City of Winters Planning Commission
Teleconference Meeting
Tuesday, July 26, 2022, 6:30 PM

AGENDA

Community Development Department
Contact Phone Number (530) 794-6714
Email: kirk.skierski@cityofwinters.org

Chairperson: Gregory Contreras
Vice Chair: Lisa Baker
Commissioners: Ramon Altamirano, Judith Arce
Nancy Northrup
Chris Rose
Jessica Smith

Kathleen S. Trepa, City Manager
Senior Planner, Kirk Skierski
Ellena Branson, Deputy City Clerk

PLEASE NOTE – The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Planning Commission Chair, Commissioners, or City staff. Public comment is limited to 3 minutes, and speakers will be asked to state their name and address.

Zoom Information

https://us02web.zoom.us/j/88184650967?pwd=WktNZXZEdHNuQlVXYkFETTBoVUtxQT09

Meeting ID: 881 8465 0967
Passcode: 892134

1. Call to Order: City of Winters Planning Commission Meeting
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. PUBLIC COMMENTS

   At this time, any member of the public may address the Planning Commission on matters, which are not listed on this agenda. Citizens should reserve their comments for matters listed on this agenda at the time the item is considered by the Planning Commission. An exception is made for members of the public for whom it would create a hardship to stay until their item is heard. Those individuals may address the item after the public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

5. APPROVAL OF AGENDA

5.1 June 28, 2022 Minutes

20220628Minutes

5.2 Minutes from the regular meeting of May 24, 2022

20220524 Minutes.docx

6. PUBLIC HEARINGS

6.1 Winters Highlands – Public Hearing and Consideration by the Winters Planning Commission of the Proposed First Amendment to Amended and Restated Development Agreement between the City of Winters, HBT of Winters Highlands LLC and Meritage Homes of California, Inc.
Staff_Report_DA_Ammendment
Resolution2022_07_with_Exhibit_A

7. MISCELLANEOUS
8. PRESENTATIONS
9. STAFF COMMENTS/INFORMATION ITEMS
10. COMMISSION COMMENTS/REPORTS

Under Government Code Section 54952.2, may include: (1) a brief announcement; (2) a question for clarification; (3) a brief report on his or her own activities; (4) request staff to report back to the body at a subsequent meeting concerning any matter, or (5) take action to direct staff to place a matter of business (or issue) on a future agenda.

11. ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the regular meeting of the Planning Comission was posted on the City of Winters website at www.cityofwinters.org and Commission Members were notified via e-mail of its' availability. A copy of the foregoing agenda was also posted on the outside public bulletin board at City Hall, 318 First Street , and made available to the public during normal business hours.

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Kirk Skierski, Community Development Department Senior 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 including payment of the applicable Appeal fee, 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, comments are limited to three minutes.
REVIEW OF TAPE RECORDING OF MEETING: Planning Commission Meetings are recorded. Recordings are available for public review on the City of Winters website.
GENERAL NOTES: Meeting facilities are accessible to persons with disabilities. To arrange aid or services to modify or accommodate persons with a disability to participate in a public meeting, contact the City Clerk.

Minutes of the Regular Meeting of the Planning Commission
Held June 28, 2022, 6:30pm Via ZOOM

Chairman Gregory Contreras called the meeting to order at 6:31pm.

Roll Call

Present: Commission Members Altamirano, Arce, Rose, Smith, Vice Chair Baker, Chair Contreras

Absent: Commission Members Northrup

Staff: Senior Planner Kirk Skierski, Deputy City Clerk Ellena Branson, City Manager Kathleen Salguero Trepa, Assistant City Attorney Martin de los Angeles

PLEDGE OF ALLEGIANCE:
Led by Commission Member Commissioner Altamirano.

PUBLIC COMMENTS:
None

APPROVAL OF AGENDA:
Senior Planner Skierski recommended that item 6.2 be continued to the July 26, 2022 Planning Commission Meeting.

Motion by Vice Chair Baker to approve the agenda with the continuance of item 6.2 to the July 26, 2022 Planning Commission meeting, second by Commission Member Altamirano. The motion carried with the following roll call vote:

AYES: Commission Members Altamirano, Arce, Rose, Smith, Vice Chair Baker, Chair Contreras
NOES: None
ABSENT: Commission Members Northrup
ABSTAIN: None

PUBLIC HEARINGS:
6.1 Barsotti Vacation Rental (STR-2022-02)
Item introduced by Senior Planner Kirk Skierski
Public hearing opened at 6:40pm
Public hearing closed at 6:41pm

Vice Chair Baker requested staff report back on vacation rental properties vs community access to housing.

Commissioner Arce inquired about the City's potential limits on vacation rental approval applications.

