

Granite Bay, CA 95746
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Section 2.10 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

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

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

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

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

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Amendments to the Bikeway System Master Plan (adopted November 19, 2002)(Resolution No. 2006-09 adopted on April 4, 2006).

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

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

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

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

Section 3.2 Consistency with General Plan.

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

Section 3.3 Vested Rights of Developer.

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

Section 3.4 Rights Retained by the City.

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

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

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

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

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

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

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

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

Section 3.5 Other Vesting Laws Inapplicable.

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

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

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

Section 3.6 Commencement and Phasing of Development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.8 Installation of Public Improvements.

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

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

Section 3.9 Property for Public Improvements; Offsite Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.11 Subsequent Discretionary Approvals.

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

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

Section 3.12 Review of Agreement.

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

Section 3.13 Compliance with Government Code Section 66006.

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

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

ARTICLE 4

DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

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

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

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

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

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

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

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

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

Section 4.2 On-Site Park Improvements.

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

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

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

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

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

Section 4.3 Off-Site Park Improvements

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

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

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

Section 4.4 Funding For Police/Fire/Municipal Facilities.

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

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

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

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

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

Section 4.5 Annuity in Lieu of Mello-Roos District.

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

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

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

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

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

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

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

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

Section 4.6 Payment to Library Fund and Community Pool Fund.

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

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

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

Section 4.7 Wastewater Treatment Plant Expansion.

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

b. The Developer shall provide funding as follows:

1. On or before December 1, 2006, the Developer shall provide funding to the City in the amount estimated as necessary by the City Engineer to fully pay for the cost of designing the WWTP Phase II. Sixty (60) days prior to December 1, 2006, the City shall provide written notification to the Developer of the estimated amount needed for design costs.
2. On or before December 1, 2007, the Developer shall provide funding to the City in the amount estimated as necessary to fully pay for the acquisition of land necessary for the construction of the WWTP Phase II. This amount

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

3. On or before December 1, 2008, or if Developer has not filed a Final Map for Phase I of the Winters Highlands Subdivision by December 1, 2008, then prior to the filing of the Final Map for Phase I, the Developer shall provide funding to the City in the amount estimated by the City Engineer as necessary to fully pay for the cost of constructing the WWTP Phase II. One hundred and twenty (120) days prior to December 1, 2008, the City shall provide written notification to the Developer of the estimated amount needed for construction of the WWTP Phase II.
4. In the event that the amounts estimated by the City pursuant to subparagraphs b1., b2. and b3. above are insufficient to cover the actual costs of design, land acquisition or construction of the WWTP Phase II, the Developer shall provide the additional funding necessary to cover the actual costs, within one hundred and twenty (120) days of receipt of written request from the City for supplementary funding.

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

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

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

Section 4.8 New Sewer Pump Station.

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

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

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

Section 4.9 Urban Water Management Plan.

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

Section 4.10 Water Well.

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

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

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

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

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

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

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

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

Section 4.11 Pedestrian Circulation and Safety Improvements.

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

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

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

Section 4.13 Energy Efficiency.

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

- a. Fifty percent (50%) of the market rate units shall be built with a photovoltaic solar energy system capable of producing 2.4 peak rated direct current (DC) kilowatts. The remaining market rate units shall be pre-wired to accommodate such a system.
- b. All units shall be constructed to the Energy Star Standards as defined by the U. S. Environmental Protection Agency.
- c. All units shall be built with low emission furnaces.
- d. No unit shall be built with any dark colored roofing material.

Section 4.14 Flood Overlay Zone; Payment of Impact Fees.

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

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

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

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

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

Section 4.15 Miscellaneous Contributions.

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

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

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

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

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

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 Termination of Agreement.

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

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

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

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

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

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

Section 5.3 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 The Winters Highlands Subdivision pending

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

3. Specific performance as provided in subsection c.
4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.
5. An action for damages as provided in subsection d.
6. The right to withhold the issuance of any permits, including building permits, as provided in subsection e.

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

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

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

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

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

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

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

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

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

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

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

Section 5.4 Developer's Remedies.

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

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.
2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Winters Highlands Subdivision pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.
3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

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

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

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

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

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

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

Section 6.3 Duty to Defend Challenges to this Agreement.

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

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

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

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

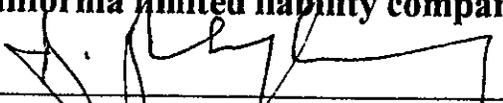
e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and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

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SIGNATURE PAGE TO FOLLOW

"DEVELOPER"

**GBH WINTERS HIGHLANDS, LLC,
a California limited liability company**

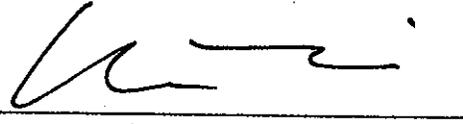
By: 

Its: MANAGING MEMBER

Dated: 04.18.06

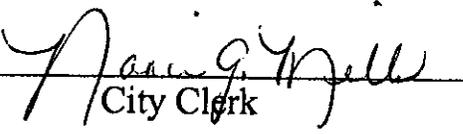
"CITY"

**CITY OF WINTERS, a municipal
corporation**

By: 

Mayor

Dated: 5/25/06

Attest: 
City Clerk

Approved as to form:


John Wallace, City Attorney

.....

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Yolo

} ss.

On April 18, 2006

Date

before me,

Shelly A. Gunby, Notary Public

(Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

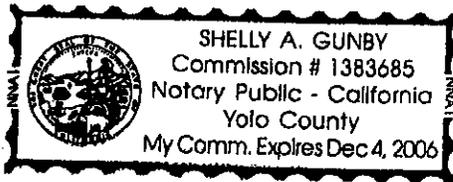
personally appeared

D. Rick Cheney

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/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.

Shelly A. Gunby
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: _____

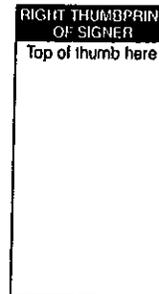
Signer(s) Other Than Named Above: _____

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: _____

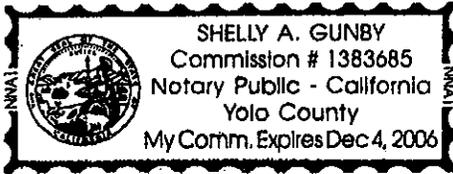


CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Yolo } ss.

On May 25, 2006 before me, Shelly A. Gunby, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Keith W. Fredace
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/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.
Shelly A. Gunby
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: _____



LIST OF EXHIBITS

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

LEGAL DESCRIPTION**EXHIBIT "A"**

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

PARCEL A:

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

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

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

ALSO EXCEPTING THEREFROM, THE FOLLOWING:

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

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

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

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

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

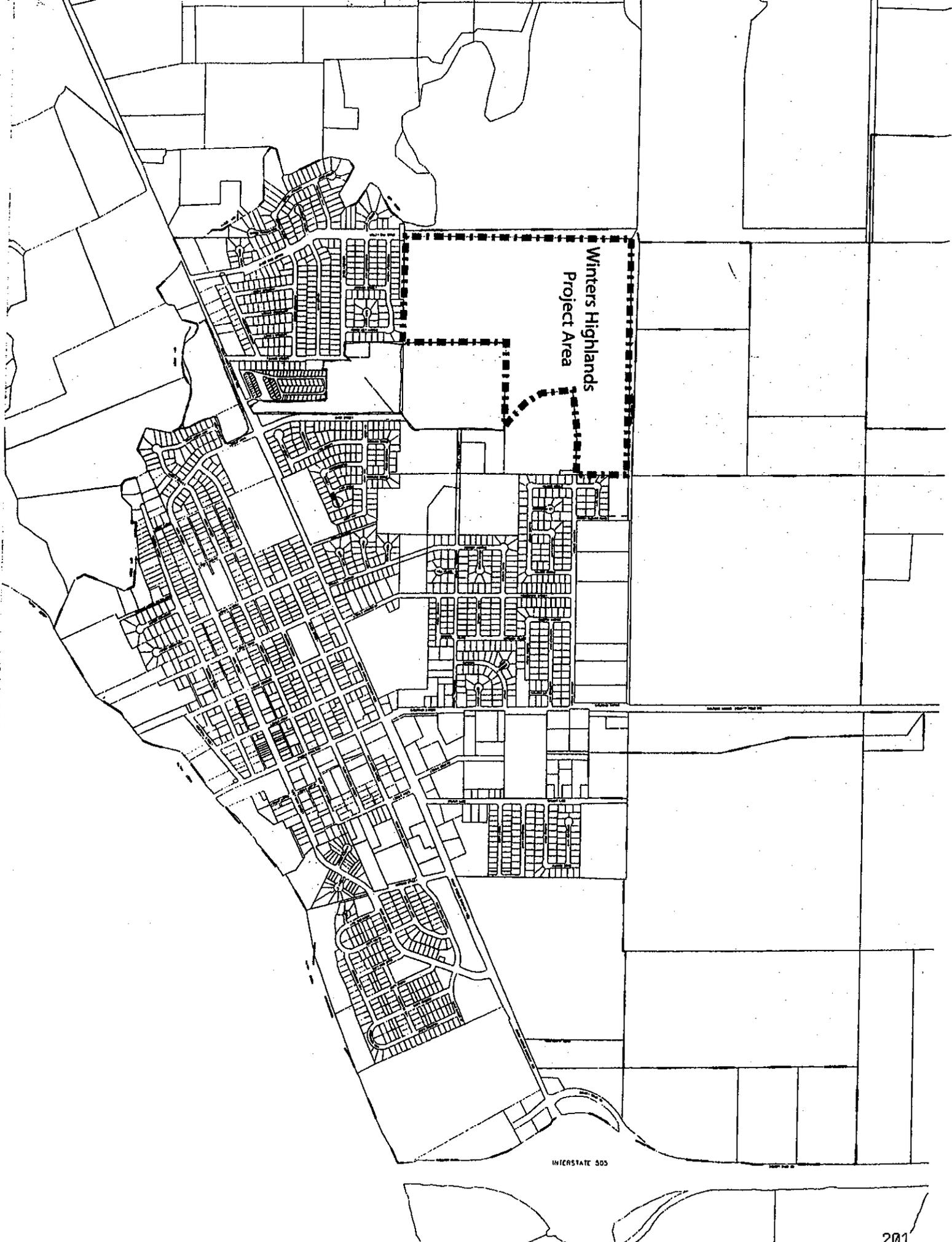
PARCEL B:

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

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

APN: 030-361-01-1

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

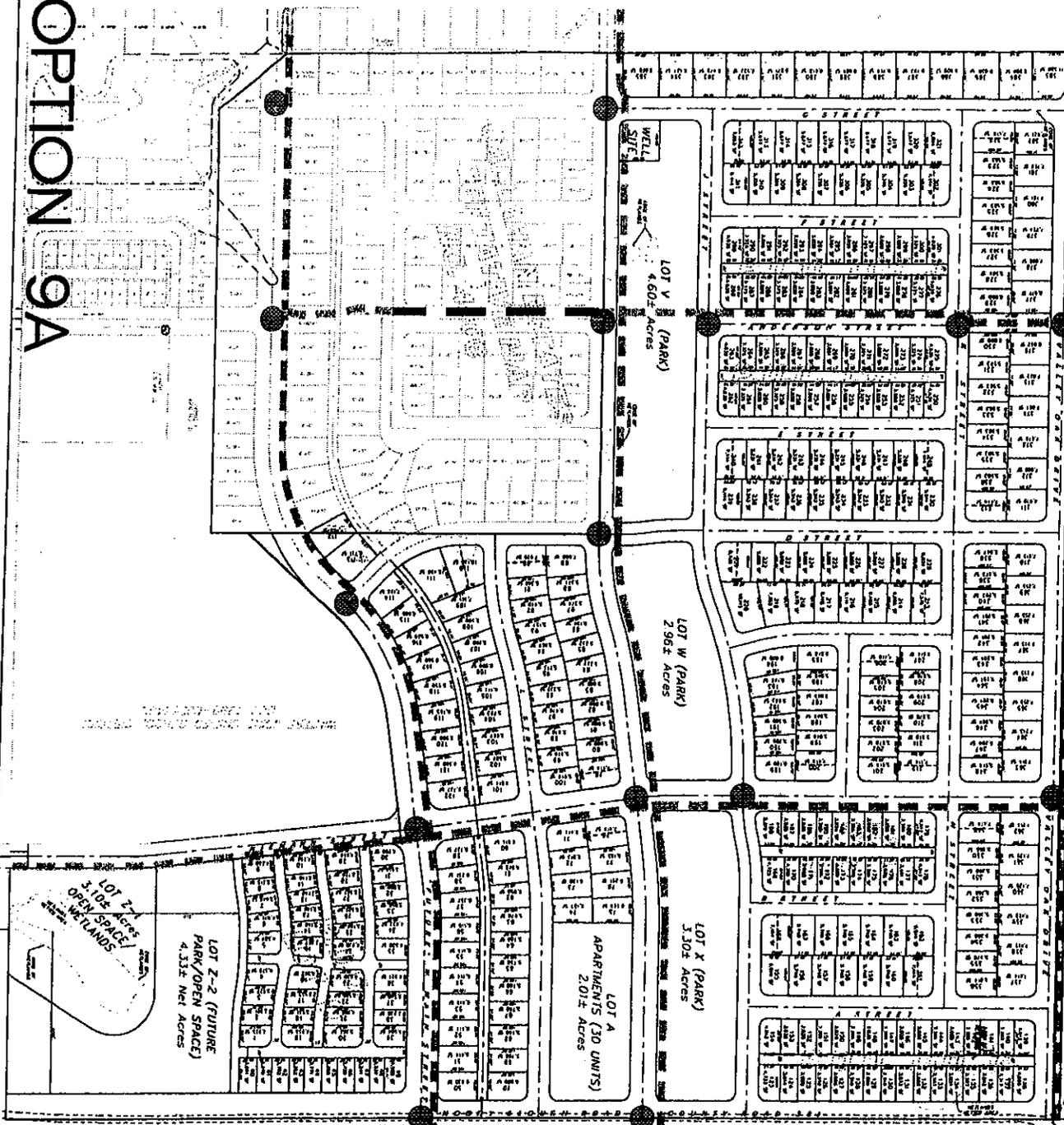


Winters Highlands
Project Area

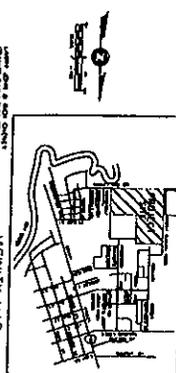
INTERSTATE 505

WINTERS HIGHLANDS

OPTION 9A



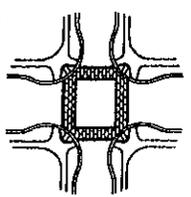
FUTURE SPORTS PARK



VICINITY MAP

-  CLASS I BIKE PATH
-  CLASS II BIKE PATH
-  TRAFFIC CALMING FEATURE
SEE DETAIL 1, THIS SHEET

-  TRAFFIC CALMING FEATURE



GENERAL NOTES:

1. EXISTING STREET RIGHTS-OF-WAY AND UTILITIES SHOWN ON THIS PLAN ARE THE PROPERTY OF THE CITY OF WINTERS AND SHALL REMAIN UNDER THE CONTROL OF THE CITY OF WINTERS. THE CITY OF WINTERS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE UTILITIES SHOWN ON THIS PLAN.
2. THE CITY OF WINTERS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE UTILITIES SHOWN ON THIS PLAN.
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9. THE CITY OF WINTERS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE UTILITIES SHOWN ON THIS PLAN.
10. THE CITY OF WINTERS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE UTILITIES SHOWN ON THIS PLAN.



LM
 LAND MANAGEMENT
 1000 S. GARDEN ST., SUITE 200
 WINTERS, CALIFORNIA 95894
 TEL: 209.838.1111
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FINDINGS OF FACT

CEQA Findings

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

Findings for General Plan Amendments

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

Findings for Rezonings

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

Findings for Exclusion from West Central Master Plan

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

Findings for PD Overlay and PD Permit

1. The project, as modified and conditioned, is consistent with the General Plan and the purposes of Section 8-1.5117 of the Zoning Ordinance.
2. Deviations from specified provisions of the basic zoning district on the property have been justified as necessary to achieve an improvement design for the development and/or the environment. The development complies with the remaining applicable provisions of the basic zoning district on the property.
3. The proposed development, as modified and conditioned, is desirable to the public comfort and convenience.
4. The requested plan, as modified and conditioned, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.
5. Adequate utilities, access roads, sanitation, and/or other necessary facilities and services will be provided or available.
6. The development, as modified and conditioned (including execution of the Development Agreement) will not create an adverse fiscal impact for the City in providing necessary services.

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

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

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

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

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

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

Findings for Development Agreement

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

CONDITIONS OF APPROVAL

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

General

1. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project Applicant shall defend, indemnify, and hold harmless the City or its agents, officers and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense which includes court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the subdivider in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning commission, any advisory agency to the City, local district and the City Council.
2. Developer acknowledges and agrees that, but for Developer's contributions as set forth in the Development Agreement for Winter Highlands, City would not approve the development of the project. City's approval of the development entitlements is expressly granted in reliance upon and in consideration of Developer's execution of the Development Agreement and Developer's expressed intent to fully and faithfully perform such agreement. In the event that the Development Agreement is terminated for any reason whatsoever, regardless of fault, or if Developer is in default of the Development Agreement, as defined therein, then Developer may not proceed with the development of the project and any of the rights granted by the development entitlements shall be deemed suspended in the event of default, and automatically revoked in the event of termination of the Development Agreement.
3. All conditions identified herein shall be fully satisfied prior to acceptance of the first final map unless otherwise stated.
4. The project is as described in the Environmental Impact Report. The project shall be constructed as depicted on the maps and exhibits included in the Environmental Impact Report, except as modified by these conditions of approval. Substantive modifications require a public hearing and Council action.

General Plan Requirements

5. Pursuant to General Plan Policy II.A.19, a minimum of ten percent of the single-family lots (41 lots) shall be reserved for and sold to local builders or owner-builders.
6. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. Pursuant to Policy II.C.2 of the Housing Element, energy conservation and weatherization features shall be incorporated into the home design. At a minimum this shall include: a) maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution". b) Attainment of EPA Energy Star Standards in all units. c) Low emission furnaces in all units. d) Avoidance of dark colored roofing on all units. e) A minimum of 50 percent of the market-rate units shall have a photovoltaic solar energy system capable of producing a minimum of 2.4kW (peak-rated DC watts) photovoltaic. The remainder of the market-rate units shall be pre-wired for an equivalent system. The applicant shall make a good faith effort to obtain outside funding in order to install photovoltaic solar energy systems in the affordable units.

7. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to occupancy of each phase of the project.
8. Pursuant to General Plan Policy III.B.3, the location of one or more bus turnouts along Main Street shall be coordinated with the City and the Yolo County Transportation District, and shall be installed by the developer with construction of Main Street.
9. Pursuant to General Plan Policy IV.B.12 and V.A.13, drought-tolerant plant species and drip irrigation systems shall be used in landscaping the proposed new park, to the extent practical. Pursuant to General Plan Policy VI.C.7, drought-tolerant and native plants, especially valley oaks, shall be used for landscaping roadsides, parks, schools, and private properties. Pursuant to General Plan Policy VI.C.8, parks and drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat. All homes in this subdivision shall have "low application rate" lawn sprinkler systems, as approved by the Planning Commission.
10. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.
11. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.
12. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.
13. Pursuant to General Plan Policy V.A.3, park maintenance shall be funded through a lighting and landscaping district or other appropriate mechanism.
14. Pursuant to General Plan Policy V.A.10, the proposed neighborhood park shall be designed to buffer existing and planned surrounding residential uses from excessive noise, light, and other potential nuisances.
15. Pursuant to General Plan Policy VI.A.6, grading shall be carried out during dry months, when possible. Areas not graded shall be disturbed as little as possible. Construction and grading areas, as well as soil stockpiles, should be covered or temporarily revegetated when left for long periods. Revegetation of slopes shall be carried out immediately upon completion of grading. Temporary drainage structures and sedimentation basins must be installed to prevent sediment from entering and thereby degrading the quality of downstream surface waters, particularly Putah Creek. The full cost of any necessary mitigation measures shall be borne by the project creating the potential impacts. Pursuant to General Plan Policy VII.B.3, should the City allow any grading to occur during the rainy season, conditions shall be implemented to ensure that silt is not conveyed to the storm drainage system.
16. Pursuant to General Plan Policy VI.E.6, construction-related dust shall be minimized. Dust control measures shall be specified and included as requirements of the contractor(s) during all phases of construction of this project.
 - All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
 - Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
 - Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
 - Construction equipment and engines shall be properly maintained.
 - If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.

- Construction practices will minimize vehicle idling.
 - Potentially windblown materials will be watered or covered.
 - Construction areas and streets will be wet swept.
17. Pursuant to General Plan Policy VII.A.1, VII.A.2, and VII.C.4 all site work and construction activities shall be in accordance with the requirements of the City, and other applicable local, regional, state, and federal regulations.
 18. Pursuant to General Plan Policy VII.C.1, necessary water service, fire hydrants, and access roads shall be provided to the satisfaction of the Fire Chief and Fire Protection District standards.
 19. Pursuant to General Plan Policy VII.C.2, a minimum fire-flow rate of 1,500 gallons per minute is required for all residential uses.
 20. Pursuant to General Plan Policy VIII.D.2, street trees shall be planted along all streets, in accordance with the City's Street Tree Plan and Standards. There shall be a minimum of one street tree in the center front of each single-family lot, and on both frontages for corner lots. All trees shall be of a type on the approved street tree list and shall be a minimum of fifteen gallons in size with a mature tree canopy of at least a thirty-foot diameter within five years. The intent is that majestic street tree species that create large canopies at maturity will be required in all medians and streetside landscape strips. The goal is create maximum shade canopy over streets and sidewalks.
 21. Pursuant to General Plan Policy VIII.D.4, a permanent mechanism for the ongoing maintenance of street trees is required, to the satisfaction of the City Manager and City Finance Director.
 22. Pursuant to General Plan Policy VIII.D.7, all lighting including street lighting, shall be designed, installed, and maintained to minimize excess light spillage, unnecessary brightness and glare, and degradation of night sky clarity.

Environmental Impact Report Mitigation Measures

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

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

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

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

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

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

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

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

25. **Mitigation Measure 3:** Homes and apartments constructed as a part of the Highlands project shall contain only low-emitting EPA certified wood-burning appliances or natural gas fireplaces.
26. **Mitigation Measure 4:** If cultural resources (historic, archeological, paleontological, and/or human remains) are encountered during construction, workers shall not alter the materials or their context until an appropriately trained cultural resource consultant has evaluated the situation. Project personnel shall not collect cultural resources. Prehistoric resources include chert or obsidian flakes, projectile points, mortars, pestles, dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits often in old wells and privies.
27. **Mitigation Measure 5:** Special preparation of subgrades and reinforcement of foundations and floor slabs shall be conducted in full and as described in the Geotechnical Engineering Report Winters Highlands (January 9, 1990, and February 22, 1994, Wallace-Kuhl & Associates) for the Proposed Project.
28. **Mitigation Measure 6:** The City Council shall: a) direct that 6 medium density units be added to the project; b) find the project to be in substantial compliance with the density range of the Medium Density Residential (MR) designation; or c) approve a citywide General Plan amendment to change the density range for the proposed Medium Density Residential (MR) designation from 5.4 – 8.8 dwelling units per acre, back to 4.1 – 6.0 dwelling units per acre.
29. **Mitigation Measure 7:** All aspects of the project shall be subject to design review to ensure compatibility with the surrounding area and satisfaction of the Community Design Guidelines and other applicable principles of good neighborhood design. Prior to issuance of a building permit for each phase of construction of the project, the applicant shall submit full architectural renderings, including building elevations and floor plans, for design review and approval.
30. **Mitigation Measure 8:** The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for controlling the pace of growth on an annual basis. Provisions for the design, funding, and construction of necessary infrastructure to accommodate allowed growth shall also be addressed. Threshold requirements for the construction of affordable units shall be included to ensure that the development of affordable units reasonably keep pace with the development of market-rate units within the project.
31. **Mitigation Measure 9:** The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for mitigating the projected fiscal deficit. This may include an on-going Mello-Roos Community Facilities District (CFD) to fund eligible services, a Lighting and Landscaping District which could fund eligible park and landscaping expenses, establishment of an annuity the interest proceeds of which would cover the projected deficit, or other acceptable mechanisms.

