.

Section 4.6, paragraph a., of the Development Agreement is replaced in its entirety and shall read as follows:

- a. Concurrently with the issuance of the first building permit for Phase I, the Developer shall pay to the City the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) and concurrently with the issuance of the first building permit for Phase II, the Developer shall pay to the City the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000), 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.

Section 4.6, paragraph b., of the Development Agreement, as amended in the First Amendment, shall remain as set forth in the First Amendment.

Section 11. Amendment to Section 4.7, Wastewater Treatment Plant Expansion.

Section 4.7 of the Development Agreement, and as previously amended in the First Amendment, is replaced in its entirety to read as follows:

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.

b. 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.

c. Notwithstanding any provision to the contrary, Developer's funding obligation pursuant to this Section 4.7 shall not be greater than EIGHT MILLION DOLLARS (\$8,000,000). Developer agrees to work with City to create a financing plan and mechanism for WWTP Phase II. The Developer shall provide funding as follows:

1. On or before June 1, 2011, 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 June 1, 2011, the City shall provide written notification to the Developer of the estimated amount needed for design costs.

2. On or before June 1, 2012, 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 June 1, 2012, the City shall provide written notification to the Developer of the estimated amount needed for land acquisition costs.

3. On or before June 1, 2013, the Developer shall provide funding to the City in the amount estimated by the City Engineer as necessary to pay for the cost of constructing the WWTP Phase II, up to the funding limit specified above. One hundred and twenty (120) days prior to June 1, 2013, the City shall provide written notification to the Developer of the estimated amount needed for construction of the WWTP Phase II.

d. 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 June 1, 2014; and

3. No circumstances beyond the control of the City have occurred. For the purposes of this subsection d.3., "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.

e. 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 the Development Agreement.

Section 12. Amendment to Section 4.9, Urban Water Management Plan.

Section 4.9 of the Development Agreement is amended by replacing the old phrase "Prior to the recordation of the Final Map for Phase I" with the new phrase, "No later than the issuance of the 118th building permit."

Section 13. Amendment to Section 4.10; Water Well.

Section 4.10 of the Development Agreement is replaced in its entirety and shall read as follows:

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. Conditions of Approval No. 37.- (Mitigation Measure 15) and No. 140, in part, require the Developer to advance the costs for the design and construction of a water well if not already constructed by others, and alternatively, to pay its fair share obligation if the first water well is constructed by others. In addition, the Conditions of Approval require the Developer to advance the costs for the design and construction of a second water well, if the City Engineer determined that a second well is necessary in order to serve the Winters Highlands Subdivision.

c. The City Engineer has determined that the water well, referred to as "Well No. 7", shall be located at the southern portion of the Hudson-Ogando Subdivision. Another developer has completed the first phase of construction of Well No. 7, which includes the actual development of the well. Acceptance of these improvements by the City is contingent upon (1) conveyance of the property by such developer to City in accordance with Section 4.2, and (2) assignment by such developer to City of all design plans for the construction of the second phase of Well No. 7.

d. City intends to fund, but is not obligated to fund, the construction of the second phase of Well No. 7, which includes the pump station and site improvements, subject to the availability of funds. Should the City fund the construction of Well No. 7 from sources other than water development impact fees, the City shall be reimbursed from

water development impact fee funds, when available, and prior to the reimbursement of any costs incurred by Developer. Funding of the second phase of Well No. 7 by the City is contingent upon (1) available funding, (2) conveyance of the property by another developer to City, and (3) assignment by such other developer to City of all design plans for the construction of the second phase of Well No. 7.

e. Developer acknowledges and agrees that it will be required to pay the full amount of water development impact fees at the time of issuance of each building permit for the development, which shall be used, in part, to reimburse City for the costs of constructing Well No. 7.

f. The amount and timing of reimbursement for funds advanced by Developer and related to the construction of Well No. 7 shall be set forth in a separate reimbursement agreement in accordance with the provisions of section 3.10 of the Agreement.

g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Winters Highlands Subdivision until the construction of Well No. 7 is completed, accepted and placed in service by City. In the event that the City does not fund the construction of the second phase of Well No. 7, Developer will be required to fund and construct the second phase of Well No. 7 prior to the issuance of Building Permits, if it desires to proceed with the development of the Winters Highlands Subdivision.

h. The Developer agrees to dedicate a second well site acceptable to the City and at no cost to the City. Developer also 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 dedicate the site, construct or pay for such facility upon demand and as determined by the City Engineer, then the City may withhold the issuance of Building Permits for the Winters Highlands Subdivision, in addition to other remedies available to the City.