Commissioner Smith inquired about how the decision would be made to limit or change vacation rental applications and approvals.

Motion by Vice Chair to approve the Barsotti Vacation Rental project (STR-2022-02) based on the recommended findings and subject to the draft conditions of approval, second by Commission Member Altamirano. The motion carried with the following roll call vote:

AYES: Commission Members Altamirano, Arce, Rose, Smith, Vice Chair Baker, Chair Contreras
NOES: None
ABSENT: Commission Members Northrup
ABSTAIN: None

The following Item was continued to the July 26, 2022 Regular Meeting of the Winters Planning Commission

6.2 Winters Highlands – Public Hearing and Consideration by the Winters Planning Commission of the Proposed First Amendment to Amended and Restated Development Agreement between the City of Winters, HBT of Winters Highlands LLC and Meritage Homes of California, Inc.

MISCELLANEOUS

None

PRESENTATIONS

None

STAFF COMMENTS/INFORMATION ITEMS

None

COMMISSION COMMENTS/ REPORTS

Vice Chair Baker requested staff bring back a report addressing vacation rental property applications approved vs. total number of available housing stalk. (Commissioner Rose, Arce, and Altamirano supported the report)

ADJOURNMENT

Meeting end time 6:56pm

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Ellena Branson, Secretary

Minutes of the Regular Meeting of the Planning Commission
Held May 24, 2022, 6:30pm Via ZOOM

Chairman Gregory Contreras called the meeting to order at 6:34pm.

Roll Call

Present: Commission Members Arce, Smith, Vice Chair Baker, Chair Contreras
Absent: Commission Members Altamirano, Northrup, Rose

Staff: Senior Planner Kirk Skierski, City Manager Kathleen Salguero Trepa, Assistant City Attorney Martin de los Angeles

PLEDGE OF ALLEGIANCE:
Led by Commission Member Commissioner Altamirano.

PUBLIC COMMENTS:
None

APPROVAL OF AGENDA:
5.1 Minutes of the Regular Meeting of the Planning Commission Held on March 22, 2022, 6:30pm via ZOOM

Motion by Vice Chair Baker to approve the agenda, second by Commission Member Altamirano. The motion carried with the following roll call vote:

AYES: Commission Members Arce, Smith, Vice Chair Baker, Chair Contreras
NOES: None
ABSENT: Commission Members Altamirano, Northrup, Rose
ABSTAIN: None

PUBLIC HEARINGS:

6.1 Review of City FY 2022/23 Capital Improvement Program for Conformity with the General Plan

Item introduced by Senior Planner Kirk Skierski
Public hearing opened at 6:43pm
Public hearing closed at 6:44pm

Vice Chair Baker provided several comments regarding the Sewer Master Plan, the Water Master Plan, the Pavement Plan, the Bike and Pedestrian Plan, and the General Plan update.

Public Hearing reopened at 6:59

Kate Laddish commented on what is involved in the ADA Transition Plan

Public Hearing Closed at 7:02pm

Motion by Vice Chair to determine that the conformity determination of the FY2022/23 Capital Improvement Program is not a project pursuant to Section 15378 of the California Environmental Quality Act (CEQA) Guidelines and therefore is not subject to CEQA; and find the proposed FY2022/23 Capital Improvement Program to be in conformance with the City's General Plan, second by Commission Member Smith. The motion carried with the following roll call vote:

AYES: Commission Members Arce, Smith, Vice Chair Baker, Chair Contreras
NOES: None
ABSENT: Commission Members Altamirano, Northrup, Rose
ABSTAIN: None

6.2 Public Hearing for Herrera Vacation Rental (STR-2022-02) 418 Third Street.
Item introduced by Senior Planner Kirk Skierski

Public hearing opened at 7:10

Applicant Natalia Herrera thanked staff for responsiveness during application process

Public hearing closed at 7:12

Vice Chair Baker inquired about parking requirements.

City Manager Trepa clarified that the Planning Commission can make offsite parking requirements as a part of the recommendation.

Vice Chair Baker requested renters of the property park in the driveway

Chair Contreras asked about the 3rd bedroom window that was noted in the staff report, agreed on the driveway parking recommendation by Vice Chair Baker.

Commission Member Smith asked about enforceability of parking requirements on public roads.