32. **Mitigation Measure 10:** The project park site shall be designed and constructed to meet the specifications of the City of Winters. Park phasing and a final date by which the park shall be completed, operational, and accepted by the City shall be established in the project Development Agreement.
33. **Mitigation Measure 11:** a) Install a traffic signal at the intersection of Grant Avenue/I-505 Northbound Ramps. The traffic signal would need to be installed after construction and occupancy of 40 single family dwelling unit "equivalents" citywide(i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");
- b) Install a traffic signal at the intersection of Grant Avenue/Walnut Lane. The traffic signal would need to be installed after construction and occupancy of 380 single family dwelling unit "equivalents" citywide (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents"). A preliminary review of traffic volumes indicates that conditions at this intersection would likely not meet the warrants, or criteria, applied by Caltrans for installation of traffic signals on a state highway. OR Prohibit left turn movements from southbound Walnut Lane onto eastbound Grant Avenue. Southbound vehicles on Walnut Lane would be forced to turn right and make a u-turn at the signalized intersection of Grant Avenue/Railroad Avenue;
- c) Install a traffic signal at the intersection of Grant Avenue/West Main Street. The traffic signal would need to be installed after construction and occupancy of 50 single family dwelling unit "equivalents" from this project and/or Hudson/Ogando, Callahan Estates, or Creekside(i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");
- d) The applicant shall pay a fair share of the cost for design and installation of a traffic signal at the intersection of Railroad Avenue/Main Street at buildout.
34. **Mitigation Measure 12:** The applicant shall be required to complete full roadway improvements, including traffic calming, to City Standards. Where phasing of improvements is allowed to support phased construction of residences, interim phased improvements shall be to the satisfaction of the City Engineer.
35. **Mitigation Measure 13:** The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map. The project is required to fund and construct off-site improvements necessary to support the development. Such improvements could include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. Should property acquisition or additional CEQA clearance be required for off-site improvements, this will be the responsibility of the developer.
36. **Mitigation Measure 14:** The proposed project shall contribute its fair share toward expansion of the City of Winters Wastewater Treatment Plant, consistent with the Wastewater Treatment Plant Master Plan. An acceptable financing mechanism shall be in place for the WWTP expansion prior to acceptance of a final map. Building permits for each phase of development shall be issued only after the City has established that WWTP capacity will be available to serve that phase of development.
37. **Mitigation Measure 15:** The applicant shall offer three alternative locations, satisfactory to the City, for locating a new well to serve the subdivision. Upon determination of an acceptable site, the City will release unused sites back to the applicant. At the City's discretion, the City may waive the requirement for an on-site location, should an acceptable off-site location be acquired and cleared procedurally (e.g. CEQA, etc.) for construction. If determined to be necessary, a separate CEQA analysis shall be conducted to clear the well site for construction. The applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement.
38. **Mitigation Measure 4.3-1(a):** The applicant shall mitigate for Project-related impacts to 0.67 acre of habitat for federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service

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

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

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

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

1. The conservation easement shall protect the entire 7.43 acres, not just the 3.10-acre core zone.
2. The buffer zone shall be maintained in a natural condition and shall not be planted with non-native vegetation. Irrigation will occur only during the initial establishment of any vegetation planted at the Preserve.
3. The U.S. Army Corps of Engineers does not need to be involved in the decision-making for removal of problematic non-native plant species.
4. No surface runoff from other sources shall be allowed.
5. Approval for the use of pesticides and other chemical agents must go through the U.S. Fish and Wildlife Service but need not go through the U.S. Army Corps of Engineers.
6. "Low impact" activities shall be defined and guidance on activities not allowed shall be provided. The U.S. Army Corps of Engineers need not be involved in the decision-making.
7. The structure of the conservation easement, including parties to the agreement, shall be to the satisfaction of the City of Winters.
8. The U.S. Fish and Wildlife Service rather than the U.S. Army Corps of Engineers shall be given authority to enforce provisions of the Management Plan and conservation easement.
9. The Management Plan shall include provisions for access by the Sacramento-Yolo Mosquito & Vector Control District personnel for routine surveillance of the ponded area(s) and shall identify a procedure for addressing possible vegetation management concerns should the District determine that dense vegetation growth in the wetland(s) may contribute to future mosquito outbreaks.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Detailed description of the proposed mitigation site, including the location, ownership status, presence of any jurisdictional areas, topography and hydrology of the proposed site, soils (subsurface soil information to confirm that the soils are appropriate for wetland construction), vegetation and wildlife habitat and use of the proposed site, present and historical uses of the proposed mitigation site, and present and planned use of areas adjacent to the proposed mitigation site.
- Description of the seasonal wetland habitat to be created, including the mitigation ratio, long-term goals, anticipated future site topography and hydrology, vegetation, and anticipated wildlife habitat on the proposed mitigation site.
- Performance criteria and monitoring protocol to document that the constructed seasonal wetland habitat are meeting or exceeding the performance criteria, including a detailed description of the monitoring methods and justification of the methods, the monitoring schedule and other means of documenting the development of the mitigation (e.g., photo documentation).
- An implementation plan that describes in detail the physical preparation of the site, the planting plan, irrigation (if necessary) and the implementation schedule. The surface soils at the seasonal wetlands at the Project site that support primarily native species shall be collected and used to inoculate the constructed pools, especially the three largest pools at the Project site.
- A maintenance plan that describes the actions to be taken to address or prevent adverse conditions, such as invasion by undesirable vegetation, control of erosion of bare ground. This plan shall present a maintenance schedule and identify the party responsible for the maintenance, which will be the applicant unless another party agreeable to the City of Winters is selected.
- A contingency plan that identifies measures to be taken if the constructed seasonal wetlands are not performing according to the established standards. This plan shall be adaptive and identify how monitoring data will be used to define future actions to achieve the performance criteria. The contingency plan shall also identify the funding mechanism for the initial monitoring period and the endowment that will be provided by the applicant for the long-term management of the site.

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

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

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

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

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

Development Review Committee

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

Community Development

47. All lots within 500 feet of the northwest corner of the project site shall have a deed disclosure regarding nearby agricultural uses and practices as well as the City's Right to Farm regulations. The wording and verification of the disclosure shall be approved by the City Attorney.
48. If a second well is required, the well site shall be located at or near the northwest corner of Lot V.
49. All lots adjoining the park site shall have a deed disclosure regarding typical operational and maintenance aspects of the park. The wording and verification of the disclosure shall be approved by the City Attorney.
50. To the extent feasible all builders shall engage in "green" construction practices. This shall be demonstrated to the City in conjunction with each design review.

51. Construction activities shall be limited to 7:00 am to 7:00 pm, Monday through Friday only (holidays excluded) in compliance with the City's Noise Ordinance and Standard Specifications. The applicant shall submit a Construction Noise Control Plan for review and approval by the City prior to acceptance of final map. This plan shall address job site noise control and establish protocols for addressing noise complaints. Job site signage with 24-hour contact information for noise complaints shall be included.
52. The developer shall obtain the following approvals from the Central Valley Regional Water Quality Control Board, as appropriate: 1) coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities; 2) compliance with post construction storm water Best Management Practices pursuant to the NPDES General Permit for Small Municipal Separate Storm Sewers Systems; 3) 401 Water Quality Certification for wetlands impacts; 4) Dewatering Permit under Waste Discharge Requirements General Order for Dewatering and Other Low Threat Discharges to Surface Waters Permit.
53. There shall be an onsite, resident manager at the apartment complex. This shall be recorded against the property and disclosed to all future owners. Form and substance of the disclosure and recording shall meet the prior approval of the City Attorney. Evidence that this condition has been satisfied shall be provided to the City prior to occupancy of the first unit.
54. All construction, new or remodeling, shall conform to the most currently adopted California Building Code and Winters Municipal Code.
55. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.
56. The main electrical panel for each residence shall be located at the exterior of the residence and capable of total electrical disconnect by a single throw.
57. All address numbering shall be clearly visible from the street fronting the property. All buildings shall be identified by either (4) inch high illuminated numbers or six (6) inch high non-illuminated numbers on contrasting colors. For residences on alleyways, the address numbering shall appear on the front and rear of the structure. Naming of streets and address numbering shall be completed by a committee comprised of the Street Naming Committee, Community Development Department, the Fire District, the Police Department, and the Postal Service.
58. The applicant shall pay all development impact fees, fees required by other entities, and permit fees.
59. The applicant shall be responsible for any additional costs associated with the processing of this project including but not limited to: plan check, inspections, materials testing, construction monitoring, and other staff review and/or oversight including staff time necessary to ensure completion/satisfaction of all conditions of approval and mitigation measures. The applicant shall, on a monthly basis, reimburse the City for all such costs. Project applicant shall pay all development impact fees adopted by the City Council and shall pay fees required by other entities.

Design Review

60. Prior to recordation of the Final Map, a deed restriction shall be recorded against each property that precludes conversion of garage area to livable areas.
61. In order to achieve architectural diversity, the developer shall offer five floor plans and 25 elevations (five per plan).
62. A minimum of half of the required elevations shall include brick or stone veneer installed to a minimum height three feet from grade, with no more than a four-inch opening at the base between the grade and the start of the masonry. The veneer shall wrap around all sides of the structure visible from the front and sides so that it terminates at a point where the yard fencing begins.

63. Each elevation for a particular floor plan shall be distinctive, with a unique roof design, architectural detailing, and application of exterior materials. Single story and two-story plans shall be varied.
64. The same (or substantially similar) elevation may appear no more than twice on one side of a block, or three times on either side of facing blocks, and may not be opposite or kitty-corner from the same elevation on the opposite side of the block. In addition, no more than ten percent of the homes can share the same elevation within a development.
65. A minimum of 50 percent of all detached units shall have useable front porches (minimum 6-feet by 8-feet). The remaining 50 percent shall have other prominent useable architectural features such as courtyards, balconies, and/or porticoes.
66. Units on opposing sides of a street shall be compatible in terms of design and color.
67. Lights along local streets shall not exceed 20-feet in height and shall be spaced to meet illumination/safety requirements. Lights along collector and arterial streets shall be as low as feasible in order to maintain pedestrian scale. Historic-style street lamps shall be used along all streets.
68. Entry walks to individual residences shall be separated from the driveway by a landscaped area.
69. Exterior colors on residential units shall not be restricted.
70. Single family structures shall be consistent with applicable development standards identified in Tables 3A and 4, and Section 8-1.5302, of the Zoning Ordinance unless otherwise modified through the PD Permit in subsequent Design Review approvals.
71. The apartment project shall be consistent with Section 8-1.5306 of the Zoning Ordinance.
72. Fencing and parking shall be consistent with the applicable requirements of Section 8-1.6001 and 8-1.6003 of the Zoning Ordinance.
73. Landscaping and signage shall be consistent with the applicable requirements of Section 8-1.6004 and 8-1.6005 of the Zoning Ordinance.
74. A separate site plan approval and design review approval is required for the apartment project.
75. A separate site plan approval and design review is required for the on-site park.
76. Universal design features shall be incorporated as an option in residential units. These features shall include first floor passage doors and hallways, a handicap accessible path of travel from either the driveway or sidewalk to the entrance of the residential units, and other features determined by the Community Development Department.
77. The applicant shall ensure that lots along West Main Street receive special design and architectural treatment to showcase neo-traditional principles along this new segment of the City's original Main Street. Front doors for all lots that adjoin West Main Street (front-on or side-on) shall open onto West Main Street. Side-on homes shall include wrap around porches. There shall be no driveways onto West Main Street.
78. A site plan for Lots Z-1 and Z-2 and landscaping plans for the entire project shall be submitted for design review and approval by the City prior to acceptance of the final map.
79. Landscaping improvements shall be developed at the same time as adjoining lots, and shall be completed to the City's satisfaction prior to occupancy of adjoining lots.

80. The following lots shall have wrap-around porches with front doors facing the park: 154, 168 (east), 169, 188, 221 (east), 240 (east), 262, 263, 288, 289, and 312 (east). The following lots shall have wrap-around porches with front doors facing the park and driveways on the local street: 155, 220, 239, and 311.
81. Details for side yard fencing along West Main Street and Taylor Street shall be provided for City review and approval as a part of subsequent Design Review for the project. Height, materials, setback, and landscaping shall be considered in light of the visibility of those areas from proposed bicycle trails along those streets.
82. Alley loaded garages shall have rear lighting that illuminates the alley. Style and wattage of fixtures shall be subject to City review and approval for both safety and aesthetic purposes as a part of subsequent Design Review for the project. Project CC&Rs shall specify the requirement for these fixtures to be maintained, and kept lit during evening hours, by the resident.
83. Duplex lots shall driveways and front doors on opposite street frontages.

Affordable Housing

84. Prior to recordation of the Final Map, an inclusionary housing agreement shall be prepared and executed for the identified income-restricted units/properties. Deed restrictions shall be recorded against each income-restricted lot (including Lot A) property to ensure permanent affordability.
85. Of the 66 affordable units, 26 shall be restricted to very low income occupants and 40 shall be restricted to low/moderate income occupants (comprised of 25 low income units and 15 moderate-income units). These lots shall not be the same lots as those identified to meet the City's local builder requirement. The low/moderate split shall be determined by the City.
86. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.
87. Fifty percent of the affordable for-sale (single family) units shall have 3 bedrooms and 2 baths and fifty percent shall have 4 bedrooms and 2 baths. The same requirements shall apply to the affordable apartment units.
88. Pursuant to Policy II.A.13 of the Housing Element, the affordable units shall be visually indistinguishable from the market-rate units.

