

**DRAFT—FOR DISCUSSION PURPOSES**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

No fee for recording pursuant  
to Government Code Section 27383

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

**AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF WINTERS**

**AND**

**WINTERS INVESTOR TURNING POINT ACQUISITIONS V, LLC,**

**A CALIFORNIA LIMITED LIABILITY COMPANY**

**[CALLAHAN PROPERTY]**

**RELATING**

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**AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF WINTERS AND TURNING POINT  
ACQUISITIONS V, LLC RELATING TO THE DEVELOPMENT OF  
THE PROPERTY  
OF THE PROPERTY COMMONLY KNOWN AS  
THE CALLAHAN PROPERTY**

**THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT** ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and ~~WINTERS INVESTOR~~TURNING POINT ACQUISITIONS V, LLC, a California limited liability company, ~~a company associated with THE HOFMANN LAND DEVELOPMENT COMPANY, a California corporation~~ (the "Developer"), under the authority of § 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters City 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. ~~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. ~~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.

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3. ~~3.~~ In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Callahan Property and further depicted in Exhibit A and described in Exhibit B to this Agreement, is through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer entered into a Development Agreement approved by Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0026332-00, which Development Agreement has been amended by a First Amendment to Development Agreement dated January \_\_, 2009 and recorded in the Official Records of Yolo County as Document No. \_\_\_\_\_, and a Second Amendment to Development Agreement dated \_\_\_\_\_ 2013 and recorded in the Official Records of Yolo County as Document No. \_\_\_\_\_ (collectively, the "Original Development Agreement").

5. The City and Developer desire to enter into this Agreement to incorporate the previously approved amendments into a single document and make additional amendments to extend the term of the Original Development Agreement and to further update the term and conditions to reflect the current needs and objectives of the Parties.

4.6. ~~4.~~ It is the intent of the Parties in entering into this Agreement supersede and replace the Original Development Agreement in its entirety, and further 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

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develop the Callahan Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

**THE PARTIES AGREE AS FOLLOWS:**

**TABLE OF CONTENTS**

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

**ARTICLE 1** ~~Article 1.~~

**DEFINITIONS**

~~Article 2. General Provisions~~

~~Article 3. Development of the Property~~

~~Article 4. Special Development Obligations~~

~~Article 5. Default, Remedies, and Dispute Resolution~~

~~Article 6. Hold Harmless and Indemnification~~

**ARTICLE 1**

Section 1.1 Definitions.

The following words ~~and~~or phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such

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words in the parlance of the planning and development of real property in the State of California.

1. ~~Section 1.1~~—"Agreement" means this Development Agreement.
2. ~~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.
3. ~~Section 1.3~~—"Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.

~~Section 1.4~~—"Callahan Property" or "The Property" means ~~the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.~~

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

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

6. ~~Section 1.7~~—"City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It

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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.)

7. ~~Section 1.8~~—"City of Winters" means the physical boundaries of the City of Winters.

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

9. ~~Section 1.9~~—"Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

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

11. ~~Section 1.11~~—"Developer" means ~~the~~ Winters Investors, TURNING Gurning POINToint ACQUISITIONScquisitions V 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.

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12. ~~Section 1.12~~—"Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

13. ~~Section 1.13~~—"Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

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

15. ~~Section 1.15~~—"Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval issued ~~to The Property~~ by the City for the development of the Property under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law, ~~which permits development on The Property. Examples: zoning; a conditional use permit; a tentative or final subdivision map; a building permit; a sewer or water connection.~~

16. ~~Section 1.16~~—"Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

17. ~~Section 1.17~~—"Mitigation Measures" means the requirements placed on the development of the Property to cure or lessen the environmental

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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.

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

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

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

21. ~~Section 1.20~~—"Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

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

23. "Property" means the property commonly known as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.

24. ~~Section 1.22~~—"Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property. ~~Examples:, including but not limited to~~ roads~~;~~ sewer and water lines; and traffic signals.

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

**ARTICLE 2**  
**ARTICLE 2**  
**GENERAL PROVISIONS**

Section 2.1 All Exhibits Deemed Incorporated By Reference.

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

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22. A map showing the location and boundaries of the Property is attached as Exhibit A and a legal description describing the Property is attached as Exhibit B. In this Agreement the Callahan Property will, in most instances, be referred to simply as "the Property."

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

a. ~~a.~~ When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County, and upon recordation of this Agreement, it shall replace and supersede the Original Development Agreement in its entirety, and the Original Development Agreement shall be of no further force and effect.

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~~— 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.~~

b. The term of this Agreement shall expire on December 31, 201921, unless otherwise extended in accordance with State law and City ordinances.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

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

Section 2.5 Right to Assign; Non-Severable Obligations.

a. ~~—a.—~~ The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its

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rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

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

1. ~~———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. ~~———2.~~ The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to ~~Callahan Estates and has successfully completed such developments~~ the portion of the Project that is the subject of the assignment.

c. ~~—e.~~ 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.~~

d. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related

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expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

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~~Section 15.72.210 (Amendment or Cancellation by Mutual Consent) of the Winters ~~City~~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 ~~City~~Municipal Code.

a. ~~—a.—~~This Agreement, together with any subsequent addenda~~s~~, 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. ~~—b.—~~The provisions of Title ~~11~~15, Chapter ~~2~~15.72 of the Winters ~~City~~Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific

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provision of the Winters ~~City~~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. ~~—a.~~ This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be ~~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. ~~—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.

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Section 2.9 Notices.

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

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

b. ~~e.~~ 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. ~~d.~~ Notices to the Developer shall be given as follows:

~~Winters Investors, Turning Point Acquisitions V LLC~~  
3314 Freeman Road

~~e/o The Hofmann Land Development Company~~  
~~1380 Galaxy Way~~

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~~P.O. Box 758~~

~~Concord Walnut Creek, CA 9452294595~~

~~Attn: Jim Hildenbrand~~

~~Telephone (925) 682639-48304204~~

~~FAX (925) 682-4771~~

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

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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 inconsistent with Article 2 shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

~~Section 2.10~~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.

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ARTICLE 3 ~~ARTICLE 3~~

DEVELOPMENT OF THE PROPERTY

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

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

~~1.~~ This Agreement as adopted by Ordinance No. \_\_\_\_\_ adopted \_\_\_\_\_ and effective \_\_\_\_\_.

1. This Amended and Restated Development Agreement (Ordinance No. 20156- adopted \_\_\_\_\_, 20 \_\_\_\_\_ and effective on \_\_\_\_\_, (the "Enacting Ordinance")).

~~1.2.~~ ~~2.~~ An exclusion for the Property from the West Central Master Plan.

~~2.3.~~ ~~3.~~ A rezoning to add a Planned Development (PD) overlay zone to allow for a subdivision in which the average lot size ~~td~~ does not meet the minimum requirement of the zone (7,000 square feet) and to allow for one lot (Lot 1) which does not meet the width requirement (60 feet).

~~3.4.~~ ~~4.~~ The approval of a Planned Development Permit for an unlimited term pursuant to the requirements of Section ~~8-~~

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~~1.5117.E17.48.050.A.1~~ and .2 of the Zoning Ordinance and ~~the~~ Conditions of Approval.

~~4.5.~~ ~~\_\_\_\_\_~~ ~~5.~~ An amendment to the Circulation Master Plan (May 19, 1992) and Standard Cross-Sections (adopted October 2, ~~2001~~2011) to remove the requirement for on-street Class II bike lanes on West Main Street and replace with off-street Class I bike path.

~~5.6.~~ ~~\_\_\_\_\_~~ ~~6.~~ An amendment to the Bikeway System Master Plan (~~November 19, 2002~~January 2013) text and Figure 3 to identify a Class I bike path along West Main Street and Class II bike lanes along Anderson Avenue.

~~\_\_\_\_\_~~ ~~7.~~ Approval of Callahan Estates Tentative Subdivision Map, together with the Conditions of Approval, dividing 26.4 acres into ~~120~~109 single-family lots; Parcels A and D (exchange lots); Parcels E, F, and G (Open Space Lots); and Parcel X (detention pond/~~sewer force main~~potential well site). The ~~120~~109 single-family lots will be ~~built with:~~

~~6.~~ ~~\_\_\_\_\_~~ ~~a)~~ ~~102~~ market rate units, of which ~~12~~10 must be made available to local builders as defined by the ~~City's~~City's land use regulations; ~~and.~~

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

~~8.7.~~ ~~\_\_\_\_\_~~ ~~8.~~ A lot line adjustment on the north property line to exchange Parcel D for Parcel C from the adjoining Winters Highlands property.

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~~9.8.~~ ~~\_\_\_\_\_~~ ~~9.~~ A lot line adjustment on the south property line to exchange Parcel A for Parcel B from the adjoining Ogando/Hudson property.

