

CITY OF WINTERS SPECIAL PLANNING COMMISSION AGENDA

Tuesday, June 13, 2017 @ 6:30 PM
City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 794-6713
Email: dave.dowswell@cityofwinters.org

Chairperson: Kate Frazier
Vice Chairman: Paul Myer
Commissioners: Dave Adams, Lisa Baker,
Patrick Riley, Gregory Contreras
City Manager: John W. Donlevy, Jr.
Management Analyst, Dago Fierros

I CALL TO ORDER

II ROLL CALL & PLEDGE OF ALLEGIANCE

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

IV CONSENT ITEM

A. Minutes of the May 23, 2017 meeting of the Planning Commission.

V STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

- A. Public Hearing and Consideration of the Affordable Housing Plan for the revised Tentative Subdivision (Olive Grove) Map to subdivide 4.21 acres into 21 lots. The property is located off Apricot Avenue and Hemenway Street.
- B. Public Hearing and Consideration of the Amended and Restated Development Agreement for development of the property, commonly known as the Creekside Estates, between the City of Winters and Catholic Bishop of Sacramento, a California Corporation. The property is located on the south side of Grant Avenue/SR 128 and borders Dry Creek.

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT MANAGEMENT ANALYST POSTED THE AGENDA FOR THIS MEETING ON JUNE 8, 2017


DAVID DOWSWELL, COMMUNITY DEVELOPMENT DEPARTMENT PLANNER

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

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

MINUTES: THE CITY DOES NOT TRANSCRIBE ITS PROCEEDINGS. ANYONE WHO DESIRES A VERBATIM RECORD OF THIS MEETING SHOULD ARRANGE FOR ATTENDANCE BY A COURT REPORTER OR FOR OTHER ACCEPTABLE MEANS OF RECORDATION. SUCH ARRANGEMENTS WILL BE AT THE SOLE EXPENSE OF THE INDIVIDUAL REQUESTING THE RECORDATION.

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

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

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

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

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

**MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD
MAY 23, 2017**

***DISCLAIMER:** These minutes represent the interpretation of statements made and questions raised by participants in the meeting. They are not presented as verbatim transcriptions of the statements and questions, but as summaries of the point of the statement or question as understood by the note taker.*

Chair Frazier called the meeting to order at 6:30 p.m.

PRESENT: Commissioners Adams, Baker, Contreras, Vice Chairperson Myer, Chairperson Frazier

ABSENT: Commissioner Riley

STAFF: City Manager John Donlevy, Contract Planner Dave Dowswell, Management Analyst Dagoberto Fierros

Moyra Barsotti led the pledge of allegiance.

CITIZEN INPUT: Celestino Galabasa, 1039 Adams Ln. asked about the possibility of a cross walk across Grant Avenue.

City Manager John Donlevy discussed the upcoming roundabout project.

CONSENT ITEM: Minutes of the April 25, 2017 meeting of the Planning Commission.

Commissioner Baker moved to approve the minutes.

Commissioner Contreras seconded.

AYES: Commissioners Adams, Baker, Contreras, Myer, Vice Chairperson Myer, Chairperson Frazier

NOES: None

ABSTAIN: None

ABSENT: Commissioner Riley

Motion carried unanimously.

STAFF/COMMISSION REPORTS:

Commissioner Myer participated in the Youth Day Parade.

Planner has been meeting with Valerie Whitworth in regards to Dry Creek issues.

DISCUSSION ITEM:

- A. Public Hearing and Consideration of the following entitlements for 417 Haven Street:
- 1) Finding the project Categorical Exempt from CEQA, Section 15303(c) (New Construction or Conversion of Small Structures).
 - 2) Conditional Use Permit for a new 28 children pre-school.

**MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD
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COMMISSIONER/STAFF COMMENTS:

Contract Planner Dave Dowswell shared background info about the proposed preschool project on 417 Haven Street.

PUBLIC COMMENTS:

Barbara Swink, 416 Edwards Street, stated that her fence adjacent with 417 Haven Street needs to be replaced or repaired. Swink also shared her concerns about the added noise, and traffic the proposed project will bring.

Moyra Barsotti expressed her support for the proposed preschool project.

Teresa Dunlop expressed her support for the proposed preschool project.

Larissa Dodson expressed her support for the proposed preschool project.

COMMISSIONER/STAFF COMMENTS:

Commissioner Baker asked Dave Dowswell the project applicants, Cheryl Moore and Janet Anderson, about the possible noise concerns and the deteriorating state of the fencing.

Janet Anderson stated the children will be indoors most of the time. Anderson also mentioned that parking/drop-off instructions are presented to the parents. Cheryl Moore followed up by saying the preschool will have rules to keep the noise level down.

Commissioner Baker asked if the patio fencing is necessary. Anderson stated fencing will not be placed surrounding the patio because it will not be a gathering area for children.

Commissioner Myer asked if there will any relation between students at the Tree House preschool and the Club House Preschool. Cheryl Moore commented that students will not be attending both preschools. Only staff will be overlapping between schools.

Contreras asked how long parents take to drop-off and pick-up their children. Anderson state that it varies from parent to parent.

Chairperson Frazier commented that the fencing shared with 416 Edwards Street, be repaired or replaced.

Commission Baker moved with the added Condition of Approval #14 which is to replace or repair the fencing shared with 416 Edwards St.

Commissioner Myer seconded.

AYES: Commissioners Adams, Baker, Contreras, Vice Chairperson Myer, Chairperson Frazier

NOES: None

ABSTAIN: None

ABSENT: Riley

Motion carried unanimously.

**MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD
MAY 23, 2017**

DISCUSSION ITEM:

B. Public Hearing and Consideration of the following entitlements for 1 PG&E Way:

- 1) Finding the project to be consistent with the EIR certified by the City Council on September 22, 2015.

Design/Site Plan Review for a new 8,240 square foot welding (fabrication) building to be located on the existing Gas Operations Technical Training Center (GOTTC) site currently under construction.

COMMISSIONER/STAFF COMMENTS:

Contract Planner Dave Dowswell shared background information about the proposed project at the PG&E training facility site.

PUBLIC COMMENTS:

None.

COMMISSIONER/STAFF COMMENTS:

Commissioner Baker stated possible environmental disposal concerns.

Tom Crowley, Program Manager at PG&E commented that Code issues will be enforced and all CAL/OSHA regulations will be followed.

Chairperson Frazier stated her concern about having fabrication at a training facility.

Crowley added that the minimal fabrication at the training facility provides the best on-hands training for the students.

Commissioner Baker added that she would like to add a hazard disposal mitigation plan to the conditions of approval.

Commissioner Myer moved to approve the Design/Site Plan for the proposed fabrication PG&E building with an added Condition of Approval #9.

Commissioner Baker seconded.

AYES: Commissioners Adams, Baker, Contreras, Vice Chairperson Myer, Chairperson Frazier

NOES: None

ABSTAIN: None

ABSENT: Riley

Motion carried unanimously.

Tome Crowley stated that PG&E feels comfortable with their robust environmental process.

**MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD
MAY 23, 2017**

DISCUSSION ITEM:

- C. Public Hearing and Consideration of the following entitlements for two parcels (003-391-005 & 003-392-001) near Apricot Avenue and Hemenway Street:
 - a. Finding the project to be consistent with Mitigated Negative Declaration approved by the City Council on September 2, 2008.
 - b. An application for a revised Tentative Subdivision Map to subdivide 4.21 acres into 21 lots.

COMMISSIONER/STAFF COMMENTS:

Contract Planner Dave Dowswell shared background information about the proposed project near Apricot Avenue and Hemenway Street.

PUBLIC COMMENTS:

Joe Bristow, 405 Pear Place, asked if the homes proposed are going to be two stories. Bristow also stated his concerns about the traffic now that Apricot Avenue will be a through street.

Dave Dowswell stated that a determination will be made at later date in regards to single or two story homes on the site. Property owners who received notices for this meeting will be noticed when the house plans come forward.

Don Jordan, 718 Hemenway Street expressed his concern about having smaller lots along Hemenway Street in comparison to the preexisting larger lots to the south.

COMMISSIONER/STAFF COMMENTS:

Commissioner Myer asked why larger lots were not as favorable as smaller lots when discussions began on what to do with this property.

Dave Dowswell commented the plan is for the minimum number of lots allowed. The applicant can apply for a General Plan Amendment and Rezoning, but other problems would arise such as affordable housing requirements. The applicant would have to pay for a General Plan Amendment and Rezoning.

Commissioner Baker stated the city/developers should not run afoul of the affordable housing requirements.

Commission Myer and Dowswell discussed Subdivision Improvement Plan requirements. John Donlevy also commented on the requirements. Discussion ensued.

Commissioner Contreras asked if the homes on Hemenway Street are smaller than the surrounding homes. Dowswell stated that the lots are smaller, but the sizes of the homes have not yet been determined.

Chairperson Frazier commented the lot sizes are not consistent to the specific area.

Don Jordan stated his displeasure with the City's emphasis on affordable housing. Jordan continued by saying that larger lots should be made more available.

Applicant stated that applying and paying for a General Plan Amendment and Rezone is not realistic to do because of the State's affordable housing requirements.

**MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD
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Commissioner Adams commented that the lot sizes on Mermod Road are very modest and similar in size to the lot sizes in the proposed development.