Street Improvements

89. All proposed roads within the subdivision shall comply with the City's Public Works Improvement Standards and Construction Specifications, dated September 2003.
90. West Main Street:
 - a) Full improvements shall be constructed from the northern terminus of existing West Main Street to the proposed Moody Slough Road with the first final map on the project. Applicant shall acquire the necessary right of way on the Callahan property prior to approval of the first final map.
 - b) The proposed West Main Street cross-section was previously approved with the Callahan Estates Subdivision as an 80-foot right-of-way comprised as follows: a 10-foot Class I bikeway with 2-feet of clearance and 14-foot landscape strip on the west side, an 8-foot parking lane on both sides, a 12-foot travel lane on both sides, and an 8-foot landscape strip with 6-foot sidewalk on the east side.
 - c) The project proponent shall install a traffic signal at the Grant Avenue and West Main Street intersection prior to the issuance of the 50th building permit. Signal is currently being designed and constructed by the Callahan Development. If signal is not constructed by the Callahan

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

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

91. Taylor Street:

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

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

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

92. Valley Oak Drive:

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

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

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

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

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

94. Niemann Street: Niemann Street is shown to extend from the existing Niemann Street at the east property line to proposed Valley Oak Dr. Within the project boundaries, Niemann Street shall be constructed in conjunction with the appropriate phase of the project. Niemann Street is a "Secondary Collector" with a 76-foot cross-section comprised of a 5-foot sidewalk on the south side, an 8-foot landscape strip on the south and an 11-foot landscape strip on the north, a 7-foot parking lane on both sides, a 13-foot travel lane on both sides, and a 10-foot Class I bikeway with 2-feet of clearance on the north side. The extension of Niemann Street from W. Main Street to the westerly terminus of existing Niemann Street will be extended with the first phase (Final Map) of development. If the Callahan Property is not developed prior to the development of Phase III of the Winters Highlands project then the Applicant will be required to extend Anderson Ave. to the west to connect to W. Main Street.
95. Anderson Avenue: Anderson Ave. from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the first phase (first Final Map) of the Winters Highlands project to serve the existing Middle School on Anderson Ave. In addition, if the Callahan Property is not developed prior to the development of Phase III of the Winters Highlands project then the Applicant will be required to extend Anderson Ave. through the Callahan Property to the west to connect to W. Main Street. Applicant shall acquire the needed right-of-way prior to approval of the final map for Phase III. Anderson Street is a local residential street with a 66-foot cross-section to account for the proposed Class I bikeway. The cross-section shall be comprised of the following: a 10-foot Class I bikeway with 2-foot clearance and 8-foot landscape strip on the south side, a 7.5-foot parking lane on each side, a 10-foot travel lane on both sides, and a 6-foot landscape strip with 5-foot sidewalk on the north side.
96. "D" Street: Between Taylor Street and West Main Street, the Applicant shall be required to acquire the land on the Callahan property prior to approval of a final map for Phase I, in order to facilitate the full construction of "D" Street as shown on the Tentative Map during Phase I of the project. "D" Street between Taylor and Valley Oak Drive shall be constructed to Local Street standards no later than the completion of Phase III development
97. G" Street: G Street is proposed to be a standard local City street with a 57-foot cross-section. South of the park however, it should be noted that the City will require an expanded cross-section to be determined by the City Engineer.
98. J Street, which would run along the west side of the linear park, will be a standard local City street with a 57-foot cross-section.
99. Intersection Enhancement Details: Island Planters and crosswalks shall be constructed of colored brick pavers, stamped concrete or other enhanced feature as approved by the City Engineer.
100. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA.
101. Alleys: All Alleys shall be 26' wide back of curb to back of Curb. Final pavement structural shall require City Engineer approval, but in no case shall the section be less than that specified in the City of Winters Improvement Standards with the addition of Type A Asphalt Concrete
102. All Asphalt Concrete Pavement shall be Type A and Asphalt Grade shall be AR-8000 or equivalent Performance Grade.
103. Tentative Map Street Cross-Sections, Conditions and Changes shall be made as follows:
 - a) Street Section (Local): Add all street names to the detail heading.
 - b) ADD NEW STREET CROSS SECTION- Moody Slough Road (East of Project Boundaries): Street cross section shall clearly depict primary collector improvements to be constructed per the conditions of approval for Moody Slough Road.

- c) ADD NEW STREET CROSS SECTION- Niemann Street (East of West Main Street): Depict full improvements
- d) ADD NEW STREET CROSS SECTION- Anderson Avenue (East of West Main Street): Depict full improvements
- e) Street Cross section details, including all intersection geometric design, complying with the conditions of approval, shall be revised on tentative map, submitted to the City, and approved by the City Engineer prior to submitting a final map and improvement plans.
- f) Additional traffic studies shall be performed for subsequent phases as required by the City Engineer. The City has the option to perform the studies at Applicant's expense.
- g) A signing and striping, and stop sign plan is required and shall be approved by the City Engineer. All signing and striping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.
- h) Street light types shall be those historic types as approved by the City. Applicant shall fund the analysis for designing standards and details for spacing historic lights. Improvement plans shall be designed to those standards once approved.

Storm Drainage and Site Grading

- 104. A comprehensive storm drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to existing downstream facilities and to prevent additional flooding at off-site downstream locations. All necessary calculations and assumptions and design details shall be submitted to the City Engineer for review and approval. The design features proposed by the applicant shall be consistent with the most recent version of the City's Storm Drainage Master Plan criteria and City Public Improvement Standards. The plan shall incorporate secondary flood routing analysis and shall include final sizing and location of on-site and off-site storm conduit channels, structures. The Storm Drainage Plan shall be submitted for approval prior to submittal of the first final map and/or construction drawings for checking. The applicant shall pay the cost associated with all improvements required by the plan and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversized improvements on a pro rata basis per the Project level Development Agreement.
- 105. A topographic survey of the entire site and a comprehensive grading and drainage plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading and drainage plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
- 106. The Tentative map Grading and Drainage plan showing grading and drainage information including topographic information, drainage routing, pipe slopes and sizing and locations and excluding topographic information, and overland drainage routing are preliminary only and do not constitute approval in any way. Final approval for the grading and Drainage Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
- 107. To accommodate the Winters Highlands Flood Overlay area into the existing Rancho Arroyo Pond the applicant shall be required to construct a pump station in the pond that would consist of an approximate sized 14.5 cfs of pumping capacity. The applicant would also be required to fund and

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

108. By allowing the project General Plan Flood Overlay Area to be redirected into the Rancho Arroyo Pond with improvements to the pond, does not eliminate the requirement for the Project to pay into the Flood Overlay Area Storm Drainage Fee. The proposal to develop in the Flood Overlay Area, and remove portions of the development from the Flood Overlay Area will require City Council approval, and amendment to the General Plan and Rancho Arroyo Drainage Shed.
109. Applicant shall be required to coordinate with FEMA through the City's Floodplain Administrator to determine if a CLOMR or LOMR is needed for the project as a result of possible impacts to Dry Creek or Putah Creek Flood Plain. Applicant shall obtain all necessary permits and CLOMRs/LOMRs as required prior to First Final Map approval.
110. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls.
111. Drainage fees shall be paid prior to issuance of a building permit.
112. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.
113. If disposal and sharing of the excavated soil from the construction of the Development occurs, prior to approval of the first Final Map, Applicant shall prepare a written agreement with the other participating property owners and submit to the City.
114. All projects shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.
115. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.
116. Applications/projects disturbing less than one acre of soil shall implement BMP's to prevent and minimize erosion. The improvement plans for construction of less than 1 acre shall include a BMP to be approved by the City Engineer.
117. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).
118. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.

119. Landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.
120. Applicants for projects draining into water bodies shall obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the Regional Water Quality Control Board prior to commencement of grading.
121. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
122. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
123. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
124. Construction equipment and engines shall be properly maintained.
125. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.
126. Construction practices will minimize vehicle idling.
127. Potentially windblown materials will be watered or covered.
128. Construction areas and streets will be wet swept.

Wastewater and Sewer Collection System

129. The applicant shall obtain a no-cost Wastewater Discharge Permit from the Public Works Department prior to the issuance of a Building Permit.
130. The property shall be connected to the City of Winters sewer system, with a separate sewer lateral required for each parcel, in accordance with City of Winters Public Improvement standards and Construction Standards.
131. A Tentative Map Sewer comprehensive Collection System Master Plan shall be submitted for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. A registered civil engineer for project shall prepare the sewer collection system plan. The plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate those developments.
132. The applicant shall pay the cost associated with all improvements required by the study, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
133. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
134. The Applicant shall be obligated to advance fund the construction of the off-site sewer pump station identified on West Main Street Adjacent to the entrance to the Rancho Arroyo Detention Pond. The City has the option of requiring the Applicant to design and construct the Pump Station or have the City design and construct the pump station at the Applicant's expense. An appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on

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

135. Prior to approval for use of the City's existing force main pipe, Applicant shall assess the capacity and physical condition of the force main and obtain City Engineer approval for use on the project. If the force main cannot be used, the Applicant shall be required to construct a new force main to the WWTP.
136. The Developer acknowledges and agrees that, notwithstanding any provision contained in the Development Agreement, the Land Use Entitlements or the Conditions of Approval to the contrary, the City shall not be required to approve or record a Final Map for any Phase of the Winters Highlands Subdivision until and unless the City Engineer determines, in his/her sole and absolute discretion, that the WWTP has adequate capacity to serve all residential units and other buildings to be constructed within that Phase of the Winters Highlands Subdivision.
137. Construction of deep sewer mains shall be connected to laterals by a parallel mains and connections at Manholes.

Water Infrastructure

138. All materials and installation of the water system shall be at the applicant's expense per City of Winters Public Improvement Standards and Construction Standards.
139. If required, per SB221, project Applicant shall obtain a Water Verification (WV) prior to approval of final 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.
140. Based on City water modeling, a new well is needed to serve the first phase of development. A new well is being constructed by the Callahan Estates Development. Developer shall pay its fair share obligation in accordance with the Development Agreement. If a second well is required, Developer shall advance fund the construction of a second water well and required water system conveyance pipelines with the project. Developer shall enter into a reimbursement agreement in accordance with the terms of the Development Agreement for reimbursement of costs above its fair share obligation for funding the design and construction of a second well. Per Mitigation Measure #15, the applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units..
141. The Applicant shall submit a well site plan with facility elevations for City approval with the first final map application.

142. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. Applicant shall pay for all required water modeling for identifying water infrastructure needs to serve its development and shall construct offsite water improvements to connect to the City water distribution system.
143. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection Fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the City Engineer.
144. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the City Engineer or his designated agent.
145. Per the City of Winters Cross Connection Control Program, fire protection systems are required to maintain approved backflow prevention, at the applicant's expense. Required location, service size and flow-rate for the fire protection system must be submitted. Actual location is subject to the review and approval of the Public Works Department, Fire Department, and Community Development Department.
146. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.
147. FINAL PLANS, PERIODIC TESTS FOR FIRE HYDRANTS: All final plans for fire hydrant systems and private water mains supplying a fire hydrant system shall be submitted to the City of Winters Fire Department for approval prior to construction of the system. All fire protection systems and appurtenances thereto shall be subject to such periodic tests as required by the City of Winters Fire Department.
148. WATER PRESSURE: All water lines and fire hydrant systems must be approved by the Fire Chief and operating prior to any construction taking place on the site. Prior to issuance of building permits, water flow must be measured and certified for adequacy by the Winters Fire District. The following minimum water flows, with 20 PSI residual pressure, shall be acceptable unless otherwise determined due to the type of construction material used.
149. REFLECTORS FOR FIRE HYDRANTS: Any fire hydrant installed will require, in addition to the blue reflector noted in Standard Drawings, an additional blue reflector and glue kit that is to be supplied to the Winters Fire Department for replacement purposes.
150. MEDIANS, FIRE HYDRANT PLACEMENT: When Median strip is to be installed in the center of a street; the fire hydrant will be spaced not more that 300 feet on both sides of the divider on the curb side of the street. Final approval and approval of any changes is the responsibility of the City Engineer.
151. All Construction, new or remodeling, shall conform to the most current Uniform Fire Codes, the Winters Fire Prevention Code, and section of the National Fire Codes that the Winters Fire Chief or his/her agent may find necessary to apply.
152. Prior to approval of the first final map, a comprehensive on-site water system master plan shall be prepared by a registered civil engineer for project, and shall be submitted to the Public Works

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

153. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.
154. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.
155. When the fire protection facilities are in the City of Winters, the developer shall contact the Winters Fire District Chief or his/or agent prior to construction for a pre-construction meeting.
156. All required fire accesses that are to be locked shall be locked with a system that is approved by the Fire Chief or his/her agent.
157. Submit three sets of plans for each fire suppression sprinkler system to the Fire Department for review and approval prior to the issuance of each building permit.
158. All residences shall have fire suppression sprinkler systems meeting or exceeding NFPA 13-D and local Fire Department standards. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems.