~~10.9.~~ ~~\_\_\_\_\_~~ ~~10.~~ Subsequent discretionary approvals (such as design review) pursuant to the ~~City's~~City's generally applicable land use regulations.

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

c. ~~—c.—~~ Under the provisions of Government Code ~~§section~~§section 66452.6(a), the ~~life of the Callahan Estate~~term of the ~~Winters Highlands~~Callahan Estates Subdivision Tentative ~~Subdivision~~ Map is ~~hereby extended to be~~ hereby extended to be co-terminus with the ~~life~~term of this Agreement.

Section 3.2 ~~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 ~~Section 3.3~~ ~~—~~ Vested Rights of Developer.

a. ~~—a.—~~ The Developer shall, solely with respect to the Property, have the right to the following land use entitlements regardless of subsequent

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amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City.

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

2. ~~2.~~ Exclusion from:

a) ~~a)~~ the West Central Master Plan; and

b) ~~b)~~ subsequently enacted building moratoria.

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

5. ~~5.~~ The Mitigation Measures.

b. ~~b.~~ Subdivision a. does not apply to changes effecting development of the Property as mandated by State and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will permit the development of the Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

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Section 3.4     ~~Section 3.4~~—Rights Retained by the City.

a.     ~~a.~~—Except as specifically provided in section ~~3-23.3~~, 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.     ~~1.~~—Discretionary approvals. (The only discretionary approval contemplated at this time is design review pursuant to the Zoning Code.)

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

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

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

Section 3.5     ~~Section 3.5~~—Other Vesting Laws Inapplicable.

a.             ~~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.             ~~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 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.             ~~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     ~~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 fifty (150) days after this Agreement is recorded, submit for approval by the City the final map for Callahan~~

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~~Estates (or the first phase, as the case may be) and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the State and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.~~

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

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

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

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

~~— 1. Year 1: 51~~

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~~\_\_\_\_\_ 2. Year 2: 51~~

~~\_\_\_\_\_ 3. Year 3: 25~~

~~\_\_\_\_\_ 4. Year 4: 25~~

~~\_\_\_\_\_ 5. Year 5: 25~~

~~\_\_\_\_\_ 6. Year 6 : 27~~

~~\_\_\_\_\_ b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement.~~

~~\_\_\_\_\_ c. There are 18 deed restricted, below market rate units to be built in Callahan Estates pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the life of this Agreement. The permits for the below market rate units are in addition to, and not part of, the number of units per year set forth above. However, the Developer must complete the construction of the below market rate units prior to the expiration of this Agreement.~~

~~\_\_\_\_\_ d. The Parties agree that the purpose of limiting the number of building permits issued in any year is to allow the City to meter growth in such a manner that the total number of new units built per year, both within Callahan Estates and on other properties, does not exceed the number which can reasonably be served with municipal and education services without unduly impacting those existing units which receive such services.~~

~~\_\_\_\_\_ e. Should circumstances beyond the control of the Developer preclude the Developer from applying for and/or being issued the number of building permits specified in subsection a. in the year specified, then the City shall adjust the schedule accordingly. For purposes of this subsection e., "circumstances beyond the control of the Developer" shall include, but are not limited to, acts of God, natural disasters, and acts of the State and/or federal government. However,~~

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~~"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.~~

a. City and Developer agree that Developer shall satisfy the City's affordable housing requirements as follows:

1. The Developer shall pay to City the amount of One Hundred Ten Thousand Dollars (\$110,000.00) upon the recordation of the Final Map for the Project, or in the event that Developer files more than one Final Map, upon the recordation of the first Final Map.

Section 3.8 ~~Section 3.8~~ Installation of Public Improvements.

a. ~~—a.~~ Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Callahan Estates Subdivision. When the Final Map for all of the Callahan Estates Subdivision (or a phase, as the case may be), is approved, the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it ~~contracts~~commits to build and dedicate to the City or applicable public agency, the public improvements required either in all of Callahan Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by State law and City law.

b. ~~—b.~~ If the Developer proceeds by filing final maps for various phases of Callahan Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase

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

Section 3.9 ~~Section 3.9~~ Property for Public Improvements; Offsite Improvements.

a. ~~a.~~ The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Callahan Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements ~~contemplated~~required by this Agreement.

b. ~~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 Callahan ~~Estates (or the first phase as the case may be)~~Estates Subdivision is filed with the City.

c. ~~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

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improvements as required by this Agreement, or b) if necessary, in accordance with 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, ~~and for purposes of eminent domain,~~ the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

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

a. ~~a.~~ In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Callahan Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

1. ~~1.~~ By way of a separate agreement between the City and the Developer which will provide that when a particular property

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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. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. ~~—————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. ~~—e.~~ In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. ~~—————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~~pro rata share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. ~~—————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. ~~—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.~~

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~~3.1.~~ When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

~~4.2.~~ ~~2.~~ If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

~~5.3.~~ ~~3.~~ If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

~~d.e.~~ ~~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.

~~e.f.~~ ~~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

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cost of \$20,000, then the Developer will be credited with having paid that fee for 20 building permits.)

Section 3.11 ~~Section 3.11~~—Subsequent Discretionary Approvals.

a. ~~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 ~~land use entitlements~~such Discretionary Approvals from the City. All Application fees then applicable for the type of ~~land use entitlement(s) sought~~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. ~~b.~~ The only remaining Discretionary Approval which is contemplated at this time is design review under the Zoning Ordinance.

Section 3.12 ~~Section 3.12~~—Review of Agreement.

~~Reviews~~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~~ (Section 15.72.230 (Periodic Review)) of the Winters ~~City~~Municipal Code.

Section 3.13 ~~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

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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.

Section 3.15 Deferral of Impact Fees.

In order to encourage the Developer to proceed with construction of new market rate housing within the City of Winters, except as provided for herein, the City hereby agrees to defer all development impact fees imposed by the City on building permits issued until the earlier of (1) issuance of a Certificate of Occupancy; or (2) six (6) months after the issuance of a building permit. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval. This provision is not intended to restrict, limit, or waive any rights which Developer may acquire pursuant to subsequently enacted state legislation.

**ARTICLE 4**~~ARTICLE 4~~

**SPECIFIC DEVELOPMENT OBLIGATIONS**

Section 4.1 ~~Section 4.1~~ Schools.

~~a.~~ The Developer acknowledges and agrees that the mitigation of the impact of Callahan Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a

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consequence, the Developer states that ~~its intention entering into this Agreement is~~ it has entered into an Agreement (Restated Mutual Benefit Agreement for the Mitigation of Development Impacts Upon the School Facilities of the Winters Joint Unified School District) to mitigate the impact on schools to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the Developer and the Winters Joint Unified School District. A copy of the agreement is attached as Exhibit E, recorded October 24, 2013 as Instrument No. 2013-0034136 of Official Records County of Yolo.

~~\_\_\_\_\_ b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement City Council, a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement shall provide, in addition to such other matters as the parties to it may agree, that the Developer will pay to the School District, at the time of the issuance of a building permit:~~

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

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

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

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

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

Section 4.2      ~~Section 4.3~~ — 2.7 Acre Park Land and Fees.

Developer shall satisfy its 1.64 acre park obligation as follows: Developer shall pay a park fee, in the aggregate totaling Five Hundred Sixteen Thousand Four Hundred Seventy one Dollars (\$516,471.00) as follows: Developer shall pay the sum of Seven Thousand One Hundred Seventy three Dollars (\$7,173.00) at the time of issuance of a building permit for each residential structure. Developer shall fund and construct the park on Parcel A (0.1230 acres). Developer shall be further credited against Park Improvement Fees for the provision of infrastructure improvements, planning, developing and equipping the park on Parcel A, not to exceed Thirty eight Thousand Seven Hundred Thirty five Dollars (\$38,735.00). This credit shall be applied on against parkland and parkland improvement fees otherwise applicable the Project. The amount of the Parcel A park credit is based on the pro-rata cost per acre obligation established for the 1.64 acre park. The cost per acre is  $\$516,471/1.64 \text{ acres} = \$314,921$ . Parcel A is 0.1230 acres. Therefore, the Parcel A park credit is  $\$314,921 \times 0.1230 = \$38,735$ . Developer shall satisfy its 2.7 acre park obligation as follows: Developer shall pay a park fee, in the

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aggregate totaling Eight Hundred Fifty Thousand Two Hundred Eighty-six Dollars (\$850,286.00) as follows: Developer shall pay the sum of \$6,024 in equal installments at the time of issuance of a certificate of occupancy for each residential structure. Developer shall fund and construct the parks on Parcels E, F, and G (equal to 0.6149 acres). Developer shall be further credited against park improvement fees for the provision of infrastructure improvements, planning, developing, and equipping the park on Parcels E, F, and G, not to exceed One Hundred Ninety-three Thousand Six Hundred Forty-four Dollars (\$193,644.00). This credit shall be applied on a pro rata basis against the anticipated development of 109 lots. The amount of the Parcels E, F, and G park credit is based on the pro rata cost per acre obligation established for the 2.73 acre park. The cost per acre is  $\$850,286/2.73 \text{ acres} = \$314,921$ . Parcels E, F, and G are equal to 0.6149 acres. Therefore, Parcels E, F, and G park credit is  $\$314,921 \times 0.6149 = \$193,644$ .