Commissioner Baker moved with changes.

Commissioner Baker seconded.

AYES: Commissioners Adams, Baker, Contreras, Vice Chairperson Myer

NOES: Chairperson Frazier

ABSTAIN: None

ABSENT: Riley

ADJOURNMENT: Chairperson Frazier adjourned the meeting at 7:38pm.

ATTEST: _____

Dagoberto Fierros, Management Analyst

Kate Frazier, Chairperson



**PLANNING COMMISSION
STAFF REPORT**

TO: Board Chair and Members of the Planning Commission
DATE: June 13, 2017
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Dan Maguire, Economic Development and Housing Manager *DM*
SUBJECT: Olive Grove – Proposed Affordable Housing Plan

RECOMMENDATION:

That the Planning Commission:

1. Receive a Staff Report on a proposed Affordable Housing Plan for the Olive Grove Subdivision;
2. Make recommendation, along with any suggested modifications, to the Winters City Council in support of the proposed Affordable Housing Plan for development of the property commonly known as the Olive Grove Property (aka Valadez Property) between the City of Winters and SLO Rentals, LLC, in order to amend the fulfillment of the affordable housing requirements.

BACKGROUND:

In 2007, the real estate market essentially “crashed” and none of the proposed projects proceeded until the recent construction activity at Winters Ranch (formerly referred to as Hudson Ogando). Additionally, the City lost its primary source of affordable housing funding with the dissolution of Redevelopment Agencies statewide.

In August, 2013, the City Council approved amendments to the Hudson Ogando & Creekside Estates Subdivision Development Agreements. These amendments included a revision to the affordable housing obligation, essentially “modernizing” the agreements to acknowledge the new fiscal realities of residential development. The modification included the payment of in lieu fees, in lieu of constructing the very low- and low income housing required of the project under

the existing Development Agreement. The Hudson Ogando & Callahan projects are obligated to pay \$360,000 in in-lieu fees, with the City taking on the production responsibility for 12 very low-income units, and 10 low income units.

Subsequent to that action, Staff worked with the developers for the Winters Highlands subdivision for similar modifications to encourage construction of their entitled project. The City Council approved the Affordable Housing Plan proposed by the Winters Highlands developer, which included the payment of \$2,000,000 in in lieu fees, with the City taking on production responsibility for 24 very low-income units and 18 low-income units. The approved Affordable Housing Plan also include the developer dedicating to the City a 2 acre parcel within the project zoned R-4.

DISCUSSION:

Staff began discussions with SLO Rentals, LLC after their recent purchase of the Valadez property (aka Olive Grove – 720 Hemenway). Based on their tentative map of 21 lots, under the City of Winters Inclusionary Housing Ordinance, the project would be required to provide 1 very low-income dwelling unit, 1 low-income dwelling unit, and 1 moderate-income unit. In the Olive Grove Affordable Housing Plan (“AHP”) proposal discussions, Staff focused on a number of key elements, which included the following:

1. Acknowledgement of the development of affordable housing consistent with the obligations of the project, pursuant to the existing Inclusionary Housing Ordinance.
2. Allowed for flexibility in proposed project layout and in lieu fee payments.
3. Maintained consistency with the City’s adopted Housing Element Update (2013-2021) and Inclusionary Housing Ordinance (Ord. 2010-18).

The AHP proposal is based on a very pragmatic approach to creating a balance between a project which will bring a quality project to the City and one which is financially viable to build for the developer.

The AHP was brought before the Affordable Housing Steering Committee (“AHSC”) on May 22, 2017, for their review and possible amendments to the current Affordable Housing Plan. The AHSC discussion resulted in their recommendation to the Planning Commission and City Council that the Olive Grove AHP be approved. That discussion acknowledged the desirability of smaller in-fill projects like Olive Grove, and also recognized the financial challenges of small in-fill projects.

ATTACHMENTS:

1. Olive Grove Affordable Housing Plan
2. Ordinance 2009-18 (Inclusionary Housing Ordinance)

Date: May 2, 2017

To: Dan Maguire, Housing Manager

From: Chris Williams, SLO RENTALS LLC

Re: Proposed Affordable Housing Plan – Olive Grove

SLO RENTALS LLC recently acquired the property commonly known as 720 Hemenway St, Winters, CA 95694. The property is an approximately 4.21 acre R-2 infill site located adjacent to the Winters High School baseball field. Per our recent conversation, please review the following proposed Affordable Housing Plan pursuant to Chapter 17.200 of the City of Winters' Municipal Code.

Background

The approved Tentative Map for Olive Grove is for 18 lots, however it has been determined that the number of dwelling units needs to be increased to 21 in order to meet the unit/acre requirement of the R-2 zoning. An application for a tentative map modification was submitted by SLO RENTALS LLC to Dave Dowswell and the City of Winters on April 27, 2017. The modified map has been attached for reference.

Proposed Affordable Housing Plan

Inclusionary Housing Requirement-Chapter 17.200.030 of the City's Municipal Code requires that 15 percent of a project's total number of residential units must be dedicated to affordable housing, with 6 percent meeting the VLI requirement and 9 percent meeting the Low Income or Moderate Income Requirement. These units can be rental, for-sale, or a combination of the two.

SLO RENTALS LLC will be requesting that the City approve the modifications made to the existing tentative map. This change would result in a total of 21 lots constructed in two phases. With a baseline of 21 lots and pursuant to the City of Winters' Inclusionary Housing requirement there will be a need to satisfy one Very-Low, one Low and one Moderate rate income units. To satisfy the 3 required income restricted units SLO RENTALS LLC proposes the following:

Payment of an affordable housing fee of \$75,000.00, which is to be amortized over the phase 2 (lots 6-21) market-rate lots on a per unit basis. The fee of \$5,000.00 will be paid upon certificate of occupancy for dwellings built on lots 6-10, 12-21.

Construct a for-sale, inclusionary Moderate Income unit of no less than 3 bedrooms on lot 11 of the attached tentative map and offer it for sale to qualified homebuyers.

Thank you in advance for your consideration. I look forward to further discussing our AHP with you and the AHSC.

Chris Williams

SLO RENTALS LLC, Managing Member

ORDINANCE NO. 2009-18

AN ORDINANCE OF THE CITY OF WINTERS REPEALING SECTION 17.60.030(B) OF THE ZONING CODE AND ADDING CHAPTER 17.200 TO THE ZONING CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS

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

SECTION 1. Recitals.

- A. The City of Winters undertook a comprehensive study and analysis of its affordable housing program, which prompted certain revisions to the affordable housing program for the City.
- B. The affordable housing requirements contained in this Ordinance are the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low, low and moderate income within the City.
- C. The City of Winters Planning Commission conducted a noticed public hearing regarding this Ordinance, which amends the Zoning Code to repeal Section 17.60.030(B) and add Chapter 17.200 pertaining to affordable housing requirements within the City, and has recommended approval of the Ordinance.
- D. The City Council of the City of Winters has provided public notice of its intention to amend the Zoning Code to adopt Chapter 17.200, and conducted a public hearing thereon on December 15, 2009.
- E. The proposed amendment of the Zoning Code to add Chapter 17.200 is consistent with the goals, policies, and objectives of the City of Winters General Plan, and in particular, the Housing Element, as adopted on September 1, 2009.
- F. The proposed amendment of the Zoning Code to add Chapter 17.200 has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 2. Chapter 17.200 "Affordable Housing Requirements" is hereby added to the Winters Municipal Code to read as follows:

Section 17.200.010 Purpose and Intent

The public welfare requires the City to take action to ensure that affordable housing is constructed and maintained within the City. This Chapter is intended to provide that new development projects in the City contain or assist in the production of a defined percentage of housing affordable to low income and very low income households, to provide for a program of incentives, and to implement the affordable housing policies contained in the Housing Element of the City's General Plan.

Section 17.200.020 Definitions

"Affordable Housing Steering Committee" means an advisory committee appointed by the City Council for the purpose of advising the City Council, Planning Commission, Community Development Agency and City staff on affordable housing policies and programs, use of redevelopment housing funds, proposed affordable housing projects, and other housing matters, at the request of the City Council.

"Community Development Director" means the director of the Community Development Department of the City, or his or her designee.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks the City's approval of discretionary land use entitlements for all or part of a development project. "Developer" includes "owner"

"Development project" means any development project that contains residential units, including single family and multifamily units.

"Inclusionary housing agreement" means an agreement between the developer and the City setting forth the manner in which the inclusionary housing requirements will be met in the development project.

"Inclusionary housing plan" means the plan setting forth the manner in which the developer proposes to satisfy the inclusionary housing requirements of this Chapter within the development project.

"Inclusionary housing requirement" means the inclusionary housing requirements as specified in this Chapter.

"Inclusionary housing unit or inclusionary unit" means an ownership or rental unit developed or provided in satisfaction of the inclusionary housing requirements of a development project, as provided for in this Chapter, and which is affordable to very low, low income or moderate income households.

"Low income household" means a household whose income does not exceed eighty percent (80%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Moderate income household” means a household whose income does not exceed one hundred twenty percent (120%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Very low income household” means a household whose income does not exceed fifty percent (50%) of the median income, adjusted for household size, applicable to Yolo County, as published and periodically updated by the United States Department of Housing and Urban Development.