Motion by Vice Chair Baker to Approve a Vacation Rental Permit (STR-2022-01) to allow for an unhosted short-term vacation rental use within an existing single-family dwelling

located at 418 Third Street (APN: 003-143-014) within the R-1 zoning district based on the recommended findings and subject to the draft conditions of approval (INCLUDE PARKING)Determine the proposed project to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines; and, second by Commission Member Arce. The motion carried with the following roll call vote:

AYES: Commission Members Arce, Smith, Vice Chair Baker, Chair Contreras
NOES: None
ABSENT: Commission Members Altamirano, Northrup, Rose
ABSTAIN: None

MISCELLANEOUS
None
PRESENTATIONS

STAFF COMMENTS/INFORMATION ITEMS
None

COMMISSION COMMENTS/ REPORTS

ADJOURNMENT
Meeting end time 7:31pm

_____
Ellena Branson, Secretary

Planning Commission
Staff Report

To: Chair and Planning Commissioners

Date: July 26, 2022

From: Kirk Skierski, Senior Planner

Subject: Winters Highlands – Public Hearing and Consideration by the Winters Planning Commission of the Proposed First Amendment to Amended and Restated Development Agreement between the City of Winters, HBT of Winters Highlands LLC and Meritage Homes of California, Inc.

Recommendation:
Staff recommends the Planning Commission:

1. Receive a Staff Report on the proposed First Amendment to Amended and Restated Development Agreement between the City of Winters, HBT of Winters Highlands LLC and Meritage Homes of California, Inc. ("First Amendment"); and

2. Continue to conduct a Public Hearing to consider comments on the First Amendment; and

3. Adopt Planning Commission Resolution No. PC 2022-07 recommending that the Winters City Council adopt an ordinance approving the First Amendment to Amended and Restated Development Agreement for development of the property commonly known as the Winters Highlands property between the City of Winters and HBT of Winters Highlands, LLC and Meritage Homes of California, Inc. pursuant to Government Code sections 65864 through 65869.5.

Background:
In 2015, the City executed an Amended and Restated Development Agreement with GBH-Winters Highlands, LLC ("Homes by Towne" or "HBT") regarding the Winters Highlands Subdivision, provided that certain amendments can be made to the Development Agreement. Subsequently, Meritage purchased a portion of the property of the Winters Highlands Subdivision to develop. On August 3, 2021, HBT and Meritage entered into a Partial Assignment and Assumption of the Development Agreement, and certain developer rights and obligations under the Development Agreement ("DA") were assigned to and assumed by Meritage. On August 3, 2021, the City Council approved Resolution 2021-50 approving Meritage's Final Map No. 4507 for Winters Highlands Subdivision Phases III, IV, and V (Hideaway). If the Commission approves Planning Commission Resolution No. PC 2022-07, then the First Amendment will proceed to the September 6, 2022, City Council meeting, along with the Final Map for HBT's 52 alley-

loaded lots for Winters Highlands Subdivision Phases IV and V.

The First Amendment is intended to update the DA to clarify HBT and Meritage's rights and obligations due to the assignment, reflect revisions to the DA agreed to between the City and HBT regarding park-related obligations and costs, HBT's funding obligations, and the management of the Preserve (the parcel located across the street from Shirley Rominger Intermediate School). The changes to the DA in the First Amendment are outlined below.

DISCUSSION:

Development Agreement

The proposed First Amendment to the DA includes the following changes to the DA:

1. Reallocation of Flood Fees: The current DA requires HBT to pay $1,175,340 in General Plan Flood Overlay Area drainage impact fees ("Flood Fees") to fund drainage improvements. The City and HBT have determined that flood mitigation is not needed for the Winters Highlands Subdivision project. The First Amendment reallocates the payment towards Three Oaks Park. In addition, language related to the payment of Flood Fees is deleted from the proposed First Amendment. HBT has already paid $200,000 in Flood Fees. Once the First Amendment is executed, the City will return the $200,000 payment to HBT.

2. Annual Building Permit Cap: The current DA caps the number of building permits that may be issued for single-family residential units in the Winters Highlands Subdivision to 100 within a calendar year to provide for orderly growth in the City and to ensure there is sufficient infrastructure and utilities that can accommodate such growth. The cap does not apply to the construction of deed-restricted moderate-income housing. The proposed First Amendment specifies that the cap of 100 building permits collectively applies to Meritage and HBT, but gives the City's Chief Building Official or his designee the discretion to continue to issue additional permits beyond the 100-permit cap.

3. Affordable Housing Units: The current DA requires the construction of 18 moderate income affordable housing units. Currently, HBT is allowed to apply for and receive building permits for these affordable housing units anytime, but HBT must complete the construction of the affordable housing units within each phase of the Winters Highlands Subdivision before HBT can be issued building permits for market rate units within a subsequent phase. The proposed First Amendment would increase the number of moderate-income affordable housing units that must be constructed to 23. HBT is responsible for the development of 7 affordable housing units in Phases I, IA, and II of the Winters Highlands Subdivision, and Meritage is responsible for 16 units in Phases III, IV, and V. The proposed First Amendment clarifies that each developer must complete the construction of the affordable housing units within each phase that it is responsible for before that developer can pull permits for market rate units in a subsequent phase. In other words, the timing of one developer's construction schedule of its required affordable housing units will not affect the other developer's ability to receive

building permits for market rate units, as HBT and Meritage will both construct market rate units in Phases IV and V.