Section 4.3 Public Safety Facility.

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

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

~~— b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 2.7 acre park within Callahan Estates. The payment of the Park~~

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~~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 shall pay the City's Public Safety Facility fee.~~

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

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

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

~~\_\_\_\_\_ b) If at the end of thirty (30) months from the recording of the final map for Callahan Estates (or the first phase thereof, as the case may be), the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of being notified by the City to do so. (Example: If at the end of thirty (30) months, the Developer has obtained eighty (80) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining twenty two (22) market rate units.)~~

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

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

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

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

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

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

~~Section 4.3~~ Section 4.4 Intentionally Omitted.

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

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

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

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

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

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

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

~~Section 4.4~~Section 4.5 Installation of Conduit.

Developer shall provide design and construction for conduit and boxes suitable for broadband internet service to each residential unit, within the joint trench for the Winters Highlands Subdivision. The conduit shall be coordinated with all other utilities and shown on the joint trench composite plans. The conduit and boxes are to be constructed with the joint trench and completed before certificate of occupancy is issued. The utility company providing broadband internet service will install the wire necessary to provide the service; the timing of

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which will not delay the issuance of a certificate of occupancy.

~~Section 4.5~~Section 4.6 Cooperative and Reimbursement Agreement.

The developers of Callahan Estates and Winters Highlands, referred to in this section as “Owners,” intend to subdivide their respective properties into residential lots which will be served by public streets and improvements, easements and rights-of-way. Each Owner will require access to portions of the Other’s property for purposes of installation of streets, utilities conduit, storm drains, sewer and other improvements for future use and/or dedication for the benefit of their respective residential project, as well as for the benefit of all the Owners. Public streets and improvements, easements and rights-of-way that are reasonably expected to benefit all of Owners are defined herein as “Joint Improvements.” Joint Improvements may include, but are not limited to, streets, curbs, gutters, street lighting, sidewalks, joint trench, storm drains, storm water pumping station, sewer and water collection systems, sewer pump station, utilities, and other public improvements.

~~Section 4.5. Annuity in Lieu of Mello-Roos District.~~

~~— a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of Callahan Estates per the Economic & Planning Systems report titled "City of Winters Fiscal Impact Analysis Callahan Estates Subdivision", dated August 20, 2003. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.~~

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

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~~1. Subject to the provisions of b.3., below, from the escrow for the sale of each residential unit to a third party the Developer will pay to the City the sum of Eight Thousand Six Hundred (\$8,600.00).~~

~~2. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of Callahan Estates.~~

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

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

For the purpose of constructing the Joint Improvements as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner's Property, the Owners shall use best efforts to enter into a "Joint Cooperative Development and Reimbursement Agreement." The Joint Cooperative Development and Reimbursements Agreement shall be prepared and executed among the Owners prior to the City's approval of the first final map associated with any of the Owner's properties. The City shall not approve a final map for any of the Owner's **threetwo** respective projects until the Owners submit to City the Joint Cooperative Development and Reimbursement Agreement executed by all the Owners, or the Owner applying for

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a final map can show to the reasonable satisfaction of the City Manager that it has used best efforts to enter into said agreement but has been unable to agree to terms with the other Owners.

Section 4.6 Payment to Library Fund.

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

~~Section 4.6~~Section 4.7 Section 4.7 Wastewater Treatment Plant Expansion.

a. ~~\_\_\_\_\_~~ a. Wastewater (sewage) from Callahan Estates will be treated in anthe City's expanded and upgraded Wastewater Treatment Plant ("WTP"), which may be expanded in the future. The WTP Master Plan was updated in 2015, which updated the available capacity of the WTP and determined what the next phase of WTP expansion should be, when that phase will be triggered by development, and what the associated tasks and costs are for the expansion. The expansion to will be built by the City using sewer impact fees collected from the developers of property within the City of Winters. The Developer shall be required to pay sewer impact fees in effect at the time of the first Final Map.

a.b. ~~\_\_\_\_\_~~ Wastewater from Callahan Estates will eventually flow to the ~~expanded and upgraded~~ WTP through conveyance facilities to be constructed to the north of The Property across adjacent property commonly referred to as Winters Highlands.

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~~b.———Winters Highlands is expected to construct the conveyance improvements north to the WTP prior to the Callahan Estates moving forward. However, if —b. The Developer shall be required to pay all applicable sewer impact fees.~~

~~e.———c. Neither the WTP expansion and upgrade, nor the facilities through Winters Highlands, are not expected to be completed by the time the first residential unit of Callahan Estates requires sewer treatment. ~~To facilitate the treatment of sewage from Callahan Estates pending the expansion and upgrade of the WTP and the construction of facilities across Winters Highlands, then~~ the Developer shall install all wastewater conveyance facilities north of the Property to the WTP as determined by the City Engineer to be necessary to serve Callahan Estates, subject to a *pro rata reimbursement from others as provided in Section 3.10.* The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly. Such facilities include, but are not limited to, the installation of the West Main SS Pump Station “A” and the sewer force mains. ~~may, at its sole cost and expense and without reimbursement or fee credit from the City, connect to the City's existing sewage collection facilities located to the south of The Property on Grant Avenue. This will be an interim connection only. All necessary improvements to the Grant Avenue facilities as determined by the City Engineer will be paid by the Developer.~~~~

~~d.———d. When the WTP is expanded and upgraded, and the facilities across Winters Highlands are installed, sewage from Callahan Estates will be redirected to the new facilities. This will be the permanent connection. The cost of disconnecting the interim connection and connecting to the permanent connection will be paid by the Developer. Since the time for construction of the new facilities~~

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~~described above is unknown, the City Engineer may require the Developer to post security in the amount determined to be the cost of connecting to the permanent connection. Such security, if required, will be posted at the time of the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be).~~

~~e. ——— e. If the Developer chooses not to construct the interim connection to the south of The Property, then the Developer shall install all wastewater conveyance facilities to the north of The Property as determined by the City Engineer to be necessary to serve the Callahan Estates, subject to a *pro rata* reimbursement as provided by section 3.10. Such facilities include, but are not limited to, the installation of a regional pump station at Niemann St./Railroad Avenue.~~

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

~~Section 4.7~~Section 4.8 Section 4.8 Urban Water Management Plan.

~~————— a. The Developer shall pay its *pro rata* share, based on number of units in relation to Hudson/Ogando, Winters Highlands, and Creekside, of the cost for preparation of a City Urban Water Management Plan ("Management Plan"). Payment shall be due and payable no later than the date upon which the final map for Callahan Estates (or the first phase, as the case may be) is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan to be paid by other developments benefiting from the Management Plan, but only those commonly identified as Winters Highlands and Hudson Ogando, as provided by section 3.10. issuance of the 50th market rate unit building permit.~~ No later than the issuance of the 50<sup>th</sup> building permit for the

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Callahan Estates Subdivision the Developer shall pay to the City its *pro rata* share of ninety thousand dollars (\$90,000) for the cost of a City Urban Water Master Plan.

Section 4.9 Water Well.

a. Water Well No. 7 was constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision, and other developing properties.

b. Conditions of Approval No. 121 and 40- (Mitigation Measure 21), in part, required 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 funded a portion of 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.

d. City acknowledges that Developer has advanced funding for partial construction of Well No. 7 in the amount of \$615,313.03 (reduced to \$361,676.03 as a result of credits being transferred to Winters Ranch), which amount shall entitle Developer to receive fee credits. ~~Notwithstanding section~~ Notwithstanding section 3.11(f) of the Development Agreement, Developer shall be entitled to apply credits against any water facility fee then due, without reduction for any sums that might otherwise be owed to the City.

e. ~~—b.~~ The amount and timing of reimbursement under this section shall be subject to a separate for funds advanced by Developer and related to the

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construction of Well No. 7 shall be set forth in a separate Credit and Reimbursement Agreement between the City and their accordance with section 4.10 (d) above and shall include the same annual inflationary adjustment used to calculate the City's impact fees on any outstanding amount still owed to Developer.

a. \_\_\_\_\_,

b. \_\_\_\_\_

\_\_\_\_\_ 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.