General Public Works and Engineering Conditions

159. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City; state and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.
160. The applicant agrees to adhere to the terms of the of the ordinance (Ordinance No. 96-02) adopted by the City Council to address impact fees to be paid for development of property within the Rancho Arroyo Drainage District, to offset costs associated with drainage improvements.
161. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
162. A subdivision map (Final or Parcel) shall be processed and shall be recorded prior to issuance of a Building Permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the final map from the County, prior to issuance of the first building permit.
163. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.
164. A registered landscape architect shall design landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.

165. Applicant shall make every attempt to submit joint trench/utility/composite plans for review, prior to approval of the final map and improvement plans. Construction will not be allowed to proceed prior to submittal of the joint trench/utility/composite plans for City review.
166. All existing and proposed utilities (Electric, phone/data, and cable) shall be installed underground per the subdivision ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers.
167. Street lighting location plan shall be submitted and approved by the Department of Engineering, prior to approval of improvement plans and final recordation of Map.
168. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City of Winters City Engineer and Fire Department
169. Occupancy of residential units shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings, unless otherwise approved by the City Engineer and Community Development Director. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.
170. If relocation of existing facilities is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.
171. A Subdivision Improvement Agreement shall be entered into and recorded prior construction of improvements, issuance of any building permits, or recordation of a final map.
172. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the final map.

Easements and Right of Way

173. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.
174. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.
175. A ten (10) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City and may be required elsewhere as requested by the utility companies and approved by the City.
176. Per the project level Development Agreement, prior to approval of first set of improvement plans and final map, Applicant shall acquire all rights of way and easements necessary to construct off-site and on-site improvements associated with the tentative map.

Reimbursements for Applicant Install Improvements

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

Landscaping and Lighting

178. Project proponents shall enter into the City wide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of parks, open space, street lighting, landscaping, sound walls, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to the sale of any buildable lots or parcels within the project area.
179. Applicant of multi-family residential, commercial and industrial project shall provide refuse enclosure detail showing bin locations and recycling facilities to the approval of the Public Works Department.
180. Prepare, and submit for approval, a utility site plan prior to preparation of full improvement plans.
181. Prepare improvement plans for any work within the public right-of-way and submit them to the Public Works department for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Developer shall provide, to the City Engineer, one Mylar original and four sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer.
182. Each residence in the cul-de-sac must be able to accommodate parking for 3 vehicles: either (3) on site parking spaces or two (2) on site spaces and (1) on street space. The on street space shall be along the frontage of the subject property with no more than a 10-foot overlap across the frontage of adjacent parcels.
183. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.
184. Existing public and private facilities damaged during the course of construction shall be repaired by the subdivider, at his sole expense, to the satisfaction of the City Engineer.
185. The area of each lot, in square feet, shall be calculated and shown on the Final Map.
186. Encroachment permits if necessary from will be acquired from Yolo County, Cal-Trans, and PG&E.
187. All utility poles that are to be relocated in conjunction with this project shall be identified on the improvement plans, with existing and proposed locations indicated.
188. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.
189. Prior to recording of the final map, if required, provide evidence of payment for the Habitat Mitigation Fee. This fee is paid to the Yolo County Planning Department.
190. If improvements are constructed and/or installed by a party or parties other than the Applicant, which improvements benefit Applicant's property, prior to issuance of a building permit (approval of the final map) on Applicants property, Applicant shall pay a proportionate share of the costs of said improvements, including interest, prior to the issuance of building permit(s) (approval of the final map) to Applicant.
191. Moisture sensors shall be installed on the 14-foot parkway strips located along West Main Street.



PLANNING COMMISSION STAFF REPORT
July 27, 2004

TO: Chairman and Planning Commissioners
FROM: Jenaye Shepherd – Management Intern
SUBJECT: **Agenda Item VIII #1, Discussion Item – Proposed Energy Resolution.**

Please find attached the proposed Energy Resolution and a Power Point Presentation.

The proposed Energy Resolution will require newly constructed homes to follow a number of energy efficient techniques and allow all new homes to be built to EPA Energy Star Standards, which in California is 15-percent less energy use than required by Title 24. Many of these energy saving strategies have rebates available and a short money return period. Implementing this resolution will not only save energy and money, but it will also increase the comfort ability for many residents in Winters.

Attachments:

1. Proposed Energy Resolution
2. Power Point Presentation

PROPOSED ENERGY RESOLUTION

City of Winters, July 2004

PREFACE

This document is a proposal to improve the energy performance of all new single family homes by implementing measures that reduce their individual energy consumption and energy use related to their construction. The intent is to improve performance over Title 24 energy standards and to qualify homes for Energy Star ratings while insuring that the added cost can be amortized by energy savings. Implementation of these improvements would be through resolution or ordinance.

The State of California is increasingly facing limitations to its electric infrastructure, including both transmission and distribution systems and generation capacity, which will be worsened by the forecasted doubling of California's population by the year 2040¹. Most of this problem results from residential air conditioning, which is responsible for 40% of California's peak load. The California Energy Commission is responding to this problem by supporting development of technologies that reduce residential peak load, by introducing "time-dependent valuation" of energy into the 2005 energy standards, and by promoting photovoltaics through a "Zero Energy New Homes" program.

Two federal programs, Zero Energy Buildings, and Building America have been in operation for over three years to promote the construction of homes that are more energy efficient and that utilize renewable energy sources. The objective of these programs is to improve our energy independence and security. Research completed under these programs has demonstrated that energy efficiency and photovoltaics can be cost-effective, is well received by homebuyers, and has the current potential to reduce energy use by 70% or more.

With the support of the Building America program, Davis Energy Group compiled a list of efficiency measures that are proposed to be enacted by resolution of the Winters City Council. These measures are grouped under the major categories of Site Planning & Landscape; Building Envelope, Appliances, and HVAC; Photovoltaic Systems; and Waste Reduction. The primary objectives of this proposal are to:

- Utilize site planning principals to facilitate improved cooling performance of new homes and that reduce transportation energy use
- To employ a list of cost-effective energy efficiency measures that enable homes to qualify under the Energy Star label, and that result in a positive cash flow for the buyers
- To require photovoltaics for those homes for which the systems will be readily affordable

Rather than allow builders to employ a performance approach to verify Energy Star ratings, we propose that a prescriptive list of measures that have been predetermined to

¹ CALTRANS Office of Community Planning

be cost-effective be required be required on all homes. This approach greatly reduces the burden of verification on plan checkers and building inspectors.

The following sections define the proposed measures and provide background, justification, and detail on each. Appendix F of the California Environmental Quality Act pertaining to energy conservation is also attached for reference.

1 SITE PLANNING & LANDSCAPE

1.1 Subdivision maps shall comply with Section 66473.1 of the California Subdivision Map Act by providing lots that allow homes to be sited with their fronts facing either north or south, to the maximum extent feasible.

Section 66473.1 of the Subdivision Map Act states: "The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure." When it was drafted almost 30 years ago the act did not anticipate the need to reduce air conditioning peak load, nor the development of photovoltaics for residential applications. However, the principals on which was based still apply. Most streets must be orientated east-west in order to facilitate siting homes so that they use less cooling energy.

When windows are exposed to direct sunlight in summer, the resulting solar heat gain increases air conditioning energy use and compromises comfort. Since most windows are located in the front or back of homes, homes oriented with their fronts facing east or west can use over 50% more energy for cooling than homes facing north or south. East and west-facing windows are very difficult to shade. Comfort problems are particularly apparent on the second floor of two-story homes, because heat added by the sun rises to the upper floor. South-facing windows can be shaded by roof overhangs in summer and allow sunlight into the house in winter, thereby reducing heating bills.

Photovoltaic systems and solar water heaters perform much more efficiently when modules are located on south-facing roofs. Also, facing the majority of windows to the south can reduce winter heating energy use.

1.2 Deciduous street trees shall be provided by the developer, spacing and species to be approved by Planning Commission and/or listed on the City of Winters approved tree list.

Trees reduce local temperatures in summer by shading streets and roofs, and by evaporating moisture. On warm summer days urban areas can be 6-8% warmer than the surrounding agricultural areas. Street trees also improve the appearance of neighborhoods and contribute to higher property values. The City adopted an approved tree list but some new colorful varieties are available that are not on the list, such as the Chinese Tallow Tree (*Sapium sebiferum*) and the Autumn Fantasy maple (*Acer Fremanii* x). The City should also designate specific trees that are suitable for various street applications (primary feeder, secondary feeder, etc.)

1.3 Residential streets that provide access to dwellings shall not be wider than the City's adopted street standard.

Streets absorb the sun's rays and give off heat, increasing the need for air conditioning. Narrower streets are easier to shade with trees and tend to slow traffic down, improving neighborhood safety, are less expensive to build, and reduce rainwater run-off.

Currently, the minimum street width is 35'. The Village Homes development in Davis has 20' and 26' street widths and provides off-street parking areas. It is recommended that the City review the current street guidelines and encourage developers to build narrower streets with off-street visitor parking areas. Alleys, such as those provided in Putah Creek Hamlet, are another alternative to parking areas.

1.4 Paved paths shall be provided to facilitate bike/pedestrian traffic to schools. Paths shall not cross secondary collectors.

Winters Highlands and Callahan Estates developments will be within easy walking distance of Shirley Rominger School, but current street layouts do not provide for easy pedestrian access, and require several streets to be crossed that are primary or secondary collectors. As a result, parents are likely to drive students to school. The auto exhaust will degrade local and regional air quality, and the children will be deprived of exercise. Obesity is becoming an enormous problem, which making provisions for increased pedestrian and bicycle activity can help solve.

2 BUILDING ENVELOPE, APPLIANCES, AND HVAC

2.1 All houses shall be built to EPA Energy Star standards.

The top builders in the country are building whole developments to EPA Energy Star standards, which in California is 15% less annual energy use than required by Title 24 energy standards. The added costs of improvements needed to meet the Energy Star rating when amortized over 30 years is more than offset by annual energy savings, so the buyer typically experiences a positive cash flow, even if the builder marks up these improvements. Thus, the buyer saves money and the builder makes more on the sale of the house. Studies have also shown that energy efficient homes have a higher resale value. Efficient neighborhoods are quieter (less air conditioner noise), and there is less air pollution from combusted natural gas.

The utilities and California at large benefits because most measures that save energy also reduce peak electricity load, meaning that utilities are not as pressed to add generating capacity and transmission-distribution systems to serve the loads added by new development. Because of the high cost of building new power-plants, and of running inefficient "peaker" plants, the costs that utilities would pass on to ratepayers is not as great. Everyone benefits.

Improvements that are implemented now are likely to yield much bigger payoffs to homeowners in the future. Last year Alan Greenspan gave testimony before the House Committee on Energy and Commerce that "Canada, our major source of imported natural gas, has had little room to expand shipments to the United States, and our limited capacity to import liquefied natural gas (LNG) effectively restricts our access to the

world's abundant supplies of gas." He also said "We are not apt to return to earlier periods of relative abundance and low prices anytime soon." Dwindling supplies resulted in an increase in the market price for natural gas of nearly 73% since the previous year. Regulation of energy prices will not protect consumers from these price hikes for long, and there is nothing in the near future that is likely to improve this scenario. Since most of California's electricity is generated by natural gas plants, the price of electricity is certain to be affected as well.