4. Affordable Housing Fee: The current DA requires, in addition to the construction of the affordable housing units, that HBT pay an Affordable Housing Fee of $2 million to the City. The $2 million will be amortized over the market-rate single family lots in the Winters Highlands Subdivision on a per unit basis. The proposed First Amendment allocates the payment of the Affordable Housing Fee among HBT and Meritage. There are 383.5 market rate units in the Winters Highlands Subdivision across Phases I, IA, II, III, IV, and V. HBT and Meritage will each pay $5,215.13 on each market rate unit; 50% ($2,607.56) will be paid upon recordation of the final map and 50% ($2,607.56) will be paid at or before close of escrow for the sale of each market-rate unit.

5. Dedication of Affordable Housing Apartment Site (Lot A): The current DA requires HBT to dedicate Lot A, 2-acre property, located at Moody Slough Road and Taylor Street, to the City for the development of affordable family housing units. The proposed First Amendment acknowledges that the dedication and conveyance has already been satisfied.

6. Oversizing of Public Improvements: The current DA allows HBT to recover costs for oversizing improvements by assessing benefitting properties through a reimbursement agreement with the City, for a term up to 15 years. The current DA also allows for cost recovery of the oversizing through the use of development impact fee revenues through a separate reimbursement agreement with the City. The proposed First Amendment allows HBT to enter into either type of reimbursement agreement for a term up to 20 years. This Reimbursement Agreement has already been entered into. On January 28, 2022, the City Council approved a Reimbursement Agreement to assess benefitting properties for the following oversized off-site public improvements that include: (1) the West Main Street Sewer Pump Station, (2) a sewer force main that extends from the Sewer Pump Station north of the Wastewater Treatment Facility, and (3) a storm drain pump station and improvements to the Rancho Arroyo Detention Pond.

7. Three Oaks Park Improvements: The current DA requires HBT to construct a linear park, known as Three Oaks Park, on Lots X, W and V in three different phases. Under the current DA, HBT is responsible for a total park contribution ("Park Cost Obligation") of $3,292,049 in lieu of payment of park impact fees, Quimby Act fees, or park land dedication. Construction on Lots W and X have already been completed. The current DA provides that Three Oaks Park must be constructed in accordance with a City-approved design and the City's Public Works Improvement Standards and Construction Specifications. If actual costs to construct Three Oaks Park exceed HBT's Park Cap Obligation, then HBT and the City must cooperate or a redesign of improvements as to not exceed HBT's total park contribution or the City can choose to pay for the difference.

   The proposed First Amendment increases HBT's total Park Cost Obligation from $3,292,049 to $4,467,389, which represents the reallocation of $1,175,340 of Flood Fees towards the Park Cost Obligation. HBT and the City Engineer have

extensively reviewed the costs expended on Three Oaks Park to date and projected costs to construct the remaining portion of the park on Lot V. The parties agree that the costs expended by HBT to construct Lots X and W total $2,850,796 and will be deducted from HBT's Park Cap Obligation. The proposed First Amendment would also provide that within 180 days from the date the City approves a concept park for Lot V, HBT must submit final design and construction drawings for the Lot V improvements, with construction to be completed within one year following final design.

8. Urban Water Management Plan: The current 2015 DA requires HBT to pay $90,000 towards the costs to prepare a City Urban Water Management Plan (UWMP). On November 6, 2018, the City Council adopted development impact fees pursuant to a Development Impact Fee Nexus Study dated September 24, 2018 (2018 Study) that identified a $90,000 UWMP as water project cost to serve new development. Developers pay the water impact fee (that funds water projects) with each unit, which includes a pro-rata share for the UWMP cost. Therefore, no additional fee should be collected from the Winters Highlands (Stone's Throw) Subdivision. Accordingly, on September 15, 2020, the City Council waived HBT's $90,000 payment for the UWMP.

   The proposed First Amendment reflects the action taken by Council, that HBT is no longer responsible for the $90,000 payment.

9. Condition of Approval No. 39, Mitigation Measure 4.3-2(a). The Condition of Approval for the Winters Highlands Subdivision project requires HBT to develop and implement a management plan for the Preserve. The Proposed First Amendment clarifies that HBT must use its diligent best efforts to satisfy this condition of approval by December 31, 2022, of this year. If the deadline is not met, the City is not required to issue building permits for the 52 alley-loaded lots to be developed by HBT in Phases IV or V. The City, HBT, and the Wildlife Heritage Foundation have met multiple times to discuss and review management plan since late last year. The Wildlife Heritage Foundation is currently working to update the management plan to meet that deadline.