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~~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, less any credits are received for drainage improvements installed by the Developer. 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.~~

~~Masonry Wall The Developer is responsible for the cost and construction of a six foot tall masonry wall and landscaping along the north and east sides of the mobile home park for the Hudson Ogando Subdivision. The City has constructed the masonry wall along the east side of the Mobile Home Park. The Developer shall complete construction of the construction of the masonry wall and installation of~~

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~~landscaping concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47.~~

Section 4.10 ~~Section 4.9~~ Water Well.

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

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

Section 4.11 ~~Section 4.10~~ Masonry Wall

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~~The Developer is responsible for the cost and construction of a six foot tall masonry wall and landscaping along the north and east sides of the mobile home park for the Hudson-Ogando Subdivision. The City has constructed the masonry wall along the east side of the Mobile Home Park. The Developer shall complete construction of the 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 4.10 Pedestrian Circulation and Safety Taylor Street Improvements.~~

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

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

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

Taylor “A” Street knuckle to the west of the Tentative Map boundary through the Ogando property, to the Callahan property, is no longer applicable, and a realignment of Taylor Street was approved by the City and incorporated into the Hudson-Ogando plans. The revised alignment is included on a revised Tentative Map dated August 17, 2015 and shall be constructed as part of the Callahan Estates

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~~Development and shall be constructed~~ with the same cross section dimensions with the ped/bike landscape corridor on the west side and the sidewalk on the east side. ~~The Hudson Ogando development shall participate in sharing 50% of the cost for acquisition of right of way and construction of full improvements of this section of roadway.~~

**ARTICLE 5**~~ARTICLE 5~~

**DEFAULT, REMEDIES, AND DISPUTE RESOLUTION**

Section 5.1 ~~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 ~~Section 5.2~~ — City's Remedies.

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

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

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

3. ~~3.~~ Specific performance as provided in subsection

c.

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

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d. 5. ~~5.~~ A action for damages as provided in subsection

b. ~~b.~~ Default by the Developer.

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

2. ~~2.~~ Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters City Municipal Code.

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

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

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

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

Section 5.3 ~~Section 5.3~~—Developer's Remedies.

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

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1. ~~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. ~~2.~~—An action for injunctive relief to preserve the physical or legal status quo of the development of Callahan Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

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

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

c. ~~c.~~—Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry

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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     ~~Section 6.1~~—Limitation of Legal Relationship.

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

b.             ~~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.             ~~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.

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Section 6.2 ~~Section 6.2~~ No Liability for Acts of the Developer.

a. ~~a.~~ It is expressly understood that the development of the Callahan Estates 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. ~~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 ~~Callahan Estates~~The Winters Highlands Callahan Estates Subdivision under the terms of this Agreement ~~or otherwise~~.

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

Section 6.3 ~~Section 6.3~~ Duty to Defend Challenges to this Agreement.

a. ~~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

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

c. ~~—e.~~ 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. ~~—d.~~ Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. ~~—e.~~ Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. ~~However, nothing herein obligates the Developer, should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.~~

**SIGNATURE PAGE TO FOLLOW DEVELOPER**

**WINTERS INVESTORS, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**CITY OF WINTERS**

By: \_\_\_\_\_

\_\_\_\_\_ Mayor

**DRAFT—FOR DISCUSSION PURPOSES**

Dated: \_\_\_\_\_

DRAFT—FOR DISCUSSION PURPOSES

**"DEVELOPER"**  
**TURNING POINT ACQUISITIONS**  
**V, LLC, a California limited liability**  
**company**

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

**"CITY"**  
**CITY OF WINTERS, a municipal**  
**corporation**

By: \_\_\_\_\_

Mayor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_  
Ethan Walsh, City Attorney

Attest:

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

**DRAFT—FOR DISCUSSION PURPOSES**

Approved as to form:

\_\_\_\_\_

John Wallace, City Attorney

\_\_\_\_\_

Joel Ellinwood, AICP

Abbott & Kindermann, LLP, Attorneys for Developer

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**DRAFT—FOR DISCUSSION PURPOSES**

~~\_\_\_\_\_ This Agreement was adopted by Ordinance No. \_\_\_\_\_ of the City Council of the City of Winters. Ordinance No. \_\_\_\_\_ was adopted on \_\_\_\_\_, 2005 and is effective on the date it is recorded with the Yolo County Recorder.~~

**LIST OF EXHIBITS:**

~~EXHIBIT A~~ Map of Callahan Property

~~EXHIBIT B~~ Legal Description of Callahan Property

~~EXHIBIT C~~ Callahan Estates Tentative Subdivision Map

~~EXHIBIT D:-~~ Conditions of Approval, Including Mitigation Measures

~~EXHIBIT E~~ School Agreement

~~EXHIBIT F~~ Map of 2.6 +/- Parcel

~~EXHIBIT G~~ Annuity Adjustment Formula

<b>Summary report:</b>	
<b>Litéra® Change-Pro 7.5.0.135 Document comparison done on 2/18/2016 9:59:24 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://iManage/iManage/5374677/3	
<b>Modified DMS:</b> iw://iManage/iManage/24471502/1	
<b>Changes:</b>	
<u>Add</u>	479
<del>Delete</del>	416
<del>Move From</del>	14
<u>Move To</u>	14
<u>Table Insert</u>	1
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>924</b>

**RESOLUTION NO. 2016-01**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WINTERS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE CALLAHAN ESTATES SUBDIVISION AND APPROVAL OF AN AMENDED TENTATIVE SUBDIVISION MAP**

**WHEREAS**, the Winters Planning Commission held a duly noticed public hearing on April 26, 2016 to review and consider recommending to the City Council approval of the proposed Amended and Restated Development Agreement and amended Tentative Map Subdivision Map for the Callahan Estates Subdivision; and

**WHEREAS**, the Planning Commission reviewed and considered a proposal to amend various provisions of the exiting Development Agreement, which includes the First and Second Amendments, for the Callahan Estates Subdivisions, including extending the existing term, differing the payment of impact fees, amendments regarding the provisions of certain infrastructure improvements and financial contributions for related purposes; and

**WHEREAS**, the Planning Commission further reviewed and considered a proposal to amend the existing Tentative Subdivision Map for Callahan Estates by reducing the number of lots from 111 to 109; and

**WHEREAS**, the Planning Commission found the amendments in the Amended and Restated Development Agreement and to the Tentative Subdivision Map were not significant to require any additional environmental review; and

**WHEREAS**, proper notice of this public hearing was given in all respects required by law; and

**WHEREAS**, the Planning Commission has reviewed all written evidence and all oral testimony presented to date.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Winters, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, recommends that the City Council approve the Amended and Restated Development Agreement for the Callahan Estates Subdivision, attached hereto as Exhibit 1.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Winters, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, recommends that the City Council approve the Amended Tentative Map for the Callahan Estates Subdivision, attached hereto as Exhibit 2.

**BE IT FURTHER RESOLVED**, that the Planning Commission recommends that the City Council find that based on substantial evidence in the administrative record of the proceedings the Amended and Restated Development Agreement and amended Tentative Map do not require any additional environmental review.

**PASSED and ADOPTED**, by the Planning Commission of the City of Winters at a regular meeting on the 26<sup>th</sup> day of April 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Chairperson

ATTEST:

---

Planning Commission Secretary

**Exhibits 1 and 2 are not included with  
Planning Commission Resolution**

**RESOLUTION NO. 2016-15**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF WINTERS APPROVING AN AMENDED TENTATIVE  
SUBDIVISION MAP FOR THE  
CALLAHAN ESTATES SUBDIVISION**

**WHEREAS**, on March 15, 2005, the City Council of the City of Winters adopted Resolution No. 2005-07 approving, among other things, Tentative Subdivision Map No. 4508 for the Callahan Estates Subdivision (the "Tentative Map"); and

**WHEREAS**, on March 22, 2016, Turning Point Acquisitions V, LLC (the "Developer") filed an application requesting certain revisions to the Tentative Map to remove two (2) lots from the Tentative Map, which would reduce the total number of lots from 111 to 109 (the "Amended Tentative Map"), and make certain revisions to the existing development agreement governing the Callahan Estates Subdivision through an Amended and Restated Development Agreement to entered into by and between the Developer and the City; and

**WHEREAS**, the Amended Tentative Map is in the form attached hereto as **Exhibit A**; and

**WHEREAS**, the Amended Tentative Map was reviewed, studied, and found to comply with the California Environmental Quality Act ("CEQA") as more fully described below; and

**WHEREAS**, on April 26, 2016, the Planning Commission of the City of Winters ("Planning Commission") conducted a duly noticed public hearing on the Amended Tentative Map and the Amended and Restated Development Agreement at which time all persons wishing to testify in connection with the Amended Tentative Map and the Amended and Restated Development Agreement were heard and the Amended Tentative Map and the Amended and Restated Development Agreement were comprehensively reviewed;

**WHEREAS**, on April 26, 2016, the Planning Commission also considered the previously certified and approved CEQA clearance for the Callahan Estates Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-06) adopted on March 15, 2005. 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 and

**WHEREAS**, following said public hearing, the Planning Commission recommended on a 7-0 vote that the City Council approve the Amended Tentative Map and the Amended and Restated Development Agreement; and

**WHEREAS**, on May 17, 2016, the City Council conducted a duly noticed public hearing on the Amended Tentative Map and the Amended and Restated Development Agreement At

which time all persons wishing to testify in connection with the Amended Tentative Map and the Amended and Restated Development Agreement were heard and the Amended Tentative Map and the Amended and Restated Development Agreement were comprehensively reviewed; and

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

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS RESOLVES AS FOLLOWS:**

SECTION 1. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, the City Council hereby approves Amended Tentative Map as depicted in **Exhibit A**.