Section 17.200.030 Inclusionary Housing Requirements

(A) Number and Affordability of Units. Except as otherwise provided for in this Chapter, all development projects consisting of five (5) or more residential units within the City of Winters shall include inclusionary housing units equal to fifteen percent (15%) of the total number of residential units in the development project, excluding density bonus units. The fifteen percent (15%) inclusionary housing requirement shall consist of six percent (6%) very low income units and nine percent (9%) low income or moderate income units in proportion to the unmet needs for each identified in the current housing element.

(B) Exception. The following development projects are exempt from the provisions of this Chapter:

1. Redevelopment Project Area. The fifteen percent (15%) inclusionary housing requirement provided in Subsection A above shall not apply to development projects within the Winters Community Development Agency Redevelopment Project Area that contain fifteen (15) or fewer residential units. This exception shall expire on December 31, 2013, unless extended by the City Council. Any development project that has not acquired a vested right to develop in accordance with existing laws and regulations by such expiration date shall be required to comply with the provisions of this chapter.
2. Project with prior approval. A development project that has obtained discretionary approval (e.g., a Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance approval) before the effective date of this Chapter; or a building permit before the effective date of this Chapter; or a Certificate of Occupancy before the effective date of this Chapter.
3. Exempt by State law. A development project that is exempt from this Chapter by State law.
4. Project with vested rights. A development project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

(C) Implementation. The developer shall propose an inclusionary housing plan to community development director as provided for in this Chapter. A condition requiring compliance with all of the terms of the inclusionary housing plan, as approved by the Planning Commission, shall be imposed on the development project. Further, the developer and the City shall enter into an inclusionary housing agreement that requires compliance with the inclusionary housing plan, and that will be recorded upon the property as provided in this Chapter.

(D) Density Ranges. Development projects which are proposed in areas of the City zoned for medium high and high density residential use, shall only be approved if density of the development project is in the upper one-half of the density ranges specified in the Zoning Code for developments in such zones, unless site constraints effectively prohibit such intensity of development.

(E) Unit Size. The inclusionary housing requirement shall accommodate diverse family sizes by including a mix of studio, one, two and/or three bedroom units where feasible.

(F) Exterior Appearance. The inclusionary units shall be visually compatible with and shall have similar external building materials and finishes as the market rate units in the immediate neighborhood.

(G) Access to Common Amenities. Tenants and residents of inclusionary units shall be provided the same rights and access to common amenities within the development project as tenants and residents occupying market rate units.

(H) Small Parts of Larger Projects. The City shall not approve development projects which reasonably appear to be smaller parts of a greater project and have the effect of circumventing the requirements of this Chapter.

Section 17.200.040 Inclusionary Housing Plan

(A) Submittal Requirements. At the time of and as part of the application for a discretionary land use entitlement for a development project, the inclusionary housing plan shall be submitted to the Community Development Director by the project developer, and shall include:

1. A detailed description of the method by which the developer will comply with the requirements of this Chapter.
2. The location of the inclusionary units within the development project, if applicable, the size of the inclusionary units, and any incentives requested by the developer in accordance with Section 17.200.060 of this Chapter.
3. Where an alternative to constructing inclusionary units on-site is intended, the developer shall provide detailed information regarding the alternative selected for meeting the inclusionary housing requirement, including a written statement that the proposed parcel(s), site, or existing market rate units, if applicable,

are available and capable of being dedicated to the City by the developer and that the affordable units shall be restricted as affordable housing, by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

4. A phasing plan that provides a schedule for the timely development of the inclusionary units as the development project is built out.
5. Any other information deemed necessary by the Community Development Director.

(B) Affordable Housing Steering Committee Meeting. Prior to the submittal of the inclusionary housing plan, the Affordable Housing Steering Committee shall meet with and provide recommendations to the project developer regarding compliance with this Chapter.

(C) Community Development Director Preliminary Review. Upon receipt of the proposed inclusionary housing plan, the Community Development Director shall review the plan, and thereafter shall meet with the project developer to discuss the proposed plan.

(D) Plan Approval. After the preliminary review by the Community Development Director, the inclusionary housing plan shall be subject to the same review and approval as the discretionary land use entitlements.

Section 17.200.050 Alternative Methods to Meeting Inclusionary Housing Requirements

The City strongly prefers and shall encourage on-site construction of inclusionary units, however alternatives to the on-site construction of the inclusionary housing units may be proposed by the developer, consistent with the requirements set forth below in this section. The alternative methods are subject to review and approval of the City, as part of the inclusionary housing plan review process. The developer shall have the burden of demonstrating that the alternative selected is equivalent to the on-site construction of inclusionary housing units. Alternatives may include:

(A) Land Dedication. A developer may propose to dedicate land within the City sufficient to construct at least the same number of units and infrastructure to support the number of units as the developer would have been required to construct on-site subject to the inclusionary housing requirement. Land may be dedicated pursuant to this alternative provided the site will support the same number of units the developer is required to construct, has zoning of a minimum density necessary to accommodate the inclusionary housing requirement, that the site is physically and legally acceptable to the City, and that the site is restricted to affordable housing. The developer shall dedicate the land to the City at no cost the City.

(B) On-Site or Off-Site Construction. A developer may propose to develop housing to satisfy the inclusionary housing requirement at an on-site or off-site location within the City.

(C) Acquisition, Rehabilitation, and Conversion of Market Rate Units. A developer may propose to acquire and rehabilitate existing market rate units in the City which are at or above existing affordable rents, which require repair, rehabilitation, modernization or other work and convert those units to affordable housing units.

(D) Conversion of Market Rate Units. A developer may propose to convert existing market rate units in the City which do not require rehabilitation and are at or above existing affordable rents to affordable housing units by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(E) Accessory Units. A developer may propose to construct accessory dwelling units (e.g. granny flats) on site of the development project to meet the inclusionary housing requirement. The lots upon which the accessory dwelling units are constructed shall be restricted to provide that the units remain affordable housing units by way of contract, recorded covenants or other legal mechanisms.

(F) Inclusionary Housing Credits. A developer may propose to use inclusionary housing credits, as defined in this Chapter, to meet the inclusionary housing requirement.

(G) Payment of In-Lieu Fees. A developer may propose to pay an in-lieu fee to the City instead of constructing affordable units to meet the inclusionary housing requirement.

(H) Cooperative Ventures. A developer may propose a cooperative venture with a non-profit housing corporation, mutual housing association, limited equity housing cooperative, or other entity.

(I) Sweat Equity Project. A developer may propose a self-help or "sweat equity" project with a non-profit corporation or other entity.

(J) Combination. A developer may propose to utilize a combination of the above alternatives to meet the inclusionary housing requirement.

(K) Other Alternatives. A developer may propose, and the City may accept, other alternatives that meet the requirements and intent of this Chapter.

Section 17.200.060 Incentives and Assistance

(A) Request for Incentives and Assistance. The developer of a development project subject to the inclusionary housing requirements of this Chapter, may request, and the City, in its discretion, may grant or deny the request for incentives as set forth in this section.

(B) Fee Waivers or Deferrals. The City may grant to a developer a program of waivers, reduction or deferrals of development fees or administrative fees for the inclusionary units.

(C) Inclusionary Housing Credits. A developer may submit as part of the inclusionary housing plan a proposal to provide affordable housing units or a donation of land in connection with a development project beyond the requirements of this Chapter. The developer may credit the additional affordable units or land against future development projects proposed by the developer within the City, subject to the provisions of this chapter. Inclusionary housing credits may also be transferred or sold to any other person or entity subject to the following conditions:

(1) Inclusionary housing credits must be applied to another development project within five (5) years of issuance of a certificate of occupancy for the inclusionary units(s) or implementation of an alternative method of meeting the inclusionary method of meeting the inclusionary housing requirement which gives rise to the credits, such as land dedication. A developer who has not used, transferred or sold credits within the time specified in this section may apply to the City for a one (1) year extension on the life of the credits. A request for extension of the inclusionary housing credit shall be reviewed by City Council who shall grant or deny the request for extension. The City Council shall consider progress and efforts the developer has made to utilize the credits during the previous five (5) years, the impact on affordable housing in the City if the extension is granted, any proposals for use of the credits should the extension be granted and other relevant factors.

(2) Inclusionary units receiving monetary subsidies through the City shall not receive credits unless the City has been reimbursed for its financial assistance.

(D) Local Public Funding. A developer may apply to the community development agency for local public funding to assist in the financing and development of affordable housing to meet the inclusionary housing requirement.

(E) Modification of Development Standards. To the extent feasible in light of the uses, design and infrastructure needs of the development project, modifications to existing City planning standards may be made for the development project. Such modifications shall be requested through a development permit, or other such permit that allows the modification of planning standards, and shall be considered in conjunction with the other discretionary land use entitlements for the development project.

(F) Mixed Use Projects. Mixed use projects containing affordable units may be proposed and approved in areas of the City where the Zoning Code and the General Plan allow such development to help off-set the cost of developing affordable units pursuant to the requirements of this chapter.

Section 17.200.070 Density Bonus

Inclusionary units required by this Chapter or otherwise proposed to be constructed as part of a development project shall not be counted towards the number of units necessary to qualify for a density bonus under applicable state or local laws.