Environmental Analysis:

An Environmental Impact Report (EIR) was prepared for this project and certified by the City Council on April 4, 2006 (Resolution 2006-08). An Addendum was prepared consistent with Section 15164 of the CEQA Guidelines. The Addendum found that the proposed amendments to the Development Agreement are not significant to require preparation of a subsequent EIR.

Public Communication:

Pursuant to Winters Municipal Code section 15.72.160, notice of the public hearing was given at least 10 days prior to the public hearing by: (1) publication in the *Winters Express* on June 15, 2022, and (2) mailed notice to all property owners within 300 feet of the Winters Highlands Subdivision on June 14, 2022. The public hearing was continued on June 28, 2022, to July 26, 2022.

Staff Recommendation:
Staff is recommending that the Planning Commission:

1. Receive a Staff Report on the proposed First Amendment to Amended and Restated Development Agreement between the City of Winters, HBT of Winters Highlands LLC and Meritage Homes of California, Inc.; and

2. Continue to conduct a Public Hearing to consider comments on the First Amendment; and

3. Adopt Planning Commission Resolution No. 2022-07 recommending that the Winters City Council adopt an ordinance approving the First Amendment to Amended and Restated Development Agreement for development of the property commonly known as the Winters Highlands property between the City of Winters and HBT of Winters Highlands, LLC and Meritage Homes of California, Inc. entered into, pursuant to Government Code sections 65864 through 65869.5.

Attachments:
1. Resolution No. 2022-07
2. Exhibit A – First Amendment

Planning Commission Resolution No. 2022 – 07

A Resolution of the Planning Commission of the City of Winters Recommending that the City Council Approve the First Amendment to the Development Agreement with HBT of Winters Highlands LLC and Meritage Homes of California, Inc. Relating to the Winters Highlands Subdivision Project

Whereas, an Amended and Restated Development Agreement by and between the City of Winters and GBH-Winters Highlands, LLC ("Development Agreement") was recorded in the Office of the Yolo County Recorded on April 20, 2015, and effective on said date;

Whereas, on August 3, 2021, HBT of Winters Highlands LLC ("HBT") and Meritage Homes of California, Inc. ("Meritage") entered into a Partial Assignment and Assumption of Development Agreement, pursuant to which certain rights, duties and obligations under the Development Agreement were assigned and assumed by Meritage; and

Whereas, HBT, Meritage, and the City desire to amend the Development Agreement to reflect HBT and Meritage's obligations and rights under the Development Agreement; and

Whereas, pursuant to Government Code, Sections 65867 and 65868, the Planning Commission must conduct a duly noticed public hearing to consider the proposed amendment to the Development Agreement; and

Whereas, the procedure for proposing an amendment to the Development Agreement are governed by Winters Municipal Code section 15.72.220; and

Whereas, notice was provided in accordance with Chapter 15.72 of the Winters Municipal Code and state law; and

Whereas, the City of Winters Planning Commission continued the public hearing scheduled on and noticed for June 28,2022 to July 26, 2022; and

Whereas, on July 26, 2022, the City of Winters Planning Commission continued to conduct the public hearing to consider the amendment to the Development Agreement, and the Planning Commission received comments from the developers, City staff, and members of the general public, and

Whereas, the Planning Commission has carefully considered all pertinent testimony and the staff report presented during the public hearing for the proposed amendment to the Development Agreement.

Now, Therefore Be It Resolved by the Winters Planning Commission that:

1. The Planning Commission recommends the City Council of the City of Winters approve the Development Agreement attached hereto as Exhibit A.

2. The Planning Commission finds that the proposed amendment to the Development Agreement is in the public interest and reasonably related to the public welfare for future development of the Winters Highlands Subdivision Project.

3. The Planning Commission finds that adoption of the proposed amendment to the Development Agreement is consistent with the City of Winters General Plan because the amendments provide clarifications that will allow for the completion of the project, which has already been found to be consistent with the General Plan. The amendments are intended to update the Development Agreement to clarify HBT and Meritage's rights and obligations due to the assignment, reflect revisions to the Development Agreement agreed to between the City and HBT regarding park-related obligations and costs, HBT's funding obligations, and the management of the Preserve.

4. An Environmental Impact Report (EIR) was prepared for this project and certified by the City Council on April 4, 2006 (Resolution 2006-08). An Addendum was prepared consistent with Section 15164 of the CEQA Guidelines. The Addendum found that the proposed amendments to the Development Agreement are not significant to require preparation of a subsequent EIR.