SECTION 2. Except as specifically amended herein, the Tentative Map, all Findings of Fact approved by the City Council therewith, and all other approvals and conditions approved by the City pursuant to Resolution No 2005-07 remain in full force and effect.

SECTION 3. This Resolution shall become effective upon its adoption.

**I HEREBY CERTIFY** that the foregoing Resolution was adopted by the City Council of the City of Winters at a regular meeting held on the 17th day of May, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Cecilia Aguiar-Curry, Mayor  
City of Winters

ATTEST:

\_\_\_\_\_  
Nanci G. Mills, City Clerk

**EXHIBIT B**

**LEGAL DESCRIPTION**

## Legal Description of Land

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

### PARCEL ONE:

THAT REAL PROPERTY SITUATE IN THE CITY OF WINTERS, COUNTY OF YOLO, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 21, TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO MERIDIAN, AND BEING A PORTION OF PARCEL M, AS IT APPEARS IN DOC-2006-0041745-00, AND BEING A PORTION OF PARCEL "2", AS IT APPEARS IN DOC-2004-0005956-00, YOLO COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL M, MARKED BY A 5/8" REBAR WITH CAP RCE 32067; THENCE SOUTH 89°58'26" EAST 471.50 FEET, ALONG THE NORTHERLY LINE OF SAID PARCEL; THENCE NORTH 24°01'00" WEST 28.50 FEET; THENCE, NORTHEASTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET WHICH BEARS NORTH 24°01'00" WEST, HAVING A CENTRAL ANGLE OF 18°34'33" AND AN ARC LENGTH OF 97.26 FEET; THENCE SOUTH 40°06'32" EAST 104.15 FEET; THENCE, SOUTHEASTERLY ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 355.00 FEET, A CENTRAL ANGLE OF 10°21'01" AND AN ARC LENGTH OF 64.13 FEET; THENCE NORTH 59°59'53" EAST 105.66 FEET; THENCE SOUTH 89°58'26" EAST 240.75 FEET TO A 5/8" REBAR WITH CAP RCE 32067 MARKING THE NORTHEAST CORNER OF SAID PARCEL M; THENCE, ALONG THE EASTERLY LINE OF SAID PARCEL, SOUTH 00°13'16" EAST 1052.10 FEET TO AN ANGLE POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL M; THENCE, SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1,196.28 FEET WHICH BEARS SOUTH 36°27'17" EAST HAVING A CENTRAL ANGLE OF 03°36'56" AND AN ARC LENGTH OF 75.49 FEET; THENCE, CONTINUING ALONG SAID SOUTHEASTERLY LINE, SOUTH 49°55'47" WEST 138.95 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL M; THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 89°38'14" WEST 15.44 FEET; THENCE, LEAVING SAID SOUTHERLY LINE, NORTH 00°27'27" EAST 80.30 FEET; THENCE NORTH 44°53'33" WEST 28.46 FEET; THENCE SOUTH 89°45'26" WEST 50.02 FEET; THENCE SOUTH 00°14'34" EAST 110.68 FEET; THENCE SOUTH 89°38'14" WEST 463.23 FEET; THENCE NORTH 81°44'41" WEST 66.73 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL M, SAID LINE ALSO BEING THE NORTHERLY LINE OF SAID PARCEL "2"; THENCE, ALONG SAID COMMON LINE, SOUTH 89°38'14" WEST 196.57 FEET TO A 5/8" REBAR WITH CAP RCE 32067 MARKING THE SOUTHWEST CORNER OF SAID PARCEL M; THENCE, ALONG THE WESTERLY LINE OF SAID "PARCEL M, NORTH 00°14'34" WEST 1,193.86 FEET TO THE POINT OF BEGINNING, AND DESCRIBED IN THAT CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 1, 2007 AS INSTRUMENT NO. 2007-0004208, OFFICIAL RECORDS.

### PARCEL TWO:

THAT REAL PROPERTY SITUATE IN THE CITY OF WINTERS, COUNTY OF YOLO, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 21, TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO MERIDIAN, AND BEING A PORTION OF PARCEL "2", AS SAID PARCEL APPEARS IN THAT CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT, DOC-2004-0005956-00, AND BEING A PORTION OF PARCEL M, AS SAID PARCEL APPEARS IN DOC-2006-0041745-00, YOLO COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL "2", SAID POINT BEARS NORTH 89°38'14" EAST 126.71 FEET FROM A 5/8" REBAR WITH CAP RCE 32067 MARKING THE SOUTHWEST CORNER OF SAID PARCEL M; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE NORTHERN LINE OF SAID PARCEL "2", ALSO BEING THE SOUTHERN LINE OF SAID PARCEL M, NORTH 89°38'14" EAST 69.86 FEET; THENCE, LEAVING SAID COMMON LINE, SOUTH 81°44'41" EAST 66.73 FEET; THENCE NORTH 89°38'14" EAST 463.23; THENCE NORTH 00°14'34" WEST 110.68 FEET; THENCE NORTH 89°45'26" EAST 50.02 FEET; THENCE SOUTH 44°53'33" EAST 28.46 FEET; THENCE SOUTH 00°27'27" WEST 80.30 FEET TO THE NORTHEAST CORNER OF SAID PARCEL "2"; THENCE, ALONG THE EASTERN LINE OF SAID PARCEL "2", SOUTH 00°05'31" EAST 80.56 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL "2"; THENCE, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL "2", SOUTH 50°29'29" WEST 864.83 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "2"; THENCE, ALONG THE WEST LINE OF SAID PARCEL "2", NORTH 00°05'31" WEST 626.53 FEET TO THE POINT OF BEGINNING, AND DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 1, 2007 AS INSTRUMENT NO. 2007-0004208, OFFICIAL RECORDS.

**PARCEL THREE:**

LOT NO. 3, "BANK OF YOLO SUBDIVISION", OF A PART OF THE SOUTH HALF OF SECTION 21, TOWNSHIP 8 NORTH, RANGE 1 WEST, M.D.B.&M.

EXCEPTING THEREFROM, THE WEST 25 FEET OF SAID LOT 3, AND ALL THAT PORTION OF LOT 3 THAT LIES NORTH OF THE LINE OF THE SO-CALLED WINTERS AND UKIAH CO.'S GRADE OR RIGHT OF WAY AS THE SAME IS LOCATED THROUGH LOT 3;

ALSO EXCEPTING, THE RIGHT OF WAY OF THE WINTERS AND UKIAH RAILROAD COMPANY ACROSS SAID LAND.

REFERENCE IS HEREBY MADE TO THE OFFICIAL MAP OF SAID SUBDIVISION FILED IN THE RECORDER'S OFFICE, YOLO COUNTY, CALIFORNIA, ON JUNE 20, 1902, IN BOOK 3 OF MAPS AND SURVEYS, AT PAGE 23.

FURTHER EXCEPTING FROM THE ABOVE DESCRIBED, THE FOLLOW:

(a) A PORTION OF LOT 3 OF THE BANK OF YOLO SUBDIVISION AS DELINEATED ON THAT CERTAIN MAP FILED FOR RECORD IN BOOK 3 OF MAPS AND SURVEYS, AT PAGE 23, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY LINE OF SAID LOT 3 OF THE BANK OF YOLO SUBDIVISION, SAID POINT BEARS NORTH 65° 20' EAST, 27.51 FEET FROM THE SOUTHWEST CORNER OF SAID TO 3 OF THE BANK OF YOLO SUBDIVISION; THENCE NORTH 1364.58 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE WINTERS SAID LOT 3 OF THE BANK OF YOLO SUBDIVISION; THENCE SOUTH 65° 20' WEST, 33.01 FEET TO THE POINT OF BEGINNING, AND CONTAINING 0.935 ACRES, MORE OR LESS, (CONVEYED TO ROY ORR AND WIFE, BY DEED RECORDED APRIL 26, 1954 IN BOOK 421 OF OFFICIAL RECORDS, AT PAGE 30).