Analysis Davis Energy Group has completed under the Department of Energy sponsored Zero Energy Home and Building America programs has identified specific measures that are particularly cost-effective, market ready, and currently being used by many builders. If made mandatory, the following measures will assure that homes meet Energy Star standards:

- **High performance windows.** Most windows that are now installed by production builders are treated with a special "Low E" coating that reduces the amount of heat that is transmitted by the glass, and that reduces the amount of light transmitted in the non-visible spectrum. This property reduces solar heat gain without making the windows appear dark. Builders should only install windows that have a U-value of 0.36 and solar heat gain coefficient (SHGF) of 0.36 or lower.
- **Energy Star roof tiles.** Several companies, including Hanson Roof Tile in Dixon, are producing concrete roof tiles using pigments that reflect sunlight, even in darker colors. This higher reflectivity reduces summer attic temperatures and cooling loads, and helps keep neighborhood temperatures lower. Composition shingles with higher reflectivity are expected to be on the market soon.
- **Minimum R-38 ceiling insulation.** Deeper ceiling insulation results in better performance of buried ducts, as well as reducing heat gain and loss through the attic. The added cost for R-38 compared to the minimum standard R-30 is minimal.
- **Insulated headers.** Solid wood headers waste wood and degrade wall thermal performance. Insulated headers are similar to web trusses except they include two webs which sandwich foam insulation. Experience has shown they are less expensive than solid wood, don't cause cracking due to shrinkage, and since they are lighter, make walls easier to stand.
- **Air conditioners that meet the 2006 DOE minimum efficiency standard of 13 SEER.** Currently air conditioner manufacturers are not allowed to sell units that have a "SEER" rating of under 10. The U.S. Department of Energy proposed, and congress approved, a minimum rating of 13, effective in 2006. Since the proposed development will be required to install 13 SEER air conditioners on part of the homes (due to the build-out schedule), they should be installed on all new homes. The DOE standards are based on cost-effectiveness to the buyer.
- **Duct leakage HERS-certified to be not more than 6%.** Duct leakage can substantially degrade heating and air conditioning efficiency, and proper sealing is very inexpensive if done during construction. Since many ducts are not accessible after the houses are built, proper sealing can only be done during construction. The Energy Commission provides for independent Home Energy Rating System (HERS)

raters to test ducts when Title 24 credit is taken for tight ducts. This testing is necessary to assure proper installation.

- **Ducts installed in accordance with the California Energy Commission's 2005 Standards "Buried Duct" compliance option.** The 2005 energy standards will allow credit to be taken for ducts that are buried in attic insulation instead of suspended from roof trusses. According to a large Sacramento HVAC contractor, there is no added cost to install ducts in this fashion.
- **Pilotless, tankless gas water heaters.** Depending on how much hot water is used, these appliances reduce natural gas use by about 30 to 90% compared to storage type water heaters. They are available from several manufacturers and are seen increasingly in production homes. Since they heat water instantaneously they do not run out of hot water, and they do not take up valuable floor space.
- **Engineered "home run" hot water distribution systems using PEX pipe.** With conventional piping systems, it is not uncommon to have half of the hot water generated by the water heater lost in the piping, and a substantial amount of water is wasted while waiting for hot water to arrive at the tap. "Home run" piping that is properly designed saves energy and shortens hot water waiting times, thereby saving water. The cost for these systems is becoming comparable to that of conventional copper systems.
- **Energy Star approved dishwashers.** These are widely available in all popular brands, and save water as well as energy. Since dishwashers are permanently installed by the builder, they are not subject to easy replacement like refrigerators and clothes washers.
- **Fluorescent lights provided in all ceiling can fixtures and bathroom fixtures.** Fluorescent lights provide the same light output at less than a third of the electricity use and heat generation of incandescent lights, and last many times longer. The size, configuration options, cost, reliability, and color rendition of compact fluorescent lights (CFL's) have improved to the point that they are acceptable substitutes for incandescent lamps in most applications. Fixture manufacturers are beginning to introduce more fixtures designed for fluorescent lamps. The prolific use of ceiling can lights by builders provides a good opportunity to improve lighting efficiency by installing only CFL flood lamps, which can be screwed in to the conventional fixtures. Globe CFL's are good substitutes for incandescent lamps in most fixtures installed at bathroom mirrors. Efficient linear T8 lamps with electronic ballasts also provide very high quality light when used above kitchen cabinets for indirect lighting, and T5's provide excellent light for under counter applications.

3 PHOTOVOLTAIC SYSTEMS

Solar photovoltaic systems are becoming more economical every year, and there are new breakthroughs in technology that are likely to make these systems more competitive with conventionally generated electricity as time goes on. Currently, the California Energy Commission offers a \$3.00 per Watt rebate for residential systems that are grid-connected, that is they feed excess power into the utility's power lines rather than storing

it in batteries. PG&E also offers a time-of-use rate that allows homeowners to "sell" power to PG&E at a higher price during the day (12-6 PM) than they purchase it for during night and morning hours. California also offers a 15% tax credit to purchasers of PV systems.

In addition, the DOE sponsored Zero Energy Homes and Building America programs offers assistance to builders to who combine energy efficiency improvements with photovoltaic (PV) systems. The reason that states and the federal government are supporting PV systems is that they are seen as a solution to both local electricity supply problems and a contributor to our national energy security.

Recent studies have shown that these incentives combine to make PV marginally cost-effective at current electric prices, which are likely to increase significantly over the 20 year life of the systems. PV systems are becoming increasingly common on production homes, and manufacturers such as General Electric and Sharp Electronics are aggressively marketing systems to residential builders. PV modules are now available that are easy to install and blend in with concrete roof tiles and other roofing materials.

3.1 All new homes shall be constructed with a minimum of 240 ft² of south roof area that is free of vents, chimneys, and other obstructions to facilitate future installation of solar electric systems.

Making homes easier to retrofit with PV systems reduces the future cost of installing these systems while not adding significantly to the construction cost. Allowing for 200 ft² of PV module area will assure that future systems can have a significant impact on reducing electric use.

3.2 All new homes having a conditioned floor area of 2500 ft² or greater shall be equipped with 1" minimum size conduit between the attic space and the main electrical panel to facilitate wiring for future photovoltaic systems.

Conduit is inexpensive to install while homes are under construction. Pre-installing conduit will further reduce the cost of installing PV systems, especially in larger two-story homes.

3.3 All new homes having a conditioned floor area of 3500 ft² or greater shall be equipped with a functioning photovoltaic system with an STC rating of 1.5 kW or greater.

On larger, less affordable, homes a small PV system may constitute only 1% of the selling price and the cost is more easily borne by the buyer. Also, energy savings are greater in larger homes because the PV system typically offsets higher tier rates. Experiences from other builders offering PV systems show that the cost for systems is lower when some or all of the homes are scheduled to have PV systems (instead of offered as buyer options), and that the added cost rarely discourages buyers. Providing PV systems on 100% of the larger homes will help mitigate the added electricity load contributed by the new developments, and will reduce carbon and other emissions from natural gas combustion by electricity generation plants.

4 WASTE REDUCTION

Construction projects contribute substantial waste to landfill sites. Much of this waste can be eliminated by implementing simple recycling measures that can reduce the builders' disposal costs.

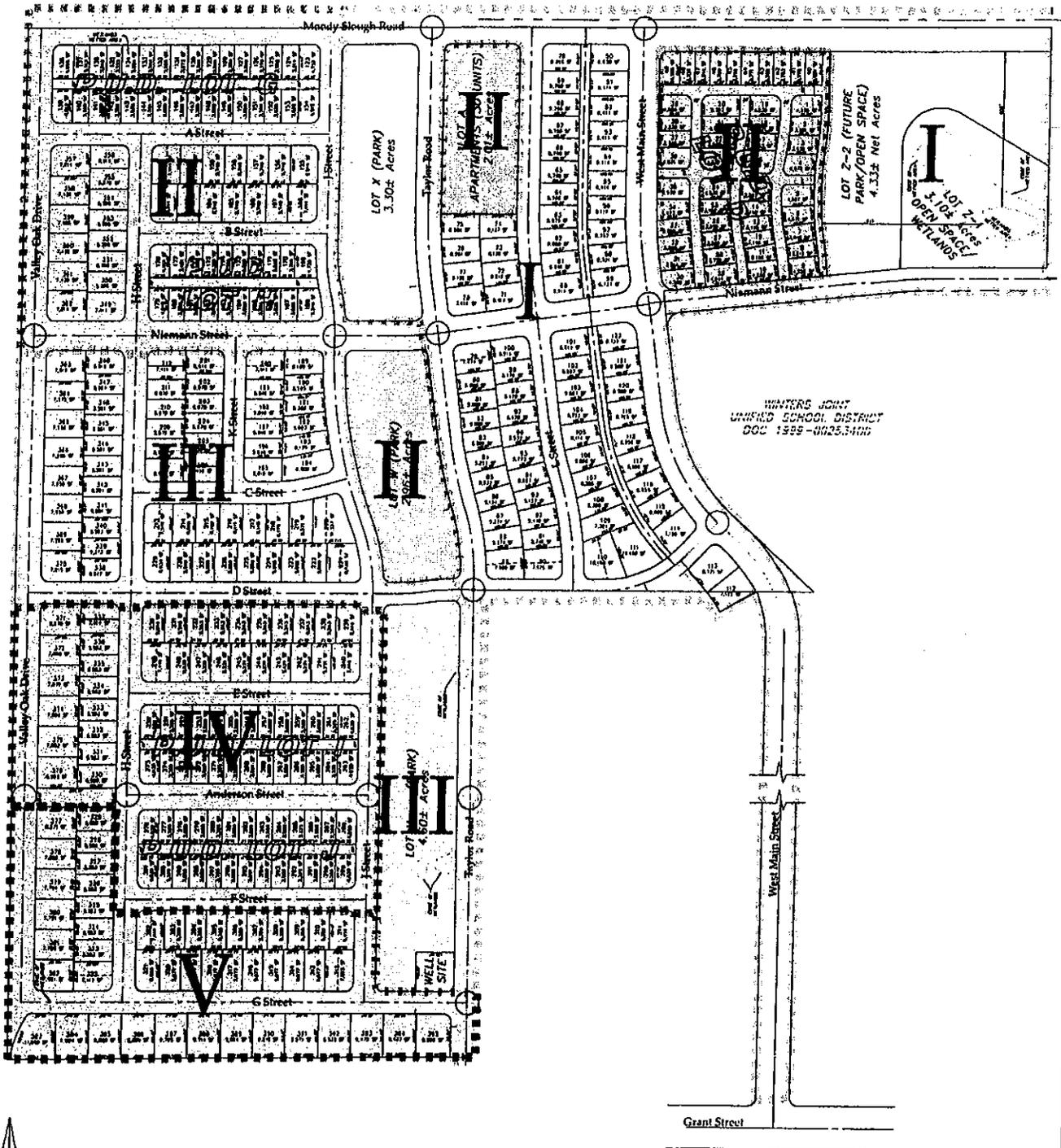
4.1 All construction waste shall be separated to allow recycling of wood, steel, and gypsum products.

This is a measure that has been adopted by several "green building" programs, including the Alameda County Waste Management Board's Green Builder Program. Energy savings resulting from this measure include reduced fuel costs for waste transport and landfill vehicles, reduction of the energy required for extraction of raw materials, and the potential use of wood waste in plants that generate electricity from biomass.

WINTERS HIGHLANDS

Winters, CA
Granite Bay Holdings, LLC.

PHASING MAP



February 2006



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

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Fax (805) 987-6361

Sacramento
Telephone (916) 441-1244
Fax (916) 441-1905

San Diego
Telephone (858) 569-6970
Fax (858) 569-0237

Reply to: Laguna Hills Office
Our File No. 25.27

November 4, 2005

VIA U.S. MAIL

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

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

Dear Mr. Mudgett:

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

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

Very truly yours,

PARHAM & RAJCIC

Pamela A. Dempsey
Attorney at Law

PAD/mp
Enclosures

7003.12.16

When Recorded, Return to:

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

Exempt: Government Code §5103

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2006-0005313-00

Check Number 2640
REQD BY PARHAM & ASSOC INC
Wednesday, FEB 08, 2006 10:12:00
Ttl Pd \$34.00 Nbr-0000623372
LUP/RB/1-10

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

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

1. District and Developer entered into a Mutual Benefit Agreement ("Agreement") on the 18th day of November, 2005, for the purpose of reaching an agreement covering developer-mitigation impact fees necessitated by the expected impact on the District by the proposed construction and occupancy occurring on, in or about the property described on Exhibit "A." All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is indefinite with no termination date.
3. The Property which is the subject of the Agreement is described in Exhibit "A" attached hereto.
4. The duties, promises and covenants set forth in the Agreement are binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land.

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

Winters Joint Union School District

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

GBH-Winters Highlands, LLC

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

- 1 -

11/3/2005

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MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

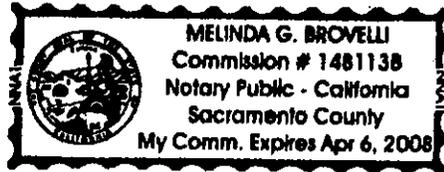
State of California
County of Placer

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

WITNESS my hand and official seal.