Section 14. Amendment to Section 4.15; Miscellaneous Contributions.

Section 4.15, paragraphs a., b., c., and d., of the Development Agreement are amended by replacing the old phrase "Prior to the recordation of the Final Map for Phase I" with the new phrase, "No later than the issuance of the 118th building permit."

Section 4.15, paragraph d. of the Development Agreement is amended to add the following new sentence to the end of the paragraph: "Any payments by Developer to City for economic development projects shall be a credit against the above amount."

Section 15. Amendment to Exhibit F, Phasing Schedule.

Exhibit F to the Development Agreement is replaced in its entirety with new Exhibit F, attached to this Second Amendment.

Section 16. Force and Effect

The effective date of this Second Amendment shall be the date that this Second Amendment is signed by the City as written above. Except as modified and amended by this Second Amendment, all other provisions of the Development Agreement and the First Amendment shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date first above written.

CITY:	DEVELOPER:
CITY OF WINTERS _____ Mayor	GBH-WINTERS HIGHLANDS, LLC a California limited liability company By: _____ Its: _____
APPROVED AS TO FORM: _____ JOHN C. WALLACE CITY ATTORNEY	
ATTEST: _____ NANCI MILLS CITY CLERK	

EXHIBIT F

EXHIBIT A-1

LEGAL DESCRIPTION
for
PARCEL "A"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-2004-0007937-00, said point bears North $00^{\circ}00'23''$ East 159.85 feet from the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, from said POINT OF BEGINNING, leaving said Eastern line, North $89^{\circ}59'37''$ West 161.78 feet to the Westerly line of said Parcel; thence North $00^{\circ}03'41''$ East 374.65 feet; thence South $89^{\circ}59'37''$ East 162.22 feet to a point on the Eastern line of said Parcel, said point also being the Western line of Main Street, as shown on said Subdivision Map No. 4284; thence, along said line and the Western line of said Lot A, South $00^{\circ}00'23''$ West 374.65 feet, more or less, to the POINT OF BEGINNING.

The parcel of land described above contains 1.39 acres, more or less.

End of description.



EXHIBIT A-2

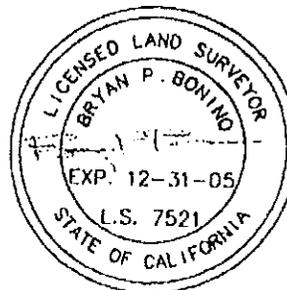
LEGAL DESCRIPTION
for
PARCEL "B"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-204-0007937-00, said point also being the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, along said Eastern line, South 00°00'23" West 35.38 feet to the Southeast corner of said Parcel; thence, along the boundary line of said Parcel, South 65°17'42" West 109.53 feet; thence North 24°42'18" West 115.98 feet; thence South 65°17'42" West 15.00 feet; thence North 00°03'41" West 141.93 feet; thence, leaving said boundary line, South 89°59'37" East 161.78 feet to the Easterly boundary line of said parcel; thence, along said line, South 00°00'23" West 159.85 feet, more or less, to the POINT OF BEGINNING.

The parcel of land described above contains 0.75 acres, more or less.

End of description.



CITY OF WINTERS

ORDINANCE NO. 2008-15

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WINTERS ADOPTING A SECOND AMENDMENT TO THE
DEVELOPMENT AGREEMENT FOR THE WINTERS HIGHLANDS SUBDIVISION**

The City Council of the City of Winters hereby ordains as follows:

Section 1: Recitals

- A. To strengthen the public planning process and encourage private participation in comprehensive planning, the Legislature of the State of California adopted Section 65864 *et seq.*, of the Government Code ("Development Agreement Statute"), which authorizes the City of Winters and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in property subject to a development agreement.
- B. On May 25, 2006, the City of Winters and GBH-Winters Highlands, LLC, a California limited liability company ("the Developer"), executed a development agreement ("Development Agreement") providing for the residential development of certain real property commonly referred to as the Winters Highlands property (the "Project") located at Yolo County Assessor's Parcels No. 030-220-17, No. 030-220-19 and No. 030-220-33, within the boundaries of the City of Winters (the "Property").
- C. On Dec 21, 2006, the City and the Developer executed the first amendment to the Development Agreement ("First Amendment") making certain modifications related to the expansion of the wastewater treatment plant.
- D. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement and First Amendment by the City and Developer has threatened the economic viability of the Project.
- E. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City of Winters, and the Developer desire to enter into a second amendment to the Development Agreement ("Second Amendment") to make certain modifications to the Development Agreement, pursuant to Section 65868 of the Government Code and Chapter 15.72.210 of the City of Winters Municipal Code.
- F. The City of Winters Planning Commission conducted a noticed public hearing on the Second Amendment on _____, and has recommended the approval of the Second Amendment.

- G. The City Council of the City of Winters has given the required notice of its intention to adopt the Second Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.
- H. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the Second Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- I. The Second Amendment has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

Section 2: Approval

Pursuant to the provisions of Government Code §65864 *et seq.* and Chapter 15.72 of Title 15 of the Winters Municipal Code, the City Council of the City of Winters hereby:

1. Adopts and approves that certain document entitled, "Second Amendment to Development Agreement By and Between the City of Winters and GBH-Winters Highlands, LLC" relating to the development of the Property commonly know as the "Winters Highlands Subdivision," attached hereto as Exhibit A and incorporated herein by reference.
2. Authorizes and directs the Mayor to sign the document on behalf of the City after the effective date of this Ordinance and after it has first been signed by the duly authorized representatives 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.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Winters hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 4. Effective Date.

This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this

Ordinance to be posted and published in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2009 and was passed and adopted at a regular meeting of the City Council held on _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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


YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2007-0002146-00
Acct 118-Winters - NC
Friday, JAN 19, 2007 08:24:00
Ttl Pd \$0.00 Nbr-0000687411
FRT/R5/1-6

No fee for recording pursuant
to Government Code Section 27383

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

**CONFORMED COPY
NOT COMPARED
WITH ORIGINAL**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (Development Agreement
Recorded May 30, 2006, Doc-2006-0020954-00, Title: Development Agreement by and
between the City of Winters and GBH-Winters Highlands, LLC)**

BY AND BETWEEN

THE CITY OF WINTERS

AND

GBH-WINTERS HIGHLANDS, LLC

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF WINTERS
AND
GBH-WINTERS HIGHLANDS, LLC**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "First Amendment") is entered into as of December 21, 2006, by and between the CITY OF WINTERS, a municipal corporation, (the "City"), and GBH-WINTERS HIGHLANDS, LLC, a California limited liability company (the "Developer").

Recitals

- A. The City and the Developer have heretofore entered into a Development Agreement, executed as of May 25, 2006, (the "Development Agreement"), providing for the residential development of certain real property (the "Project") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this First Amendment shall have the meanings given in the DA.
- B. In furtherance of the Project, the City and the Developer desire to enter into this First Amendment to make certain modifications to the Development Agreement relating to the expansion of the wastewater treatment plant, and other matters as set forth herein.
- C. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.
- D. On October 30, 2006, the City of Winters Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On November 21, 2006, the City of Winters City Council adopted its Ordinance No. 2006-08 approving this First Amendment and authorizing its execution, and that Ordinance ("Enacting Ordinance") became effective on December 22, 2006.

Agreement

Section 1. Amendment to Section 3.7, Maximum Number of Building Permits Per Year, Non-Market Rate Units.

Section 3.7a. of the Development Agreement is amended to read as follows:

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, 2007.

Section 2. Amendments to Section 4.6, Payment to Library Fund and Community Pool Fund.

Section 4.6b. of the Development Agreement is amended to read as follows:

b. Within ten (10) days from the effective date of this First Amendment, Developer shall provide the City with a Letter of Credit, in a form satisfactory to the City Attorney, in the sum of ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,250,000). Prior to the March 31, 2007 or recordation of the Final Map for Phase I for the Winters Highlands Subdivision, whichever occurs first, 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 3. Amendments to Section 4.7, Wastewater Treatment Plant Expansion.

Section 4.7 of the Development Agreement is amended to read as follows:

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. Notwithstanding any provision to the contrary, Developer's funding obligation pursuant to this Section 4.7 shall not be greater than EIGHT MILLION DOLLARS (\$8,000,000). Developer agrees to work with City to create a financing plan and mechanism for WWTP Phase II.