(b) A PORTION OF LOT 3 OF THE BANK OF YOLO SUBDIVISION AS DELINEATED ON THAT CERTAIN MAP FILED FOR RECORD IN BOOK 3 OF MAPS AND SURVEYS, AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY, CALIFORNIA, AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF TAYLOR STREET AND THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY NO. 128 AS SHOWN ON THAT CERTAIN MAP OF UNIT ONE MAJOR VISTA SUBDIVISION, FILED IN BOOK 4 OF MAPS, AT PAGE 78, YOLO COUNTY RECORDS; THENCE NORTH 65° 17' 42" EAST, ALONG THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY NO. 128, 556.44 FEET; THENCE NORTH 24° 42' 18" WEST, 115.98 FEET; THENCE SOUTH 65° 17' 42" WEST, 15.00 FEET; THENCE NORTH 0° 03' 41" WEST, 764.98 FEET; THENCE SOUTH 89° 56' 19" WEST, 343.77 FEET; THENCE SOUTH 0° 03' 41" EAST, 976.15 FEET; THENCE SOUTH 89° 56' 19" WEST, 100.00 FEET TO A POINT ON THE EAST LINE OF TAYLOR STREET; THENCE SOUTH 0° 03' 41" EAST, ALONG SAID EAST LINE OF TAYLOR STREET, 120.00 FEET TO THE POINT OF BEGINNING, AND CONTAINING 8.00 ACRES, OR LESS. (CONVEYED TO ALDEN W. LEH AND BEATRICE M. LINK BY DEED RECORDED OCTOBER 18, 1954 IN BOOK 435 OF OFFICIAL RECORDS, AT PAGE 582.)

(c) THAT PORTION OF LOT 3 OF THE BANK OF YOLO SUBDIVISION AS DELINEATED ON THAT CERTAIN MAP FILED FOR RECORD IN BOOK 3 OF MAPS AND SURVEYS, AT PAGE 23, DESCRIBED AS FOLLOWS:

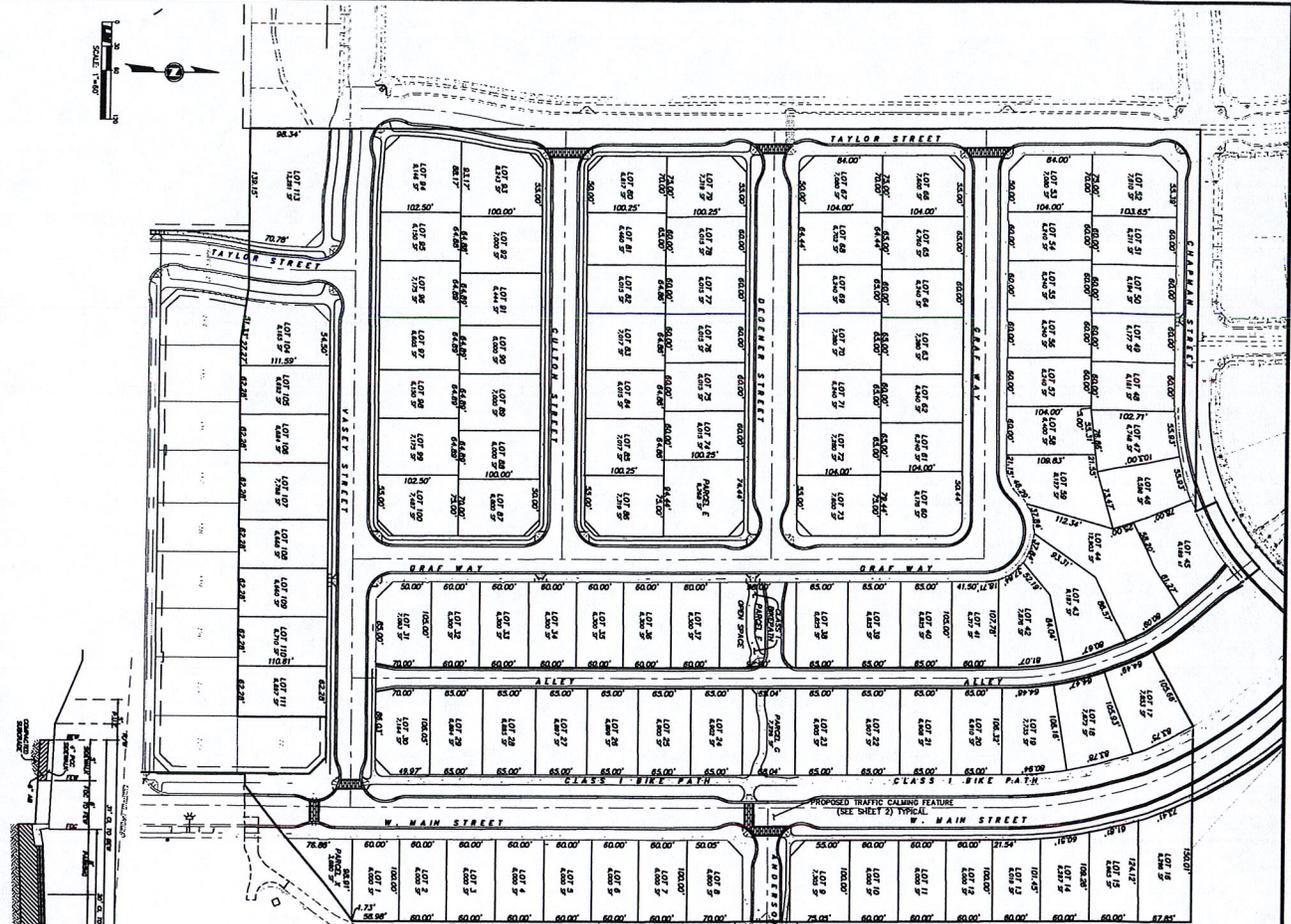
BEGINNING ON THE EASTERLY LINE OF TAYLOR STREET, AS SHOWN ON THE MAP OF MAJOR VISTA SUBDIVISION, AS PER MAP RECORDED IN BOOK 3 OF MAPS AND SURVEYS AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON NORTH 0° 03' 41" WEST, 120 FEET FROM THE INTERSECTION THEREOF WITH THE NORTHWESTERLY LINE OF STATE HIGHWAY NO. 128; THENCE NORTH 0° 03' 41" WEST, ALONG SAID EASTERLY LINE AND ITS NORTHERLY PRODUCTION, 923.16 FEET; THENCE NORTH 89° 56' 19" EAST, 100 FEET TO THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ALDEN LEH, ET AL., BY DEED RECORDED OCTOBER 18, 1954 IN BOOK 435 OF OFFICIAL RECORDS, AT PAGE 582; THENCE SOUTH 0° 03' 41" EAST, ALONG SAID WESTERLY LINE, 923.16 FEET; THENCE SOUTH 89° 56' 19" WEST, 100 FEET TO THE POINT OF BEGINNING. (CONVEYED TO C.M. SYAR, BY DEED RECORDED DECEMBER 30, 1954 IN BOOK 441 OF OFFICIAL RECORDS, AT PAGE 351.)

(d) THAT PORTION DEEDED TO THE CITY OF WINTERS IN DEEDS RECORDED FEBRUARY 11, 1986 IN BOOK 1751, PAGES 510 AND 511.

EXCEPTING THEREFROM PARCELS A AND B OF THAT GRANT DEED TO THE CITY OF WINTERS, A MUNICIPAL CORPORATION AND GENERAL LAW CITY, RECORDED APRIL 20, 2009 AS INSTRUMENT NO. 2009-0011357.

PARCEL THREE - A:

AN EASEMENT FOR ALLEY RIGHT OF WAY AS SET FORTH IN THE DOCUMENT ENTITLED "GRANT DEED" RECORDED APRIL 20, 2009 AS INSTRUMENT NO. 2009-0011357.