Section 17.200.080 Restrictions on Inclusionary Units

Each inclusionary unit created as a result of this Chapter shall have limitations governing its rental, sale, and/or resale and its occupancy, unless such limitations would be in conflict with federal or state law. The purpose of these limitations is to preserve the long-term affordability and to ensure its continued availability for income eligible households.

(A) Duration of Affordability for Rental and Resale of Inclusionary Units. All rental and for-sale inclusionary housing units developed within the City shall remain affordable for a period of not less than that required by Section 33334.3(f)(1) of the California Health and Safety Code (fifty-five years for rental units, forty-five years for owner-occupied units and fifteen years for mutual self-help housing units), and shall be regulated by regulatory agreement, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(B) Occupancy Requirements.

(1) Rental Units. Any person(s) who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence and shall annually certify that he or she qualifies for the applicable affordable rent level. The Community Development Director shall annually initiate this certification process. If and when any person(s) who rents an inclusionary unit no longer qualifies at the applicable affordable rent and income levels, the person(s) shall be required to vacate the unit or pay the market rate for the unit provided another rental unit is made available at the income level of the inclusionary unit.

(2) For-Sale Units. (i) Except as provided in this section, an initial owner who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence. The inclusionary housing agreement shall provide that a for-sale inclusionary unit may only be rented or leased with the written permission of the City, and then, only to an income eligible person and the inclusionary unit shall be rented at no greater a rental rate than the affordable rent level as defined in Health and Safety Code Section 50053. The inclusionary unit shall be rented or leased at the same income level of the original for-sale affordable housing price. For example, if the initial owner bought the unit at the very low income housing price the unit shall be rented at the very low income rent level currently in effect. Any person intending to offer a for-sale inclusionary unit for rent or lease shall first notify the City housing coordinator in writing, prior to the renting of the unit. (ii) An initial owner shall be required to execute a promissory note, secured by a deed of trust, payable to the City, for the difference between the fair market value of the unit and the actual purchase price ("Silent Second Note"). The Silent Second

Note shall accrue interest at the Local Agency Investment Fund (“LAIF”) rate, and shall be due and payable upon the sale, transfer or refinancing of the unit, unless the sale is to another low income eligible buyer, as determined by the City. The proceeds of any Silent Second Notes shall be deposited in an account designated for uses related to the provision of affordable housing in the City.

(C) Resale of For-Sale Units. The initial owner or any subsequent owner may sell a for-sale unit pursuant to the following requirements. Inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to the resale restricted term provided for in subsection (A) above, and in accordance with the affordable housing costs set forth in Health and Safety Code Section 50052.5. The inclusionary for-sale unit shall be sold at the same affordable housing price income level as it was originally sold, and the new income eligible buyer shall be required to execute a new inclusionary housing agreement and Silent Second Note, secured by a deed of trust.

(1) Option to Sell to City. If the owner is unable to sell the inclusionary unit within one hundred and eighty (180) days of offering and advertising the unit for sale, the owner may offer to sell the unit to the City at the affordable housing price at the time offer. The Community Development Director may reduce the one hundred and eighty (180) day requirement specified above if the owner demonstrates, to the satisfaction of the Director, that such limit would create a hardship for the owner. If the City or its assignee does not complete the purchase of the unit within ninety (90) days of the owner’s offer of sale to the City, the resale obligation of this section shall terminate; however, the provisions of this section relating to recapture upon sale shall continue to apply and remain in full force and effect.

(2) Recapture Upon Sale. If the inclusionary unit does not sell within one hundred and eighty (180) days of offering and advertising the unit for sale, or such lessor time as established by the Community Development Director upon a finding that a hardship exists, and if the City does not acquire the inclusionary unit as specified in this section, the inclusionary unit may be sold at the current market price. Upon the sale of a unit at market price, the seller shall pay to the City housing trust fund the full amount of the Silent Second Note, described above in this section. The owner shall be entitled to any appreciation in the fair market value of the unit from the time of initial sale to the present sale.

Section 17.200.090 Administration of Inclusionary Housing Requirements

(A) Inclusionary Housing Agreement. Upon approval of the inclusionary housing plan pursuant to Section 17.200.030, the Community Development Director shall prepare an inclusionary housing agreement for the development project that is consistent with inclusionary housing plan, and shall indicate ownership information, type of inclusionary unit (for-sale or rental), the number and size of the inclusionary units, the developer of the inclusionary units, the phasing and construction scheduling of the inclusionary units, commitments for inclusionary incentives and any other information required by the City

relative to the inclusionary housing requirement. In the case of alternatives to the inclusionary housing requirement, the agreement shall also contain the information required in this chapter pertaining to the alternative. Upon completion, the inclusionary housing agreement shall be recommended for approval by the City Council at the next regular City Council meeting. The inclusionary housing agreement shall provide a direct financial contribution by the City in the amount of not less than one hundred dollars (\$100) per inclusionary unit.

No final map shall be approved and no grading permit or building permit shall be issued by the City prior to the full execution and recordation of the inclusionary housing agreement against the property.

(B) Action on Inclusionary Housing Agreement. The City Council shall approve the inclusionary housing agreement upon a finding that the agreement meets all the requirements of this chapter and shall direct that the agreement be recorded upon the subject property.

(C) Affordable Rental and Affordable Housing Agreements. Prior to obtaining a certificate of occupancy for a development project which includes inclusionary units, the developer shall cause an affordable rental agreement to be executed between the owner of the property and the City which shall be recorded with the county recorder's office against the parcels identified in the inclusionary housing agreement as being inclusionary units, in a form reviewed and approved by the City Attorney. Where the inclusionary unit is a for-sale unit within a development project, prior to obtaining a certificate of occupancy for that unit the developer shall cause an affordable sale agreement to be executed between the initial owner of the inclusionary unit and the City, which shall be recorded with the county recorder's office against the parcel, in a form reviewed and approved by the City Attorney.

(D) Administrative of Affordability for Rental Inclusionary Housing. The owner of rental inclusionary units or for-sale inclusionary units offered for rent shall be responsible for certifying the income of the tenant or owner to the City at the time of initial rental and annually thereafter. The owner of a for-sale inclusionary unit shall certify to the City the income of the initial purchaser.

(E) Accessory Dwellings. Prior to obtaining a certificate of occupancy for an accessory dwelling which is designated as an inclusionary units pursuant to an inclusionary housing agreement, the developer shall cause an affordable sale agreement to be executed between the initial owner of the accessory dwelling unit and the City, which shall be recorded with the county recorder's office against the accessory dwelling unit, in a form reviewed and approved by the City Attorney.

(F) Guidelines. The Community Development Director may develop additional guidelines as necessary for implementation of this chapter.

(G) Appeal. Where the provisions of this Chapter vest the Planning Commission with final decision making authority, any applicant aggrieved by the decision of the Planning Commission may appeal the decision to the City Council, within ten (10) days of the final decision of the Planning Commission. Any appeal of a decision of the Planning Commission must be filed with the City Clerk. The City Clerk shall set the appeal before the City Council within forty (40) days of receipt of the appeal.

Section 17.200.100 Monitoring of Inclusionary Housing

(A) Developers. Developers that have entered into an inclusionary housing agreement requiring the provision of inclusionary housing units will be monitored by the City annually to assure compliance with the inclusionary housing agreement.

(B) Inclusionary Units. Inclusionary housing units developed within the City will be monitored by the City annually to verify that the units remain affordable in accordance with Section 17.200.080(B) of this chapter.

(C) Reporting. An annual reporting mechanism shall be created by the City to identify the number of inclusionary housing units that have been required for development within the City by inclusionary housing agreements during the annual reporting period and shall include the number of inclusionary housing units that have actually been developed during the annual reporting period. The report shall also include the results of the monitoring of developers and inclusionary units already in existence.

Section 17.200.110 Administrative and In-Lieu Fees

The City Council may, by resolution, establish an in-lieu fee and reasonable fees and deposits to defray costs of processing applications, proposals pursuant to this Chapter.

Section 17.200.120 Enforcement and Penalties

It is unlawful to offer for sale or to rent or lease any inclusionary unit without compliance with this Chapter. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor. Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day which any person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

SECTION 3.

Section 17.60.030(B) of Chapter 17.60 of the Winters Zoning Code pertaining to affordable housing requirements for individualized projects is hereby repealed in its entirety.

SECTION 4. Effective Date.