It is hereby certified that the foregoing Planning Commission Resolution No. 2022-07 was duly adopted on a motion by Commissioner _____ and seconded by Commissioner _____, at a regular meeting of the City of Winters Planning Commission held on the 26th day of July 2022, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

_____
Gregory Contreras, Chairperson

Attest:

_____
Ellena Branson, Planning Commission Secretary

Planning Commission Resolution No. 2022 – 07
Exhibit "A"

First Amendment to the Development Agreement with HBT of Winters Highlands LLC and Meritage Homes of California, Inc.

(see attachment)

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

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

No Fee for recording pursuant
To Government Code Section 27383

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

FIRST AMENDMENT TO

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN THE CITY OF WINTERS

AND

HBT OF WINTERS HIGHLANDS LLC

AND

MERITAGE HOMES OF CALIFORNIA, INC.

FIRST AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF WINTERS,
HBT OF WINTERS HIGHLANDS LLC AND
MERITAGE HOMES OF CALIFORNIA, INC.

This First Amendment to Amended and Restated Development Agreement ("First Amendment") is entered into by the City of Winters, a municipal corporation, ("City"), HBT of Winters Highlands LLC, a California limited liability company ("HBT"), and Meritage Homes of California, a California corporation ("Meritage") ("HBT" and "Meritage" are referred to collectively herein as "Developer") is entered into on this _____ day of _____ _____, 2022. City, HBT and Meritage may be referred to individually herein as "Party" or collectively as "Parties."

RECITALS

A. City entered into a Development Agreement, dated and recorded May 30, 2006, as Document No. 2006-0020954-00, a First Amendment to Development Agreement, dated December 21, 2006, and recorded in the Office of the Yolo County Recorder on January 19, 2007, as Document No. 20070002146-00, a Second Amendment to Development Agreement, dated February 19, 2009, and recorded March 16, 2009, as Document No. 2009-0007219-00, and an Amended and Restated Development Agreement dated as of April 16, 2015, and recorded April 20, 2015 as Document No. 2015-0010120-00 (the "Development Agreement") with Developer's predecessor-in-interest, GBH-WINTERS HIGHLANDS, LLC, a California limited liability company ("GBH") providing for the development of certain property commonly known in the City of Winters as the Winters Highlands Property, Yolo County Assessor's Parcel Nos. 030-220-17, 030-220-19, and 030-220-50 (the "Winters Highlands Property"), with a multi-phased residential project with ancillary open space and on-site and off-site improvements (the "Project"). All rights, title and interest in, to and obligations under the Development Agreement were immediately thereafter assigned by GBH to HBT's parent company, Towne Development of Sacramento, Inc., a California corporation, (which serves as the manager of HBT) and then to HBT.

B. On August 3, 2021, HBT and Meritage entered into a Partial Assignment and Assumption of Development Agreement, which was recorded on August 31, 2021, as Document No. 2021-0032786 (the "Partial Assignment Agreement") pursuant to which certain rights, duties and obligations under the Development Agreement were assigned to and assumed by Meritage.

C. HBT and City desire to amend certain provisions of the Development Agreement with respect to the remaining obligations of HBT under the Development Agreement. The Development Agreement obligates HBT to provide and/or pay for, in whole or in part, certain improvements, as well as to pay any drainage Impact Fees adopted or enacted by the City to fund

drainage improvements in the General Plan Flood Overlay Area (the "Flood Fees"). The total amount of the Flood Fees for the Project required to be paid by HBT pursuant to Section 4.11 of the Development Agreement is One Million One Hundred Seventy-Five Thousand Three Hundred Forty Dollars ($1,175,340). As of the date of this First Amendment, HBT has paid City $200,000 in Flood Fees. City and HBT have determined that the Flood Fees are not needed for flood mitigation for the Project and should be re-allocated to the on-site park improvements described in Section 4.2 of the Development Agreement which will directly benefit the Project.

D. In addition, the Parties have determined that certain other amendments and/or clarifications to the Development Agreement should be made to reflect changes in circumstances.

AGREEMENTS

1. Incorporation of Recitals. The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

2. Section 2.9. Notices. Paragraph c. of Section 2.9 is hereby revised to read in its entirety as follows:

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

To HBT: HBT of Winters Highlands LLC
11060 White Rock Road, # 150
Rancho Cordova, CA 95670
Attn: Jeffrey Pemstein
Tel: (916) 262-8805
Fax: (916) 782-2666

To Meritage: Meritage Homes of California, Inc.
860 Stillwater Rd., Suite 200A
West Sacramento, CA 95605
Attn: Jeremy Goulart, Vice-President – Land
Tel: (916) 840-3559"

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

Section 3.7 is hereby revised in its entirety to read as follows:

"a. To provide for orderly growth within the City of Winters, HBT and Meritage, collectively, shall not be entitled to apply for and receive Building Permits for more than 100 single-family residential units in a single calendar year for the Winters Highlands Subdivision, except that this limitation shall not apply to the deed-restricted moderate-income units as described below. After Building Permits for 100 single-family residential units for the Winters Highlands Subdivision have been issued within a single calendar year, the City may, in its sole discretion, and as

determined by the City's Chief Building Official or his or designee, continue to issue additional permits for the subdivision for said calendar year.

b. No Building Permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement, unless and until the City and Developer enter into a subsequent Development Agreement. This provision shall survive the termination of this Agreement.

c. Twenty-three (23) moderate-income deed-restricted affordable housing units (the "Affordable Units") shall be constructed in the Winters Highlands subdivision. HBT has developed or will develop seven (7) Affordable Units in Phases 1, 1A and 2 of the Winters Highlands Subdivision, and Meritage will develop a total of sixteen (16) Affordable Units in Phases 3, 4 and 5 of the Winters Highlands Subdivision, as set forth in the Partial Assignment Agreement. HBT and Meritage may each apply for and receive building permits for these units at any time during the term of the Agreement. Meritage must complete the construction of the Affordable Units within each Phase of the subdivision that it is responsible for before Meritage may be issued building permits for market rate units within any subsequent Phase. HBT must complete the construction of the Affordable Units within each Phase of the subdivision that it is responsible for before HBT may be issued building permits for market rate units within any subsequent Phase.

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

e. In order to satisfy the City's needs for affordable housing in accordance with the approved Affordable Housing Plan for the Winters Highlands Subdivision, in addition to construction of the Affordable Units as set forth in Section 3.7(c), Developer shall do the following:

1. Pay an Affordable Housing fee of Two Million Dollars ($2,000,000), which shall be amortized over the market-rate single-family lots in the Winters Highlands Subdivision on a per-unit basis, in accordance with the schedule as set forth below. Fifty percent (50%) of the per unit fee will be paid at recordation of each Final Map equal to the number of market-rate lots included within the Final Map; the remaining fifty percent (50%) shall be paid, on a per-unit basis, at or prior to the Close of Escrow for the sale of each market-rate unit. The City may, in its discretion, record a covenant, deed of trust or similar security instrument against each market-

rate lot to secure payment of the portion of the Affordable Housing fee due at the Close of Escrow.

Based on a total of 383.5 market rate units for the Winters Highlands Subdivision, the total Affordable Housing fee to be paid on each market-rate unit is Five Thousand Two Hundred Fifteen Dollars and Thirteen Cents ($5,215.13), Two Thousand Six Hundred Seven Dollars and Fifty-Six Cents ($2,607.56) of which shall be paid prior to recordation of the Final Map for each Phase in accordance with the following schedule and amounts:

Phase 1 – 72 Market Rate Units - $187,744.46 - fully paid by HBT
Phase 1A – 48 Market Rate Units - $125,162.97 – fully paid by HBT
Phase 2 – 78.5 Market Rate Units - $204,693.81 – fully paid by HBT
Phase 3 – 56 Market Rate Units - $245,023.47 – to be paid by Meritage
Phase 4 – 71 Market Rate Units - $185,136.90 - (45 to be paid by Meritage, 26 to be paid by HBT)
Phase 5 – 58 Market Rate Units - $151,238.59 (32 to be paid by Meritage, 26 to be paid by HBT)

At or prior to the close of escrow on the sale of each market-rate unit, Developer shall cause to be paid to City the remaining amount of Two Thousand Six Hundred Seven Dollars and Fifty-Seven Cents ($2,607.57).

2. Dedication of the Affordable Apartment Site (Lot A) – Developer shall grant fee title to that certain property designated as Lot A on the Tentative Subdivision Map ("Lot A") to the City, to be used for the development of affordable multifamily units. The grant deed and any other documents necessary to effect conveyance of Lot A to the City shall be recorded concurrently with recordation of the Final Map for Phase 1 of the Subdivision. As of the date of the First Amendment to the Development Agreement, this requirement was satisfied.

3. Construct the twenty-three (23) for-sale Affordable Units, se set forth in paragraph c. above, which shall be offered for sale to qualified households of moderate income (as defined in Health and Safety Code section 50093) at an Affordable Housing Price (as that term is defined in Health and Safety Code section 50025.5) within the Subdivision. The sale and affordability of the Affordable Units shall be restricted as required by the City's Inclusionary Housing Ordinance, set forth in the Winters Municipal Code Chapter 17.200. The construction of these units will keep pace with market-rate construction, as the City will not approve subsequent Final Maps, pursuant to Section 3.6(b). until all affordable units within the currently approved map(s) are constructed and offered for sale to qualified homebuyers."