**NOTES:**

OWNER/OWNER: TURNING POINT ACQUISITIONS & LLC  
 5000 MAIN STREET, SUITE 100  
 PHOENIX, AZ 85018

ENGINEER/ENGINEER: LAURENCE AND MENKLE  
 1000 CHAPMAN STREET  
 PHOENIX, AZ 85013  
 PHONE: (602) 823-1133

EXISTING USE: RESIDENTIAL

PROPOSED USE: RESIDENTIAL

EXISTING ZONING: R2

PROPOSED ZONING: R2

STORM DRAIN: CITY OF PHOENIX

WATER: CITY OF PHOENIX

Gas & Electric: P&G & E

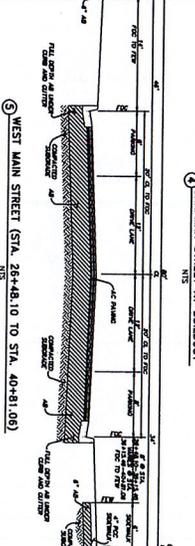
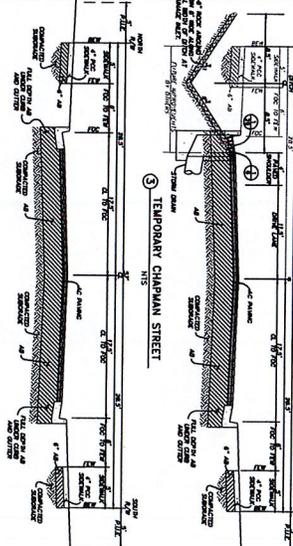
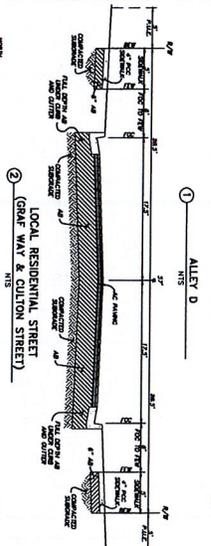
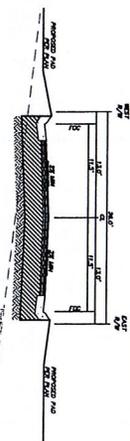
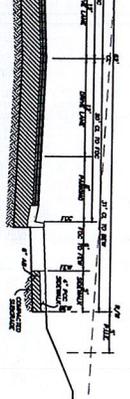
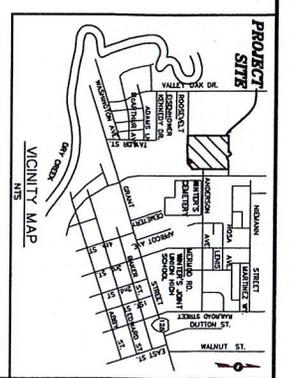
TELEPHONE: AT&T

FLOOD ZONE: C

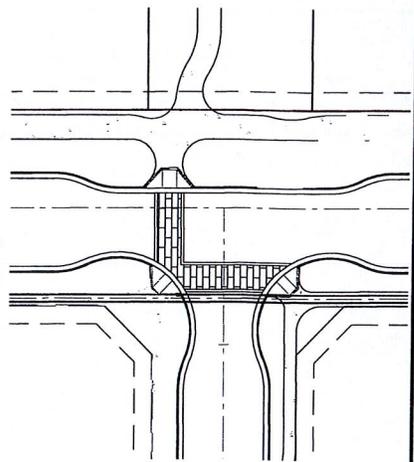
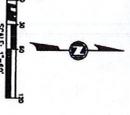
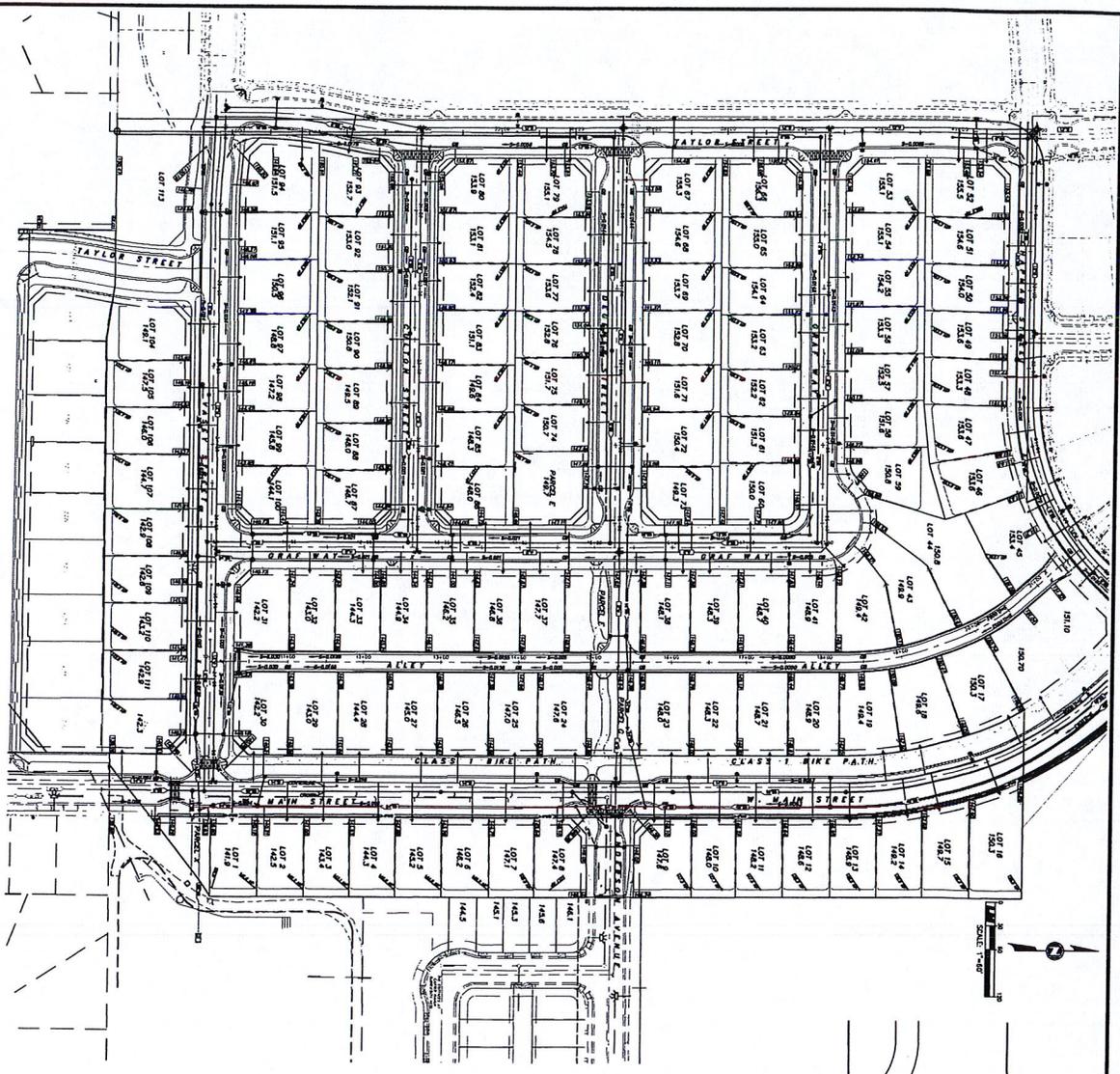
DRAINAGE AREA: 26.4815 AC.

APN: 005-20-048

PROJECT WILL BE CONSTRUCTED IN PHASES WITH THE FILING OF SUBDIVISION MAPS AND PERMITS FOR EACH PHASE OF THE SUBDIVISION MAP ACT.



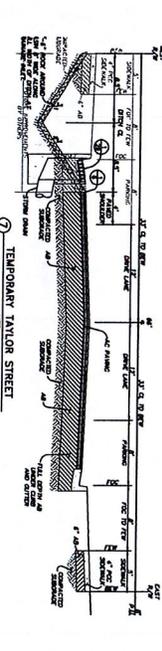
TEMPERATURE MAP  
 SUBDIVISION NO. 4508  
 CALLAHAN Township & WORTH  
 LAURENCE AND MENKLE  
 ENGINEERS  
 1000 CHAPMAN STREET  
 PHOENIX, AZ 85013  
 SHEET 1 OF 3  
 AUGUST 12, 2015



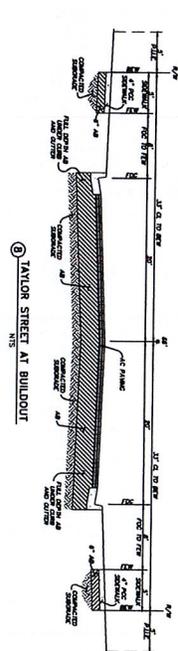
① TYPICAL DECORATIVE CROSSWALK  
PLAN VIEW

**LEGEND:**

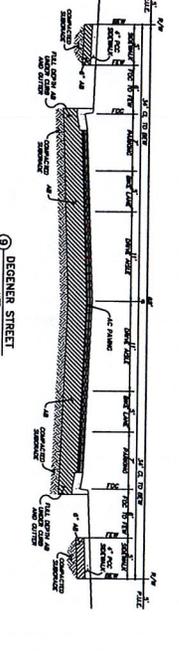
SYMBOL	DESCRIPTION
(Symbol)	STORM DRAIN AND MANHOLE
(Symbol)	SEWER, SANITARY SEWER, MANHOLE & CLEANOUT
(Symbol)	FIRE HYDRANT AND VALVE ASSEMBLY
(Symbol)	WATER MAIN, VALVE, AIR RELEASE VALVE & OTHER BASIN OR BRANCHING VALVE
(Symbol)	ORIENT MET
(Symbol)	PLUMBING OF BUILDING OR PAVE
(Symbol)	DIRECTION OF SURFACE DRAINAGE FROM ROOF OR WALK
(Symbol)	ROAD CENTERLINE
(Symbol)	TOP OF CURB ELEVATIONS