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

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

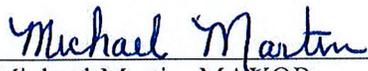
The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on December 15, 2009, and was passed and adopted at a regular meeting of the City Council held on January 5, 2010 by the following vote:

AYES: Council Members Aguiar-Curry, Fridae, Stone and Mayor Martin

NOES: None

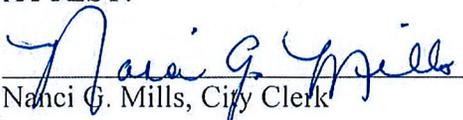
ABSENT: Council Member Anderson

ABSTAIN: None



Michael Martin, MAYOR

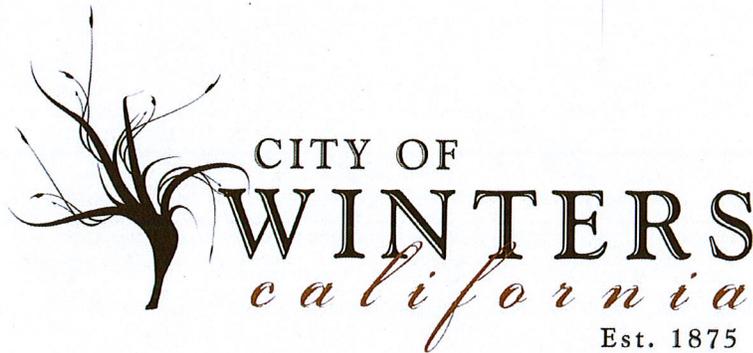
ATTEST:



Nanci G. Mills, City Clerk

1160228.15





**PLANNING COMMISSION
STAFF REPORT**

TO: Chair and Planning Commissioners
DATE: June 13, 2017
FROM: David Dowswell, Contract Planner 
SUBJECT: Creekside Estates Subdivision – Public Hearing and consideration by the Winters Planning Commission of the proposed Amended and Restated Development Agreement

RECOMMENDATION: Staff recommends the Planning Commission:

- 1) Receive a Staff Report on a proposed amendments to the Creekside Estates Subdivision; and
- 2) Conduct a Public Hearing to consider comments on the Amended and Restated Development Agreement; and
- 3) Find per Section 15061(b)(3) of the CEQA Guidelines that 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
- 4) Adopt a Planning Commission Resolution No. PC 2017-01 (Attachment E) recommending that the Winters City Council adopt an ordinance approving the Amended and Restated Development Agreement between the City of Winters and The Catholic Bishop of Sacramento, A California Corporation Sole, pursuant to Government Code sections 65864 through 65869.5, for the property commonly known as the Creekside Estates.

BACKGROUND: Beginning in 2005, the City entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, when the real estate market essentially “crashed” none of the

proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past eight years to keep the agreements current and viable for when the real estate market returned. Starting in 2014 a number of the owners of the various approved subdivisions have come forward to commence development. Winters Ranch has begun construction and Winters Highlands and Callahan Estates are in the process of moving forward.

In April 2005, the City approved the Creekside Estates Subdivision (Attachment A) and Development Agreement (DA). In December 2012 a First Amendment (Attachment B) approved a number of changes including extending the term of the agreement until December 20, 2018, amending the language regarding the approval of an agreement with the Winters Unified School District and how the cost of infrastructure improvements needed to develop the required park would be determined.

In 2015 the City met with representatives of Watt Communities, who is looking to buy Creekside Estates from the Roman Catholic Church, to discuss possible amendments to the DA. The amendments to the Creekside Estates DA are essentially to “modernize” it to recognize capital improvements made during the interim, needs of the City and the Developer, and also to acknowledge the new fiscal realities of residential development. The amendments are discussed below.

ANALYSIS:

Development Agreement The proposed Amended and Restated DA (Attachment C) includes the following changes to the original DA and the First and Second amendments:

1. **Term:** Establishes a new term for the DA of six (6) years effective from the date of recording.
2. **Annuity:** Revises the original DA by deleting Section 4.4 regarding the provision requiring a fiscal neutrality annuity payment of \$6,500 per unit. This is being deleted after the same requirement for the Hudson-Ogando (Winters Ranch), Winters Highlands and Callahan Estates subdivisions was recently deleted from those DAs based on a revised fiscal analysis for the project.
3. **Broadband Infrastructure:** Revises the DA to require the developer include the installation of and dedication to the City of broadband conduit infrastructure for all units within the subdivision.
4. **Urban Water Management Plan:** Revises language to allow pro-rata share of cost, sharing with Winters Highlands, Hudson-Ogando, and Creekside. The payment shall be due and payable no later than the issuance of the 50th market-rate building permit.

After reviewing the draft Development Agreement prepared by the City Attorney the applicant had a number of changes that he asked be made, which are highlighted in red. City Attorney reviewed the changes and found them to be acceptable except for the deletion of the last sentence in Section 3.6(a). The City Attorney recommends this section remain because "economic conditions" is too subjective to use justify extending a final map. The City Attorney would support extending the time to file the Final Map for the Creekside Estates Subdivision from 150 to 180 days. Staff has highlighted in yellow this possible change.

PROJECT NOTIFICATION: A notice advertising for the public hearing (Attachment D) on this application was prepared by the Community Development Department in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law and was published in the Winters Express on 6/1/17 ten days prior to the hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since 6/8/17.

ENVIRONMENTAL ASSESSMENT: Per Section 15061(b)(3) 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

PLANNING COMMISSION ACTION: Staff recommends the Planning Commission make a recommendation (Attachment E) to the Winters City Council to adopt an ordinance (Attachment F) approving the Amended and Restated Development Agreement between the City of Winters and Turning Point Acquisitions V, LLC, pursuant to Government Code sections 65864 through 65869.5, subject to the CEQA findings, for development of the property commonly known as the Callahan Estates Subdivision.

CEQA findings:

1. The Planning Commission finds that based the on their review of the Amended and Restated Development Agreement and Tentative Map ("the project") the changes are not considered significant enough to require preparation of a subsequent environmental document.
2. The Planning Commission has considered comments received on the project during the public review process.
3. The decision not to prepare a subsequent environmental document reflects the independent judgment and analysis of the City of Winters.

ATTACHMENTS:

- A. Project Map
- B. 2012 First Amendment to the Development Agreement for Creekside Estates
- C. Amended and Restated Development Agreement with proposed changes (redlined) requested by applicant

- D. Notice of Public Hearing
- E. Planning Commission Resolution No. PC 2017-01
- F. Ordinance



YOLO Recorder's Office
 Freddie Oakley, County Recorder
DOC- 2012-0011280-00

Acct 118-Winters - NC
 Wednesday, APR 11, 2012 08:07:00
 Ttl Pd \$0.00 Nbr-0000977073
 FRT/R6/1-5

RECORDED AT REQUEST OF AND
 WHEN RECORDED MAIL TO:

CITY OF WINTERS
 318 First Street
 Winters, CA 95695
 Attention: City Clerk

(Space Above this Line for Recorder's Use Only)

**FIRST AMENDMENT TO
 DEVELOPMENT AGREEMENT BY AND BETWEEN
 THE CITY OF WINTERS AND
 THE CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA
 CORPORATION SOLE**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "First Amendment") is entered into as of December 20th, 2011, by and between the CITY OF WINTERS, a municipal corporation (the "City") and the CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a California nonprofit corporation, (the "Developer").

* Doc 2005-0063213
 12/22/2005

Recitals

A. The City previously entered into a Development Agreement* with Donald Miller, who owned certain real property commonly known as the Creekside Estates Property, with Yolo County Assessor's Parcel Numbers 003-430-120 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres) (the "Property" or "Creekside Estates Property"). The Development Agreement provides for the residential development of the Property. Any capitalized terms used but not defined in this First Amendment shall have the meanings given in the Development Agreement.

B. Donald Miller's successors subsequently transferred the Property to the Developer, who was assigned all rights and obligations under the Development Agreement as Donald Miller had.

C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain changes to, and extend the term of, the Development Agreement.

D. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code section 65857. As

required by Government Code section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards, and land use designations specified in the City's General Plan.

E. On December 14, 2011, the City of Winters Planning Commission, the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On December 20, 2011, the City of Winters City Council adopted Ordinance No. 2012-01 approving this First Amendment and authorizing its execution.

Agreement

Section 1. Section 2.3(b) of the Development Agreement is amended to provide that the term of the Development Agreement shall be extended for an additional eight (8) years, commencing on the date written above in the introductory paragraph ("Effective Date").

Section 2. Section 2.9(d) of the Development Agreement is amended to delete the address to which notice shall be given to Developer and to replace it, as follows:

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Telephone: (916) 733-0100
FAX (916) 733-0295

Section 3. Section 4.1(b) of the Development Agreement is amended to read as follows:

As a condition to the approval of this Agreement by the City, Developer's predecessor presented to the City Council a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement provides, in addition to other matters as the parties agreed, that the Developer will pay to the School District, at the time of the issuance of a building permit, certain "Level 2" fees and will voluntarily pay certain "Level 3" fees, as those terms are commonly used in the K-12 education community. Should Developer and School District amend their agreement to change the amount or payment of the "Level 2" and/or "Level 3" fees, Developer shall provide a copy of such amendment to the City.

Section 4. Section 4.1(b)(1) and (2) and Section 4.1(c) are deleted from the Development Agreement.

Section 5. Section 4.2(e)(2) of the Development Agreement related to the estimated cost of park infrastructure improvements is amended to read as follows:

2. The estimated costs of the infrastructure improvements and development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer based on an estimated cost index of park improvements of

municipal park projects developed within the previous 24 month period.

Section 6. Section 4.2(e)(3) is deleted from the Development Agreement.

Section 7. Section 4.3 of the Development Agreement, entitled "Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility" is deleted as the facility has been constructed.

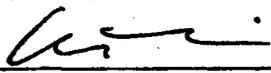
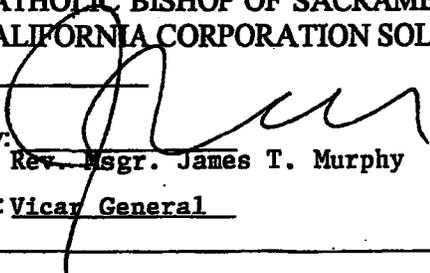
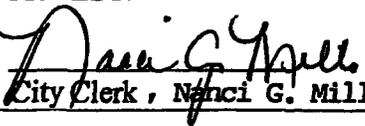
Section 8. Section 4.4 of the Development Agreement, entitled "Payment to Library Fund" is deleted, but the Section 4.4 entitled "Annuity in Lieu of Mello-Roos District" shall not change.