The Developer shall provide funding as follows:

On or before June 1, 2007, 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 June 1, 2007, the City shall provide written notification to the Developer of the estimated amount needed for design costs.

On or before June 1, 2008, 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 June 1, 2008, the City shall provide written notification to the Developer of the estimated amount needed for land acquisition costs.

On or before June 1, 2009, the Developer shall provide funding to the City in the amount estimated by the City Engineer as necessary to pay for the cost of constructing the WWTP Phase II, up to the funding limit specified above. One hundred and twenty (120) days prior to June 1, 2009, the City shall provide written notification to the Developer of the estimated amount needed for construction of the WWTP Phase II.

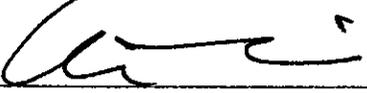
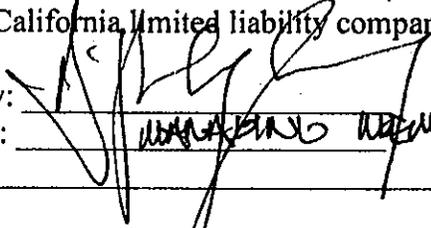
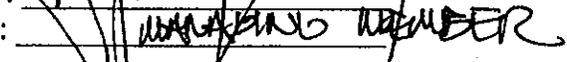
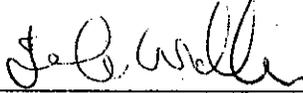
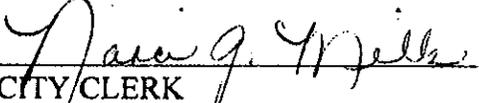
In consideration of Developer's commitment to provide funding as set forth in this Section 4.7, City agrees to provide sewer connections for each residential unit within Phases I, II and III of the Winters Highlands Subdivision prior to completion of WWTP Phase II, subject to the following conditions, 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 June 1, 2010; 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. 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. Force and Effect

The effective date of this First Amendment shall be the date that this First Amendment is signed by the City. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date first above written.

CITY:	DEVELOPER:
CITY OF WINTERS  _____ Mayor	GBH-WINTERS HIGHLANDS, LLC a California limited liability company By:  Its: 
APPROVED AS TO FORM:  _____ CITY ATTORNEY	
ATTEST:  _____ CITY CLERK	

STATE OF CALIFORNIA)
COUNTY OF Placer)

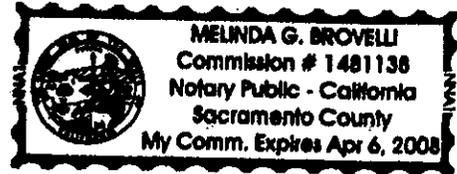
Melinda G. Brovelli, Notary Public

On December 21, 2006, before me, the ~~undersigned~~ notary public, personally appeared D. Rick Cheney,

- 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 / ~~she~~ executed the same in his / ~~her~~ authorized capacity, and that by his / ~~her~~ 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.



Signature Melinda G. Brovelli

Type of Document: First Amendment to Development Agreement

* * * * *

STATE OF CALIFORNIA)
COUNTY OF Yolo)

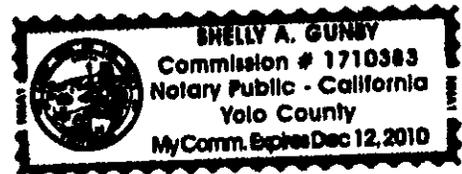
Shelly A. Gunby, Notary Public

On January 16, 2007, before me, the ~~undersigned~~ notary public, personally appeared Woody Fridae,

- 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 / ~~she~~ executed the same in his / ~~her~~ authorized capacity, and that by his / ~~her~~ 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.



Signature Shelly A. Gunby, Notary Public

Type of Document: First Amendment to Development Agreement
Agreement between City of Wendoc and GBH - Wendoc Highlands, LLC

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



YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2006-0020954-00

Acct 118-Winters - NC
Tuesday, MAY 30, 2006 08:21:56
Ttl Pd \$0.00 Nbr-0000644139
LUP/R8/1-108

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

CONFORMED COPY
NOT COMPARED
WITH ORIGINAL

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

GBH-WINTERS HIGHLANDS, LLC

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- 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

**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