Melinda G. Brovelli (SEAL)
Notary Public

My commission expires: April 6, 2008



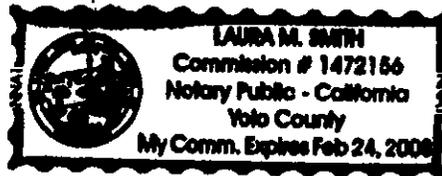
State of California
County of Yolo

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

WITNESS my hand and official seal.

Laura M Smith (SEAL)
Notary Public

My commission expires: Feb 24, 2008



LEGAL DESCRIPTION

EXHIBIT "A"

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

PARCEL A:

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

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

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

ALSO EXCEPTING THEREFROM, THE FOLLOWING:

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

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

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

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

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

PARCEL B:

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

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

APN: 030-361-01-1

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

MUTUAL BENEFIT AGREEMENT BETWEEN

GBH-WINTERS HIGHLANDS, LLC

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

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

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

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

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter
referred to as "the District"

whose address is
909 West Grant Avenue, Winters, CA 96594

RECITALS:

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

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

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

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11/3/2005

005313 FEB-8 8

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

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

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

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

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

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

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

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

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

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

Level II fees as described in Paragraph E hereof.

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

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

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

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

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

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

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

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

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

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

than as provided for in this Agreement

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

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

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

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

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

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

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

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

Developer:

GBH-Winters Highlands, LLC
4230 Douglas Boulevard, Suite
Granite Bay, CA 95746
Attn: Larry J. John, Managing Member

District:

Winters Joint Unified School District
909 West Grant Avenue
Winters, CA 96594
Attn.: Dr. Dale J. Mitchell, Superintendent

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

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

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

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

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

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

the State of California.

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

Winters Joint Union School District

GBH-Winters Highlands, LLC

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

By: *[Signature]*
Name: *D. Rick Cheney Larry J. John*
Title: *Managing Members*

City of Winters
Formula for Calculating Adjustment to Annuity - Winters Highlands

	Projected Average Assessed Value per Unit	Projected Property Tax Per Unit	Projected Property Transfer Tax Per Unit	Total Projected Revenue per unit	Sales Price	Projected Property Tax per Unit	Projected Transfer Tax per unit	Total Revenue per unit
Single Family Low Density	450,000	777.15	247.50	1,024.65	-	-	-	-
Single Family Medium Density	392,000	676.98	215.60	892.58	-	-	-	-
Single Family Medium High	325,000	561.28	178.75	740.03	-	-	-	-
Multifamily Very Low	150,000	259.05	82.50	341.55	-	-	-	-
Single Family Low to Mod	258,000	445.57	141.90	587.47	-	-	-	-
Total Revenues		269,403.37	85,797.25	355,200.62				

Average Revenue per Unit(Property Tax & Transfer Tax) 801.81

Projected Per unit cost for services 1,930.00

Increase per State of California 100%

Division of Labor Statistics and Research

Consumer Price Index Calculator for San Francisco Bay CPI

All Urban Consumers, April 1-April 1 of each year

Projected Shortfall from Property & Property transfer tax 1,128.19

Increase/(Decrease) in Annuity Contribution 801.81

1,930.00

) (0.02277)
ss fiscal analysis projected revenues
crease(decrease) in average projected revenues

Average
projected
Revenue
(801,81)
XXXX

930) (B)
crease) Decrease in Annuity Contribution
(Calculated change in average projected revenues less
increase in Service cost per unit)

Increase in
Service Cost
per Unit
XXXX

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



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 2008-15 - 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).***

Applicant: City of Winters

Description of the Project: Given the extraordinary economic climate, the City of Winters desires to amend the May 2006 Winters Highlands Development Agreement and December 2006 First Amendment (collectively the DA). The proposed Second 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. 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 1 from 69 units to 118 units, Year 2 from 127 units to 132 units, Year 3 from 54 units to 83 units, Year 4 from 83 units to 44 units, year 5 from 44 units to 25 units. Years 6 through 10 remain unchanged at 25 units per year.
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.

Project Location: The project site is located north of Grant Avenue along Moody Slough Road (County Road 33) in the northwestern portion of the City of Winters, Assessor Parcel Numbers 030-220-17, 030-220-19, 030-220-40, and 030-220-50.

Environmental Determination: On April 4, 2008 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.

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

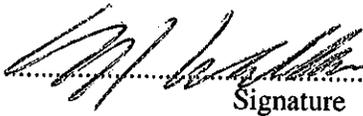
For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

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

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

This space is for the County Clerk's Filing Stamp

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

Notice Of 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).

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6. Revision of building allocation for dwelling units as follows: Year 1 from 69 units to 188 units, Year 2 from 127 units to 132 units, Year 3 from 54 units to 83 units, Year 4 from 83 units to 44 units, year 5 from 44 units to 25 units. Years 6 through 10 remain unchanged at 25 units per year.
7. Affirmation that issuance of building permits shall be governed by the DA.
8. Provision for advancement or deferral 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 munic-

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.

Project Location: The project site is located north of Grant Avenue along Moody Slough Road (County Road 33) in the northwestern portion of the City of Winters, Assessor Parcel Numbers 030-220-17, 030-220-19, 030-220-40, and 030-220-50.

Environmental Determination: 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.

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.

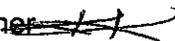
Availability of Documents: The project file is available for public review at the Community Development Department, Winters City Hall, 318 First Street, Winters, CA 95694. Copies of the Staff Report will be available on the City's website at http://cityofwinters.org/administrative/admin_council.htm. For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

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 2008-14 - 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).

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 Hudson-Ogando Subdivision Development Agreement

BACKGROUND: In January 2006, the City Council approved the Hudson-Ogando Subdivision project and its accompanying Development Agreement (DA) which would result in 72 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 Hudson-Ogando Subdivision. 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 Hudson-Ogando Subdivision 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 Hudson-Ogando 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. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from December 10, 2006 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Changing building permit allocation from 30 units in year two to 31 units.
7. Affirmation that issuance of building permits shall be governed by the DA.
8. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every six market rate units.
9. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
10. 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.
11. 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.
12. 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.
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 72 residential units or payment with each building permit at the then current fees.
14. Shifting payment to library and pool funds from final map to issuance of the first building permit.
15. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50th market rate building permit.
16. 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.
17. Provision for the City's construction and reimbursement of the required masonry wall and landscaping.

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 Hudson-Ogando 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: A Mitigated Negative Declaration and Mitigation

Monitoring Program (Resolution No. 2005-56) was adopted on November 15, 2005 for the Hudson Ogando 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 Winters Planning Commission recommend APPROVAL to the Winters City Council of 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).

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

ATTACHMENTS:

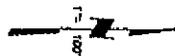
1. Location Map for Project
2. Proposed Amendment to the Hudson-Ogando Subdivision Development Agreement
3. Hudson-Ogando Subdivision Development Agreement – recorded July 14, 2006
4. Proposed Draft Ordinance 2008-14 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC Relating to the Development of the Property Commonly Know as the Hudson-Ogando Property (APN 030-220-49).
5. Public Hearing Notice (published and mailed copies)

EXHIBIT A

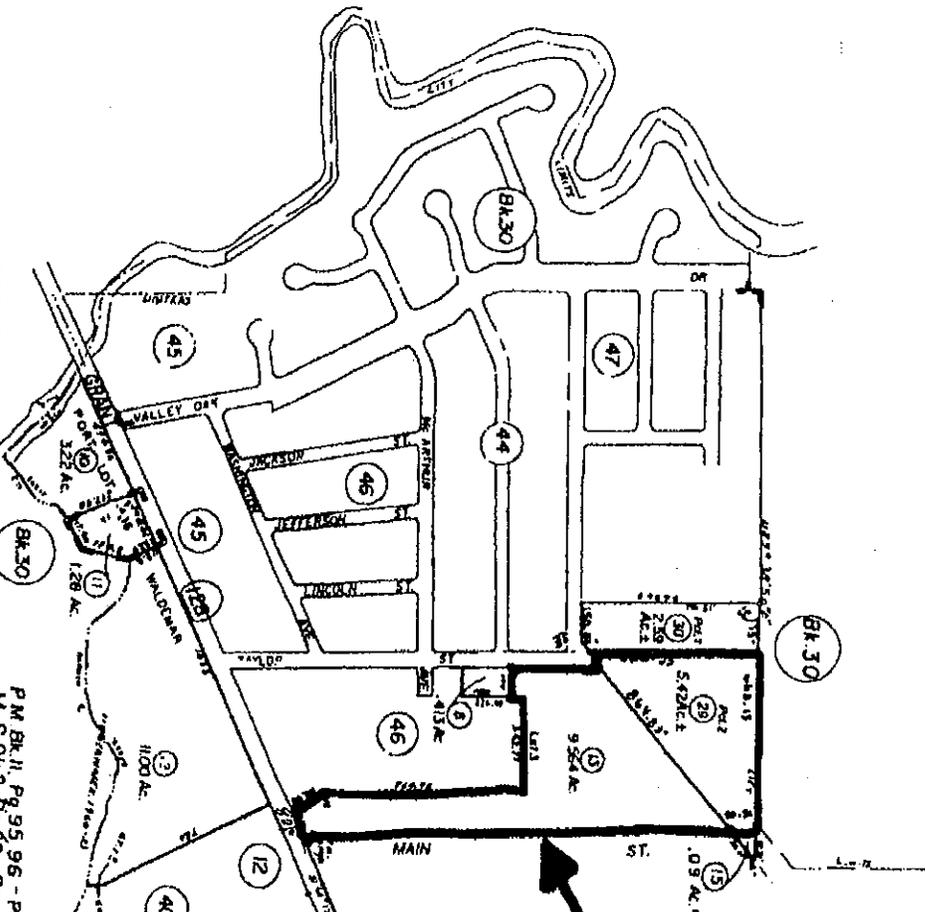
POR. T8N, R1W., M.D. B. & M.

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

03 - 43



**HUDSON-
OGANNO
PROPERTY**



M.A.S.B.K. 7, Pg. 42 - Por. Lot 16, Waldemors Subd.
 M.B.S. Bk. 11, Pg. 64 - J.W. Vickrey Enterprises M.B. Bk. 00, Pg. 170 to 174 - Subd. # 4284.
 P.M. Bk. 5, Pg. 60 - Joe Ogando, # 3 030.
 P.M. Bk. 7, Pg. 58 - Pol. Map 3209 for Vickrey Enterprises, Inc.
 P.M. Bk. 7, Pg. 59 - Pol. Map 3338 for Vickrey Enterprises, Inc.
 M.B. Bk. 13, Pg. 76 - 78 - Dry Creek Unit 1, # 5188.
 73 - 81
 P.M. Bk. 11, Pg. 95, 96 - Parcel Map, # 4242
 M. S. Bk. 3, Pg. 23 - Bank of Yolo Subd.
 P.M. Bk. 00, Pg. 34, 35 - Pol. Map, # 4268.
 (Formerly 30-13)
 NOTE - Assessor's Block Number Shown in Ellipses.
 Assessor's Parcel Number Shown in Circles.

APN	ACRES	OWNER	REMARKS
001-000-000	1.00	State of California	State Land
001-000-001	1.00	State of California	State Land
001-000-002	1.00	State of California	State Land
001-000-003	1.00	State of California	State Land
001-000-004	1.00	State of California	State Land
001-000-005	1.00	State of California	State Land
001-000-006	1.00	State of California	State Land
001-000-007	1.00	State of California	State Land
001-000-008	1.00	State of California	State Land
001-000-009	1.00	State of California	State Land
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001-000-025	1.00	State of California	State Land
001-000-026	1.00	State of California	State Land
001-000-027	1.00	State of California	State Land
001-000-028	1.00	State of California	State Land
001-000-029	1.00	State of California	State Land
001-000-030	1.00	State of California	State Land

CITY OF WINTERS
 Assessor's Map Bk. 3, Pg. 43
 County of Yolo, Calif.
 03/10

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF WINTERS
AND
WINTERS INVESTORS, LLC
[HUDSON-OGANDO SUBDIVISION]**

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 Hudson-Ogando 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 Numbers 030-430-13 and 030-43-29 with the new Yolo County Assessor's Parcel Numbers 030-430-13 and 030-430-33 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 3.2 in the first line.

Section 5. 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:

The Developer shall have sole discretion to determine when the final map for the Hudson-Ogando 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 61 market rate residential units (including the seven (7) units to be offered for sale to local builders) in the Hudson-Ogando Subdivision. For purposes of this section, the first year commences upon the date that the first final map is recorded.