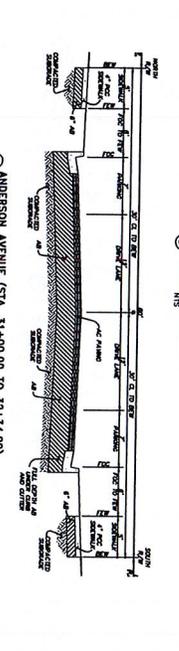
② TEMPORARY TAYLOR STREET



③ TAYLOR STREET AT BUILDOUT

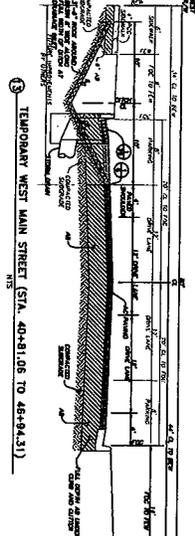
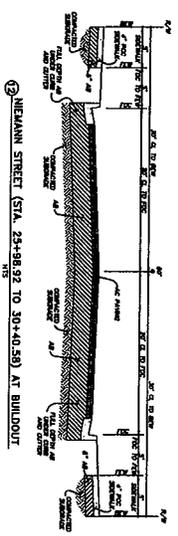
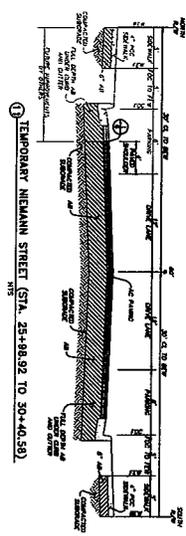
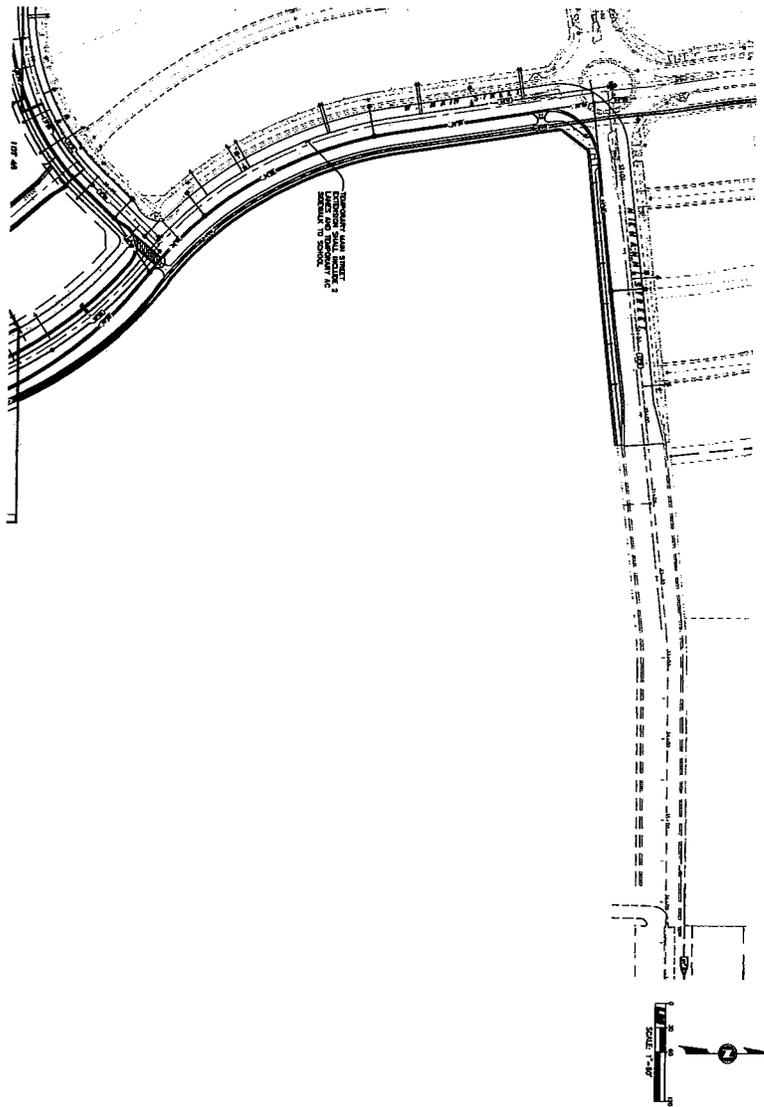


④ TAYLOR STREET AT DEGENER STREET



⑤ ANDERSON AVENUE (STA. 31+00.00 TO 32+34.00)

TENTATIVE MAP  
 SUBDIVISION NO. 4508  
 LOCATED IN A PORTION SECTION 21 TOWNSHIP 8 NORTH,  
 RANGE 14 WEST, COUNTY OF SAN DIEGO, CALIFORNIA.  
**LAUGENOUR AND MENKLE**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 10010 LA JOLLA VILLAGE SQUARE, SUITE 200  
 SAN DIEGO, CALIFORNIA 92131  
 AUGUST 17, 2015  
 SHEET 2 OF 3



TENTATIVE MAP  
 FOR  
 SUBDIVISION NO. 4508  
 CALIFORNIA  
 LOCATED IN A PORTION OF THE  
 COUNTY OF SAN DIEGO  
 PREPARED BY  
**LM LAIGENOUR AND MENKE**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 10000 LA JOLLA VILLAGE CENTER DRIVE, SUITE 200  
 SAN DIEGO, CALIFORNIA 92131  
 AUGUST 12, 2015  
 SHEET 2 OF 3

**ORDINANCE NO. 2016-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS  
APPROVING AN AMENDED AND RESTATED DEVELOPMENT  
AGREEMENT BY AND BETWEEN THE CITY OF WINTERS AND TURNING  
POINT ACQUISITIONS V, LLC FOR THE CALLAHAN ESTATES  
SUBDIVISION**

**WHEREAS**, the City of Winters (“City”) and Turning Point Acquisitions V, LLC (“Developer”) entered into a Development Agreement, approved by Ordinance No. 2005-01 on April 5, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0026332-00, (“Development Agreement”), for land located at the western terminus of Anderson Avenue and commonly known as the Callahan Property (the “Project”), within the boundaries of the City of Winters; and

**WHEREAS**, the Development Agreement has been amended by a First Amendment to Development Agreement dated January 20, 2009 and recorded in the Official Records of Yolo County as Document No. 2009-007220-00, and a Second Amendment to Development Agreement dated August 20, 2013 and recorded in the Official Records of Yolo County as Document No. 2013-0032342-00 (collectively, the “Original Development Agreement”).

**WHEREAS**, Developer and City desire to incorporate the clarifications and modifications of the First and Second Amendments, and make additional modifications to the obligations of Developer in connection with the Project, which clarifications and modifications are incorporated into an Amended and Restated Development Agreement (the “Amended and Restated Development Agreement”), in the form attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, on April 26, 2016 the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

**WHEREAS**, on May 17, 2016, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

**WHEREAS**, the City Council has reviewed and studied the environmental documents prepared for the Original Development Agreement and concluded that adopting the Amended and Restated Development Agreement will not result in any new significant environmental impacts and therefore requires no additional procedures under the California Environmental Quality Act (“CEQA”).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. RECITALS.** The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

**SECTION 2. ADOPTION OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT.** Pursuant to California Government section 65868, the City Council hereby approves the Amended and Restated Development Agreement, in the form attached hereto as **Exhibit A**.

**SECTION 3. FINDINGS.** Pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council makes and adopts the following findings:

A. That the Amended and Restated Development Agreement promotes the public health, safety, and welfare of the community because the Amended and Restated Development Agreement will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.

B. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.

**SECTION 4. CEQA.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Yolo in accordance with CEQA Guidelines.

**SECTION 5. RECORDATION.** Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Amended and Restated Development Agreement, the City Clerk shall record with the County of Yolo Recorder a copy of the Amended and Restated Development Agreement.

**SECTION 6. SEVERABILITY.** If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of such be declared invalid or unconstitutional.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective thirty (30) days from and after its passage and adoption.

**SECTION 8. PUBLICATION.** The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Winters.

The foregoing ordinance was introduced on May 17, 2016, and passed and adopted during a regular meeting of the City Council of the City of Winters on \_\_\_\_\_, 2016, by the following vote to wit:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

ABSTAIN: Council Member(s):

**City of Winters**

\_\_\_\_\_  
By: Cecilia Aguilar-Curry, Mayor

**ATTEST:**

\_\_\_\_\_  
Nanci Mills, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ethan Walsh, City Attorney