Section 9. Section 4.7 of the Development Agreement, entitled "Urban Water Management Plan," is renumbered to be section 4.6.

Section 10. Section 4.8 of the Development Agreement, entitled "Water Well," is deleted as a well has already been constructed.

Section 11. The effective date of this First Amendment shall be the date as written above in the introductory paragraph. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and remain in full force and effect.

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

CITY:	DEVELOPER:
CITY OF WINTERS  Mayor, Woody Fridae	CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a _  By: Rev. Msgr. James T. Murphy Its: <u>Vicar General</u>
ATTEST:  City Clerk, Nanci G. Mills	

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of Sacramento
On 4/3/2012 before me, Xaviera J. Isler, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Msgr. James T. Murphy
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Xaviera J. Isler
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment to Development Agreement
Document Date: December 30, 2011 Number of Pages: 3

Signer(s) Other Than Named Above: _____

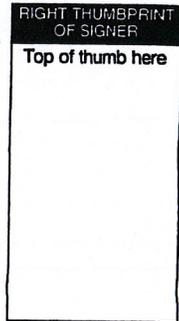
Capacity(ies) Claimed by Signer(s)

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



Signer Is Representing: _____

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



Signer Is Representing: _____

ACKNOWLEDGMENT

State of California
County of Yolo

On April 4, 2012 before me, Mary Jo Rodolfa, Notary Public
(insert name and title of the officer)

personally appeared Nanci G. Mills and Woody Fridae,
who proved to me on the basis of satisfactory evidence to be the pers on(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the pers on(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mary Jo Rodolfa



(Seal)

Free Recording Requested Pursuant to
Government Code Section 27383



YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2005-0063213-00

Acct 118-Winters - NC

Thursday, DEC 22, 2005 08:52:00

Ttl Pd \$0.00

Nbr-0000614366

FRT/R5/1-99

When recorded, mail to:

City of Winters

318 First Street

Winters, CA 95694

Attn: Community Development Department

AN AGREEMENT

BETWEEN

THE CITY OF WINTERS AND

DONALD MILLER

RELATING

TO THE DEVELOPMENT OF THE PROPERTY

COMMONLY KNOWN AS THE

CREEKSIDE PROPERTY

**CONFORMED COPY
NOT COMPARED
WITH ORIGINAL**

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
DONALD MILLER
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CREEKSIDE PROPERTY

THIS AGREEMENT is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and DONALD MILLER, (the "Developer"), under the authority of section 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County.

FACTS AND CIRCUMSTANCES

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

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.
2. The Developer is in the business of developing residential communities in northern California, including the development of property in the manner which promotes the goals envisioned by the City for its residents.

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

4. It is the intent of the Parties in entering into this Agreement to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain vested rights to develop the Creekside 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 subsection 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 sub-section.

Article 1. Definitions

Article 2. General Provisions

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

ARTICLE 1
DEFINITIONS

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

Section 1.1 "Agreement" means this agreement.

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

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

Section 1.4 "Creekside 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 Nos. 003-430-12 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres). A map showing its location is attached as Exhibit A.

Section 1.5 "Creekside Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, adopted 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 Creekside Estates Tentative Subdivision Map is attached as Exhibit C.

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

Section 1.7 "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (E.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

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

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

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

Section 1.11 "Developer" means Donald Miller and/or his successors in interest.

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

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

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

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

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

Section 1.17 "Mitigation Measures" means the requirements placed on the development of The Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for The Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

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

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

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

Section 1.21 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on The Property. Examples: roads; sewer and water lines; traffic signals.

Section 1.22 "Vesting law" means any State or federal law which gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated by Reference.

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

Section 2.2 Property to be Developed.

The property to be developed under this Agreement is the property commonly known in the City of Winters as the Creekside Property, Yolo County Assessor's Parcel Nos. 003-430-12 and 003-120-04. In this Agreement the Creekside Property will, in most instances, be referred to simply as "The Property."

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

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5.

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

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

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

Section 2.5 Right to Assign; Non-Severable Obligations.

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

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

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

2. The proposed assignee has adequate experience with residential developments of comparable scope and complexity to Creekside Estates and has successfully completed such developments.

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

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

Section 2.6. Amendment of the Agreement.

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

Section 2.7 Whole Agreement; Conflict with City Code

a. This Agreement, together with any subsequent addenda, amendment or modification, shall constitute the entire agreement of the

Parties as to the development of The Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

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

Section 2.8 Choice of Law; Venue; Attorney Fees; Alternative Dispute Resolution.

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

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

Section 2.9 Notices.

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

1. Via certified U.S. Mail, return receipt requested.
2. Via an overnight mail service of the type normally used by the business community, such as Federal Express, UPS Overnight, and California Overnight.

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

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

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

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

d. Notices to the Developer shall be given as follows

Donald Miller
P.O. Box 457
Davis, California 95617
Telephone (530) 753-2596
FAX (530) 753-5693

ARTICLE 3

DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements: One or more Final Subdivision Maps.

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

1. A rezoning of The Property from Single Family Residential, 6,000 Square Foot Average Minimum (R-2) to Single Family Residential,

7,000 Square Foot Average Minimum (R-1). The rezoning is approved contemporaneously with this Agreement.

2. The Creekside Estates Tentative Subdivision Map consisting of approximately forty (40) single family residential lots on 13.7 acres. Of the forty (40) residential lots four (4) must be made available to local builders as defined by the City's land use regulations.

The Creekside Estates Tentative Subdivision Map is approved contemporaneously with the approval of this Agreement.

3. This Agreement as adopted on May 17, 2005 by Ordinance No. 2005-03 is effective as of upon recording 2005.

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

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

c. Under the provisions of Government Code section 66452.6(a), the life of the Creekside Estates Tentative Subdivision Map is co-terminus with the life of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the development of The Property according to the terms of this Agreement conforms with the General Plan of the City of Winters.

Section 3.3 Vested Rights of Developer.

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

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

2. Exclusion from any subsequently enacted building moratoria.

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

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established as a condition to the Creekside Estates Tentative Subdivision Map.

5. The mitigation measures set forth in Exhibit D.

b. Subdivision a. does not apply to changes effecting development of The Property as mandated by State and/or federal laws effective after the

date this Agreement is recorded. In the event of such changes, the City will permit the development of The Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained By the City.

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

1. Discretionary approvals.
2. Subdivision standards in effect when a final subdivision map is approved.
3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.
4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

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

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

Section 3.5 Other Vesting Laws Inapplicable.

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

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

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

Section 3.6 Commencement of Development.

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

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

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

Section 3.7 Maximum Number of Building Permits Per Year.

a. The Developer may apply for and receive as many single family building permits as there are lots remaining in Creekside Estates.

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.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Creekside Estates. When the final map for all of Creekside Estates (or a phase, as the case may be), is approved, the Developer shall enter into a

separate written agreement with the City by which it contracts to build and dedicate the public improvements required either in all of Creekside Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by law.

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

Section 3.9 Property for Public Improvements; Offsite Improvements.

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

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such

public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the final subdivision map for Creekside Estates (or the first phase as the case may be) is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire the property interests. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, and for purposes of eminent domain, the City's attorney fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

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

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Creekside Estates. These improvements will benefit other

properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

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

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

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

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the prorata share to be borne by The Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

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

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing

properties or from mitigation fees as described in subsection b.

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

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

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

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a building permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a building permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the building permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as

determined by the City Engineer. (Example: If a fee of \$1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of \$5,000, then the Developer will be credited with having paid that fee for 5 building permits.)

Section 3.11 Subsequent Discretionary Approvals.

To the extent any discretionary approvals are required to develop The Property after this Agreement is recorded, the Developer shall apply for those approvals in the same manner as any other person applying for land use entitlements from the City. All application fees then applicable for the type of land use entitlement(s) sought shall apply.

Section 3.12 Review of Agreement.

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

Section 3.13 Compliance with Government Code Section 66006.

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

ARTICLE 4
SPECIFIC DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

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

b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement by the 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 forty (40) residential units in Creekside 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 Creekside Estates, except any very low income and low income affordable units, "Level 3" fees as that term is commonly used in the K-12 education community.

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

Section 4.2 0.9 +/- Acre Park.

a. Developer shall provide a 0.9 +/- 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 0.9 +/- acre park within Creekside Estates. The payment of the Park Obligation by the Developer is in lieu of payment of any park impact fees as provided by City ordinance.

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

1. At the time of filing the final map for Creekside 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 Creekside Estates (36 units). The resulting amount shall be paid each time a building permit is issued for one of the thirty-six (36) market rate units.

b) If at the end of thirty (30) months from the recording of the final map for Creekside 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 of the City to do so. (Example: If at the end of 30 months, the Developer has obtained twenty (20) 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 16 market rate units.)

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

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

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three 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 0.9 +/- 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 Advance Funding of Fees For Construction of Police/Fire/Corporation Yard Facility.