1. Year 1: 31
2. Year 2: 31
3. Year 3: 15
4. Year 4: 15
5. Year 5: 15
6. Year 6: 15

The total of the above number of units is not reflective of the total number of residential units within the Hudson-Ogando 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 a subsequent Development Agreement is negotiated between the City and Developer. This provision shall survive the termination of this Agreement.

c. Eleven (11) deed restricted affordable housing units shall be constructed in the Hudson-Ogando 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 six (6) market rate units, until all eleven (11) 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 Hudson-Ogando 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 7 units can be advance to Year 2 or deferred to Year 4.

Section 7. 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 herein, 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 8. Amendment to Section 4.2, Conveyance of .75 +/- 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 0.75 +/- acre parcel of land. This 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, 1.64 +/- 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 Hudson-Ogando Subdivision, by paying a pro-rata share of the amount calculated by the City Engineer as set forth in Section 4.3, paragraph 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 Hudson-Ogando Subdivision, or first phase thereof. The appraisal shall determine the fair market value of 1.64 +/- acres of the Property with the development entitlements specified in the 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 Hudson-Ogando 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 72 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 72 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 and Community Pool Fund.

Section 4.6, paragraph a., 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 4.6, paragraph b., 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 4.9, Urban Water Management Plan.

Section 4.9, paragraph a., of the Development Agreement is amended by replacing the old phrase, "no later than the date upon which the final map for the Hudson-Ogando Subdivision is recorded" with the new phrase, "no later than the issuance of the 50th market rate 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 to be constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision and other developing properties.

- b. Conditions of Approval No. 119 and 40 - (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 3.11.
- 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 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 (including a well site plan with facility elevations) 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 3.11(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 3.11(f) of the Agreement.
- g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Hudson-Ogando 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 Hudson-Ogando Subdivision .

Section 14. Amendment to Section 4.15; Masonary Wall and Landscaping.

Section 4.15 of the Development Agreement is replaced in its entirety and shall read as follows:

If prior to the issuance of the first building permit for the Hudson-Ogando Subdivision, the City has constructed the six-foot masonry wall and installed landscaping along all or any portion of the north and east sides of the mobile home park, then Developer shall reimburse the City for the cost of such improvements concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47. If the City has not fully constructed the masonry wall and installed landscaping prior to the issuance of the first building permit for the Hudson-Ogando Subdivision, then Developer shall pay City the estimated cost for such construction of the masonry wall and installation of landscaping concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47.

Section 15. 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	
ATTEST: _____ NANCI MILLS 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- 2006-0027316-00

Acct 118-Winters - NC

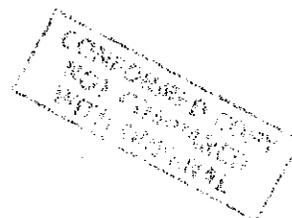
Friday, JUL 14, 2006 08:39:00

Ttl Pd \$0.00

Nbr-0000652580

FRT/X6/1-111

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



A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF WINTERS AND WINTERS INVESTORS, LLC
RELATING TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE HUDSON-OGANDO PROPERTY

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and WINTERS INVESTORS, 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 Hudson-Ogando Property and further described in Exhibits A and 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 vested rights to develop the Hudson-Ogando 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:

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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.

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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 Development 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 "Hudson-Ogando 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. 030-430-29 and No. 030-430-13, and is more specifically shown and described in Exhibits A and B.

Section 1.5 "Hudson-Ogando 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 Hudson-Ogando Tentative Subdivision Map (#4684) is attached as Exhibit C.

Section 1.6 "Hudson-Ogando Subdivision" means the single family residential development created by the Hudson-Ogando Tentative Subdivision Map.

Section 1.7 "Callahan Estates" means that land development project owned by the Developer which adjoins the Property.

Section 1.8 "Callahan Estates Development Agreement" means that recorded Development Agreement between the City and the Developer concerning Callahan Estates.

Section 1.9 "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 1.10 "City of Winters" means the physical boundaries of the City of Winters.

Section 1.11 "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 1.12 "Conditions of Approval" means the conditions placed on the approval of the Hudson-Ogando Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

Section 1.13 "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 1.14 "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 1.15 "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 1.16 "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of the Property for such things as traffic circulation, sewer and water conveyance facilities, and similar matters.

Section 1.17 "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval.

Section 1.18 "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 1.19 "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 1.20 "Off-site improvement" means a public improvement constructed outside the physical boundaries of the Property.

Section 1.21 "On-site improvement" means a public improvement constructed within the physical boundaries of the Property.

Section 1.22 "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 1.23 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on the Property.

Section 1.24 "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.

Section 1.25 "Affiliated Entity" means any entity where members of the Developer are officers, shareholders or employees of such entity.

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 Hudson-Ogando Property, Yolo County Assessor's Parcels No. 030-430-29 (consisting of approximately 5.73 acres) and No. 030-430-13 (consisting of approximately 10.24 acres). 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 Hudson-Ogando 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 the Hudson-Ogando 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 the 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 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. 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:

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

ARTICLE 3

DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

a. The Property shall be developed under the following land use entitlements, all of which have been adopted or approved by the City Council:

1. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Resolution No. 2005-56 adopted on November 15, 2005).

2. This Development Agreement (Ordinance No. 2005-09 adopted December 19, 2005 and effective on January 18, 2006, (the "Enacting Ordinance")).
3. General Plan amendment to designate 2.1 acres from MHR to PQP for the City Public Safety Center (Resolution No. 2005-57 adopted on November 15, 2005).
4. Zoning Ordinance amendments to rezone 2.1 acres from the MHR to PQP and adding a PD overlay zone to 13.85 residential acres (Ordinance No. 2005-10 adopted December 19, 2005 and effective on January 18, 2006).
5. Exclusion of The Property from the West Central Master Plan (Resolution No. 2005-57 adopted on November 15, 2005).
6. Circulation Master Plan and Standard Street Cross Sections, as amended by Resolution No. 2005-57 adopted on November 15, 2005.
7. Bikeway System Master Plan, as amended by Resolution No. 2005-57 adopted on November 15, 2005.
8. Hudson-Ogando Tentative Subdivision Map No. 4684, with Findings of Fact and Conditions of Approval, dividing The Property into 72 single-family lots (47 lots in the LR/R-1 zone and 25 lots in the MHR/R-3 zone, including five (5) very low income units and six (6) low to moderate income units); Parcel A, consisting of 5,360 square feet, and Parcel Y, consisting of 93,608 square feet (Resolution No. 2005-57 adopted on November 15, 2005).
9. A Planned Development Permit (Ordinance No. 2005-10 adopted December 19, 2005 and effective on January 18, 2006).

10. A Demolition Permit to remove two existing structures on The Property (Resolution No. 2005-57 adopted on November 15, 2005).

11. A Lot Line Adjustment allowing an exchange of property with the adjoining Callahan Estates project (Resolution No. 2005-57 adopted on November 15, 2005).

b. Under the provisions of Government Code § 66452.6(a), the term of the Hudson-Ogando Subdivision Tentative Subdivision Map is co-terminus with the term of this Agreement.

Section 3.2 Consistency with General Plan.

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

Section 3.3 Vested Rights of Developer.

a. Unless otherwise provided in this Agreement, the Developer shall have the vested right to develop the Property in accordance with the land use entitlements described in Section 3.1 above, and in conformity with the City rules, regulations, policies and ordinances in effect on the date of adoption of the Enacting Ordinance, 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. This vested right shall include:

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 Hudson-Ogando 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 Hudson-Ogando Tentative Subdivision Map.

5. The Mitigation Measures.

b. The vested rights set forth in Subdivision a. do 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 150 days after this Agreement is recorded, submit for approval by the City the final map for the Hudson-Ogando Subdivision and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, 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.

b. 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 61 market rate residential units (including the seven units to be offered for sale to local builders) in the Hudson-Ogando Subdivision. For purposes of this section, the first year commences on the date the final map is recorded or September 1, 2006, whichever is earlier.

1. Year 1: 31
2. Year 2: 30
3. Year 3: 15
4. Year 4: 15
5. Year 5: 15
6. Year 6: 15

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 11 deed restricted, below market rate units to be built in the Hudson-Ogando 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 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 the Hudson-Ogando Subdivision 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 Right to Utilize Building Permits from Callahan Estates and Visa-Versa.

a. Under the Callahan Estates Development Agreement there is an annual allocation of building permits like the annual allocation of building permits in section 3.7. As long as The Developer retains ownership of both Callahan

Estates and the Ogando-Hudson Subdivision, then the Developer may, in any one year, utilize a building permit allocation from Callahan Estates in Ogando-Hudson, and visa versa.

(Example: Under the Callahan Estates Development Agreement there is an allocation of 51 building permits in Year 2. Under this Agreement there is an allocation of 30 building permits in Year 2. The Developer may utilize the total of 81 building permits in Year 2 in any combination within Callahan Estates and Ogando-Hudson.)

b. There shall be no carry-over of building permits under this section from year to year. Each year stands on its own in terms of the total number of building permits to be issued in that year and utilized in the two projects.

c. The City Engineer shall have the exclusive right to interpret this section in case of any disagreements concerning its applicability.

d. This section is not assignable, in whole or in part, it being the express intent of the Parties that it is to be applicable only to the Developer and to no third party unless this Agreement is specifically amended to provide otherwise.

e. In exercising the he rights granted by this section, the Developer shall not (1) change the number of units allowed in each subdivision, (2) change the phasing of the development of each subdivision, or (3) change the scope or timing of the public improvements or infrastructure required with each phase of development.

Section 3.9 Installation of Public Improvements.

Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Hudson-Ogando Subdivision. When the final map for the Hudson-Ogando Subdivision 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. Security for the construction of the improvements shall be provided as required by law.

Section 3.10 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 Hudson-Ogando Tentative Subdivision Map, acquire the real 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 the Hudson-Ogando Subdivision is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public

improvements as required by this Agreement, or 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 3.11 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 the Hudson-Ogando Subdivision. 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 mitigation 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.)

1. 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.

2. 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.)

g. If the Developer utilizes the provisions of Section 3.8 dealing with the use of building permits in Callahan Estates and the Ogando-Hudson Subdivision, then any applicable impact fee credits due the Developer under this

section may be applied to either Callahan Estates, the Ogando-Hudson Subdivision, or a combination thereof, as long as the Developer or an Affiliated Entity retains ownership of both subdivisions.

1. The City Engineer shall have the exclusive right to interpret this section in case of any disagreements concerning its applicability.

2. This sub-section g. is not assignable, in whole or in part, it being the express intent of the Parties that it is to be applicable only to the Developer and to no third party unless this Agreement is specifically amended to provide otherwise.

Section 3.12 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 3.13 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 3.14 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 The Hudson-Ogando Subdivision on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that its intention 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 and the proposed amendments thereto are attached as Exhibits E-1, E-2 and E-3.

b. The Developer shall enter into an amendment to the agreement with the Winters Joint Unified School District ("School District"), , substantially in the form of Exhibit E-2 that provides, among other matters, that the Developer will pay to the School District:

1. for each of the 72 residential units in the Hudson-Ogando Subdivision, fees at the rate of \$3.10 per square foot, payable at the time of issuance of a building permit; and

2. for all units in the Hudson-Ogando Subdivision (including the units referenced in subparagraph 1 above), except the very low income and low income affordable units, fees at the rate of \$3.10 per square foot, payable at the close of escrow.

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

c. In the event the School District does not execute an amendment substantially in the form of Exhibit E-2, then the Developer will pay to the City the difference between the amount payable under paragraph b above of this section 4.1 and the amount payable to the School District under the existing agreement (Exhibit E-1), for the City to pay to the School District for school facilities.

d. In the event the School District does not execute an amendment substantially in the form of Exhibit E-3, then the Developer will pay to the City the difference between the amount payable under paragraph b above of this section 4.1 and the amount payable to the School District under the existing agreement relating to the Callahan Estates Property, for the City to pay to the School District for school facilities.

Section 4.2 Conveyance of .75 +/- Acres of Land.

Contemporaneously with the filing of the final subdivision map for the Hudson-Ogando Subdivision, the Developer shall grant to the City, free and clear

of all encumbrances, a .75 +/- acre parcel of land. This parcel of land is the parcel identified in a separate agreement between the same Parties concerning the Callahan Property. This 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 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 1.64 +/- Acre Park.

a. Developer shall provide a 1.64 +/- 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 1.64 +/- acre park within the Hudson-Ogando Subdivision. 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 the Hudson-Ogando Subdivision 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 the Hudson-Ogando Subdivision (61 units). The resulting amount shall be paid each time a building permit is issued for one of the 61 market rate units.

b) If at the end of thirty (30) months from the recording of the final map for the Hudson-Ogando Subdivision, 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 fifty (50) 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 eleven (11) 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 1.64 +/- 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+/-