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for Creekside 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 forty (40) residential units in Creekside Estates.

2. A fire facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

3. A general municipal facilities fee at its then current rate for all forty (40) residential units in Creekside 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 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 Creekside Estates per the document entitled EPS Fiscal Impact Analysis for Creekside Estates, dated February 21, 2005. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

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

1. From the escrow for the sale of each residential lot to a third party the Developer will pay to the City the sum of Sixty Five Hundred Dollars (\$6,500.00).

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 Creekside Estates.

Section 4.4 Payment to Library Fund.

Prior to recording of the final map for Creekside Estates (or the first phase, as the case may be) the Developer shall pay to the City the sum of Twenty-Five Thousand Dollars (\$25,000.00). 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 4.5 Affordable Housing.

Lot numbers 7 and 9 as shown on the Creekside Estates Tentative Subdivision Map will be divided in two to create four (4) affordable housing units (one (1) moderate income, two (2) low income, and one (1) very low income unit).

In addition, Developer is required to create two (2) affordable units off-site. In lieu of constructing two (2) off-site affordable housing units, the Developer shall, at the time of filing of the final map for Creekside Estates (or the first phase thereof, as the case may be) pay to the City Two Hundred Thousand Dollars (\$200,000.00).

Section 4.7 Urban Water Management Plan.

a. The Developer shall pay the cost of the preparation of a City Urban Water Management Plan. Payment shall be due and payable no later than the date upon which the final map for Creekside 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, as provided by section 3.10, to be paid by other developments benefiting from the Management

Plan, but only those commonly identified as Creekside, Winters Highlands and Hudson-Ogando.

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

Section 4.8 Water Well.

At the time of filing the final map for Creekside Estates (or the first phase thereof, as the case may be) the Developer shall pay its pro-rata share of the construction of a water well at a location designated on the Creekside Estates Tentative Subdivision Map, or such other location on that map as selected by the City Engineer, in an amount finally determined by the City Engineer. The pro-rata share is currently estimated to be Twenty-Six Hundred Dollars (\$2,600.00) per lot.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 City's Remedies

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

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

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

3. Specific performance as provided in subsection c.

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

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

b. Default by the Developer.

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

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

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

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

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

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

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

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

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

5.3 Developer's Remedies.

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

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

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

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For

the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorney 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 attorney fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

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

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers,

agents, and employees from any claim of injury to person or property arising out of the operations of the Developer in the development of Creekside Estates under the terms of this Agreement or otherwise.

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

Section 6.3. Duty to Defend Challenges to this Agreement.

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

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

c. In the event of any such challenge, each Party shall bear its own attorney fees and other litigation expenses.

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

e. Notwithstanding subsection b, the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. However, nothing herein obligates the Developer,

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

DEVELOPER

DONALD MILLER

Donald M Miller

Dated: May 13, 2005

CITY OF WINTERS

By: *[Signature]*
Mayor

Dated: July 29, 2005

Attest:

Nancy G. Miller
City Clerk

Approved as to form:

[Signature]

John Wallace, City Attorney

[Signature] 6-15-05

Tim Taylor of Somach, Simmons & Dunn, Attorneys for Developer

.....

This Agreement was adopted by Ordinance No. 2005-03 of the City Council of the City of Winters. Ordinance No. 2005-03 was adopted on May 17, 2005 and is effective on the date it is recorded with the Yolo County Recorder.

LIST OF EXHIBITS:

- EXHIBIT A Location Map of Creekside Property
- EXHIBIT B Legal Description of Creekside Property
- EXHIBIT C Creekside Estates Tentative Subdivision Map
- EXHIBIT D Conditions of Approval, including Mitigation Measures
- EXHIBIT E School Agreement
- EXHIBIT F Map of 3.45+/- Parcel

Attachments to First Amendment to DA are not included; they will be included with the Restated and Amended Development Agreement.

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

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

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

THE CATHOLIC BISHOP OF SACRAMENTO,

A CALIFORNIA CORPORATION SOLE

[CREEKSIDE PROPERTY]

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**AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF WINTERS AND THE CATHOLIC
BISHOP OF SACRAMENTO RELATING TO THE DEVELOPMENT
OF THE PROPERTY COMMONLY KNOWN AS
THE CREEKSIDE PROPERTY**

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

FACTS AND CIRCUMSTANCES

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

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.
2. The Developer desires to develop certain residential property in a manner which promotes the goals envisioned by the City for its residents.
3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Creekside 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,

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Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 15, Chapter 15.72 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer's predecessor in interest Donald Miller entered into a Development Agreement that was recorded in the Official Records of Yolo County as Document No. 2005-0063213-00, which Development Agreement has been amended by a First Amendment to Development Agreement entered into by and between the City and Developer dated December 20, 2011 and recorded in the Official Records of Yolo County as Document No. 2012-0011280 (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 the Original Development Agreement and to further update the term and conditions to reflect the current needs and objectives of the Parties.

6. 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 rights to develop the Creekside Estates 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.

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ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

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

1. "Agreement" means this Development Agreement.
2. "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.
3. "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.
4. "Creekside Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Creekside Estates Tentative Subdivision Map is attached as Exhibit C.
5. "Creekside Estates" means the single family residential development created by the Creekside Estates Tentative Subdivision Map.
6. "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also

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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. "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 April, 2016, and as amended from time to time.

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

11. "Developer" means the CATHOLIC BISHOP OF SACRAMENTO, a California corporation sole, and/or its successor(s) or assigns in interest.

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.

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

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

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

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

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

21. "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. "Property" means the property commonly known as the Creekside Property, Yolo County Assessor's Parcel No. 003-430-12 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres), and is more specifically shown and described in Exhibits A and B.

23. "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property, including but not limited to roads, sewer and water lines and traffic signals.

24. "Vesting law" means any State or federal law 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

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.

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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 Creekside Property, Yolo County Assessor's Parcel Nos. 003-430-12 and 003-120-04. 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 Creekside Property will, in most instances, be referred to simply as the "Property."

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

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

b. The term of this Agreement shall expire on December 20, 2022, 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

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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 Creekside Estates Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

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

b. No assignment shall be effective until the City approves the assignment, which shall not be unreasonably withheld provided:

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

2. The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

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

d. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable

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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 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.

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

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Section 15.72.210 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

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Section 2.7 Whole Agreement; Conflict with Municipal Code.

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

b. The provisions of Title 15, Chapter 15.72 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

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

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

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

Section 2.9 Notices.

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

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

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

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

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

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

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Attn:
Telephone (916) 733-0100

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 inure to the benefit of and be

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binding upon the Parties hereto and their respective successors and assigns.

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

Section 2.13 Unapproved Transfers Void. Any assignment or attempted Assignment that is inconsistent with Article 2 shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure,

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trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

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

1. This Amended and Restated Development Agreement (Ordinance No. 2017-3 adopted _____, 2017 and effective on _____, (the "Enacting Ordinance")).

2. A rezoning of the Property from Single Family Residential, 6,000 square foot average minimum (R-2) to Single Family Residential, 7,000 square foot average minimum (R-1).

3. The Creekside Estates Tentative Subdivision Map consisting of approximately forty (40) single family residential lots on 13.7 acres. Of the forty (40) residential lots, four (4) must be made available via offer to sell to local builders as defined by the City's land use regulations.

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

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

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

Section 3.2 Consistency with General Plan.

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

Section 3.3 Vested Rights of Developer.

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

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

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2. Exclusion from subsequently enacted building moratoria.

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

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

5. The Mitigation Measures.

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

Section 3.4 Rights Retained by the City.

a. Except as specifically provided in section 3.3, 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. Discretionary approvals.

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

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

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to the Property under its general police power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

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

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded and it is

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specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

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

Section 3.6 Commencement and Phasing of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred ~~eighty five (1580)~~ days after this Agreement is recorded, submit for approval by the City the final map for Creekside 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.~~

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

Section 3.7 Maximum Number of Building Permits Per Year.

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a. The Developer may apply for and receive as many single family building permits as there are lots in Creekside Estates.

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 as set forth in Section 2.3.

b.c. Any building permit applied for but not issued prior to a forthcoming building code change (update) shall be allowed to be built under the then-current building code in effect at the time of application. Building for which a permit was applied for must be obtained within six (6) months and must be commenced within one (1) year.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Creekside Estates. Prior to the approval of a final subdivision map for Creekside Estates (or a phase, as the case may be), the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it commits to build and dedicate to the City or applicable public agency, the public improvements required either in all of Creekside 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, including but not limited to the Subdivision Map Act (Gov't Code §§66410 *et seq.*) and the City's Subdivision Ordinance (Winters Municipal Code Title 16).

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

Section 3.9 Property for Public Improvements; Offsite Improvements.

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

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

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

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necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by State law, use its power of eminent domain to acquire the property interests. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

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

a. In some instances, the Developer, 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 Creekside Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property owner to

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

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

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

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the *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. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

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

1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only

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those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

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

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

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a Building Permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a Building Permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the Building Permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of \$1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of \$5,000, then the Developer will be credited with having paid that fee for 5 building permits.).

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Section 3.11 Subsequent Discretionary Approvals.

To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those Discretionary Approvals in the same manner as any other person applying for such Discretionary Approvals from the City. All Application fees then applicable for the type of Discretionary Approvals shall apply.

Section 3.12 Review of Agreement.

Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Section 15.72.230 (Periodic Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

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

Section 3.14 Subdivision Maps.

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

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ARTICLE 4

DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

The Developer acknowledges and agrees that the mitigation of the impact of Creekside Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that it has entered into an agreement to mitigate the impact on schools with the Winters Joint Unified School District, which agreement was recorded _____, 20__ as Instrument No. 20 - _____ of Official Records County of Yolo.

Comment [DD1]: An agreement has not been reached with the school district. An agreement will need to be reached before the City signs the document.

Section 4.2 Park Fees.

Developer shall satisfy its 0.9 acre neighborhood park obligation as follows: Developer shall pay a park fee, in the aggregate totaling Two Hundred Twenty-Nine Thousand Five Hundred Dollars (\$229,500.00) as follows: Developer shall pay the sum of _____ Dollars (\$) at the time of issuance of a building permit for each residential structure.

Comment [DD2]: Impact fees are in the process of being revised. Developer will pay the fee in effect at the time of signing of the DA.

Section 4.3 Public Safety Facility.

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

Section 4.4 Intentionally Omitted.

Section 4.5 Affordable Housing.

Lot numbers 7 and 9 as shown on the Creekside Estates Tentative Subdivision Map will be divided in two to create four (4) affordable housing units

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(one (1) moderate income, two (2) low income, and one (1) very low income unit). In addition, Developer is required to create two (2) affordable units off-site. In lieu of constructing two (2) off-site affordable housing units, the Developer, at the time of filing of the final map for Creekside Estates (or the first phase thereof, as the case may be) pay to the City **Two Hundred Thousand Dollars (\$200,000)**. This constitutes the remaining amount owed by Developer, from its original obligation to pay the City Two Hundred Thousand Dollars (\$200,000.00) in lieu of constructing the two (2) off-site affordable units. The Developer previously paid the City **Two Hundred Thousand Dollars (\$200,000)** in affordable housing in-lieu fees pursuant to the Original Agreement.

Section 4.6 **Urban Water Management Plan.**

a. An expanded and upgraded Wastewater Treatment Plant ("WWTP") may be needed in order to treat the wastewater from the Creekside Estates Subdivision, and other developing properties within the City. The Developer of the Winters Highlands Subdivision, a separate residential development proceeding in the City has paid for the cost of (i) development of an update to the January 2007 Wastewater Treatment Plant Master Plan, which will update the available capacity of the WWTP and will determine what the next phase of WWTP expansion should be, when that phase will be triggered by development, and what the associated tasks and costs are for that expansion, and (ii) development and completion of a financing plan for the WWTP expansion, to establish the funding mechanism(s) required for the expansion.

b. The City anticipates that the update to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan shall be used to develop updated Impact Fees to fund the cost of improvements to the WWTP that

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may be needed in order to treat the wastewater from the Creekside Estates Subdivision and other developing properties within the City. Such updated Impact Fees will also take into account the cost of funding the update to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan. Developer shall pay such Impact Fees as are in effect at the time the payment is made.

Section 4.7 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 Creekside Estates 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 which will not delay the issuance of a certificate of occupancy.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 City's Remedies.

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

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

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

3. Specific performance as provided in subsection c.

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

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

b. Default by the Developer.

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

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

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requirements of Government Code section 65868 and Section 15.72.270 of the Winters Municipal Code.

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

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

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

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

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

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

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Section 5.3 Developer's Remedies.

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

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

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

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

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

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential,

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

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ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of the Creekside 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. 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

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relating to this Agreement or the operations of the Developer in the development of Creekside Estates under the terms of this Agreement.

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

Section 6.3 Duty to Defend Challenges to this Agreement.

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

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

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

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

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

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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

DRAFT—FOR DISCUSSION PURPOSES

"DEVELOPER"
CATHOLIC BISHOP OF
SACRAMENTO, a California
corporation sole

By: _____

Its: _____

Dated: _____

"CITY"
CITY OF WINTERS, a municipal
corporation

By: _____
Mayor

Dated: _____

Attest: _____
City Clerk

Approved as to form:

Ethan Walsh, City Attorney

.....

DRAFT—FOR DISCUSSION PURPOSES

LIST OF EXHIBITS

- A Location Map of Creekside Property
- B Legal Description of Creekside Property
- C Creekside Estates Tentative Subdivision Map
- D Conditions of Approval, Including Mitigation Measures
- E School Agreement

NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION

Notice is hereby given that an Amended and Restated Development Agreement for development of the property, commonly known as the Creekside Estates, between the **City of Winters and Catholic Bishop of Sacramento, a California Corporation**, is being proposed, pursuant to Government Code sections 65864 through 65869.5 in order to make amendments to the term of the existing Development Agreement, make certain amendments to the financial contributions to be made by the Developer, clarify the affordable housing requirements for the development, and make other technical amendments.

The project consists of residential development (40 lots) on approximately 13.75 acres, Yolo County APNs 003-430-12 and 003-120-04, located southwest of the intersection of Grant Avenue/Highway 128 and Main Street along Dry Creek.

The Amended and Restated Development Agreement and will be reviewed by the Planning Commission at a special meeting in the City Council Chambers, at 318 First Street, on June 13, 2017 at or after the hour of 6:30 p.m. Comments and recommendations from the Planning Commission on the Amended and Restated Development Agreement are scheduled for review by the Winters City Council on July 5, 2017, at a separately noticed meeting.

Prior to the scheduled Planning Commission hearing, copies of the staff report, the Amended and Restated Development Agreement will be available for review at City Hall. Any person having an interest in any property affected by the proposed Amended and Restated Development Agreement may appear at the above hearing either in person or by counsel or both and may be heard in support of his/her position. If you challenge the decision of this project in court, pursuant to Government Code section 65009, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Winters at or prior to the public hearing.

The purpose of the public hearing will be to give citizens an opportunity to make their comments known. If you are unable to attend the public hearing, you may direct written comments to the City of Winters, City Clerk, 318 First Street, Winters, CA 95694 or you may telephone (530) 795-4910, extension 101, before the meeting on June 13, 2017. In addition, a public information file is

ATTACHMENT D

available for review at the above address between the hours of 8:00 a.m. and 5:00 p.m. on weekdays.

If you plan on attending the public hearing and need a special accommodation because of a sensory or mobility impairment/disability, please contact Nanci Mills, City Clerk, (530) 795-4910, extension 101 to arrange for those accommodations to be made.

For more information regarding this project, please contact David Dowswell, Contract Planner, at (530) 794-6714 or at dave.dowswell@cityofwinters.org.

RESOLUTION NO. 17-01

**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 CREEKSIDE ESTATES
SUBDIVISION MAP**

WHEREAS, the Winters Planning Commission held a duly noticed public hearing on June 13, 2017 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 existing Development Agreement, which includes the First Amendment, for the Creekside Estates Subdivision, including extending the existing term from 2019 to 2022, amendments regarding the provisions of certain infrastructure improvements and financial contributions for related purposes; and

WHEREAS, the Planning Commission found the amendments in the Amended and Restated Development Agreement were not significant enough 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 IS 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 the City Council approve the Amended and Restated Development Agreement for Creekside Estates Subdivision, attached hereto as Exhibit 1.

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 does not require any environmental review.

ATTACHMENT E

PASSED AND ADOPTED, by the Planning Commission of the City of Winters at a special meeting on the 13th day of June 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chairperson

ATTEST:

Planning Commission Secretary

ORDINANCE NO. 2017-03

**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 THE
CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION
SOLE FOR THE CREEKSIDE ESTATES SUBDIVISION**

WHEREAS, the City of Winters (“City”) and Donald Miller (“Prior Developer”) entered into a Development Agreement, approved by Ordinance No. 2005-03 on May 17, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0063213-00, (“Development Agreement”), for land located south of Grant Avenue (SR128) and west of Main Street and commonly known as the Creekside Estates Property (the “Project”), within the boundaries of the City of Winters; and

WHEREAS, the City and the Catholic Bishop of Sacramento, a California Corporation Sole (“Developer”), which acquired the property from the Prior Developer, entered into a First Amendment to the Development Agreement (hereinafter referred to as the “First Amendment”) to Development Agreement dated January 17, 2012 and recorded in the Official Records of Yolo County as Document No. 2012-0011280-00.

WHEREAS, Developer and City desire to incorporate the clarifications and modifications of the Development Agreement and the First Amendment, 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 June 13, 2017 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 _____, 2017, 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”).

ATTACHMENT F

A. That the Amendment promotes the public health, safety, and welfare of the community because the Amendment 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 3. CEQA. The City Council finds and determines that it can be seen with certainty that adoption of this Ordinance will not have a significant effect on the environment. Thus, the adoption of this Ordinance is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Yolo County Recorder's Office within five (5) working days of adoption of this Ordinance.

SECTION 4. RECORDATION. Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Amendment, the City Clerk shall record with the County of Yolo Recorder a copy of this Amendment.

SECTION 5. 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 6. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

The foregoing ordinance was introduced on December 20, 2011, and passed and adopted during a regular meeting of the City Council of the City of Winters on January 17, 2012, by the following vote to wit:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

EXHIBIT "A"
AMENDMENT TO THE DEVELOPMENT AGREEMENT

To be included with Council report