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

Paragraph b. of Section 3.10 is hereby revised in its entirety to read as follows:

"There are two sources from which the Developer may be reimbursed for oversizing improvements, as set forth below. In neither case shall the term of the agreement exceed twenty (20) years.

1. By way of a separate written 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 benefitting property owner to reimburse the Developer its *pro rata* share of the cost of the oversizing of improvements.

2. By way of a separate written agreement between the City and the Developer which will provide that the Developer will be reimbursed from Impact Fees. Such Impact Fees shall come only from the fund into which fees for that type of improvement are paid. (Example: If the costs of an oversized sewer main is to be reimbursed through impact 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.)"

5. Section 4.2. On-Site Park Improvements. Paragraphs c. and d. of Section 4.2 (On-Site Park Improvements) are hereby amended in their entirety to read as follows:

"c. HBT shall improve and construct the linear park, to be called Three Oaks Park, concurrently with the construction of each Phase of the Subdivision, such that Lots X and W shall be developed concurrently with Phases 1 and 2. The park shall be constructed in accordance with plans approved by the City, and in accordance with the City Public Works Improvement Standards and Construction Specifications. As of the date of the First Amendment to the Development Agreement, the development of the park on Lots X and W has been substantially completed, and the City Engineer has performed an audit of park costs for Lots X and W, and the Parties agree, and the City approves, the park costs for Lots X and W are Two Million Eight Hundred Fifty Thousand Seven Hundred Ninety-Six Dollars ($2,850,796). This amount shall be deducted from HBT's park cost obligation. Within 180 days from the date of final approval by the City of the concept plan for Lot V of the linear park, HBT shall submit final design and construction drawings for the improvements on Lot V with construction to be completed within one (1) year after City approval of such final design and construction drawings. If actual costs exceed the estimated cost set forth in paragraph d., below, as such costs have been verified by the City Engineer, the parties will either (i) cooperate on a re-design of the improvements such that the

actual cost does not exceed the estimated cost, or (ii) the City may elect, in its sole and absolute discretion, to fund the difference between the actual cost and estimated cost for construction in accordance with the approved plan. Upon request, HBT shall provide to City Engineer documentation substantiating its actual costs for construction of Lots X, W and V for the linear park, as well as all costs for the improvements set forth in subsection a. of Section 4.3.

d. HBT's total park cost obligation is increased from THREE MILLION TWO HUNDRED NINETY-TWO THOUSAND FORTY-NINE DOLLARS ($3,292,049) to FOUR MILLION FOUR HUNDRED SIXTY-SEVEN THOUSAND THREE HUNDRED EIGHTY-NINE DOLLARS ($4,467,389) (including infrastructure improvements, construction, administration and site equipment). The improvement, construction and dedication of the linear park by HBT shall be in lieu of the payment of any park impact fees or park land dedication or Quimby Act fees otherwise required by City ordinance of the Developer of the Project."

6. Section 4.7 Urban Water Management Plan. Section 4.7 is hereby deleted in its entirety.

7. Section 4.11 Paragraphs c. and d. of Section 4.11 (Flood Overlay Zone; Payment of Impact Fees) are hereby deleted.

8. Condition of Approval No. 39, Mitigation Measure 4.3-2(a).

This condition of approval for the Project requires HBT to develop and implement a management plan for the Preserve (as defined in the Development Agreement and which includes the Conditions of Approval and the Environmental Impact Report prepared for the Project). HBT shall use its diligent best efforts to fully satisfy this condition of approval no later than December 31, 2022. If this deadline is not met, City shall not be obligated to issue any building permits for the lots to be developed by HBT in Phase IV or Phase V of the Project until this condition is fully satisfied.

9. Within ten (10) business days of the execution of this First Amendment by all parties, City shall return to HBT Two Hundred Thousand Dollars ($200,000) which had been HBT as a flood impact fee under paragraph c. of Section 4.11 as it existed prior to this First Amendment.

10. Except as modified by this First Amendment, all terms and conditions of the Development Agreement remain unchanged and are in full force and effect.

11. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

[**Signatures on Following Page**]

CITY
"CITY"
CITY OF WINTERS, a California municipal corporation:

BY: _____
Wade Cowan, Mayor

ATTEST:

BY: _____
Kathleen S. Trepa, City Clerk

APPROVED AS TO FORM:

BY: _____
Ethan Walsh, City Attorney

DEVELOPER
"HBT"
HBT of Winters Highlands, LLC, a California limited liability company

By: Towne Development of Sacramento, Inc., its Manager

BY: _____
Jeffrey Pemstein, Vice President

"**MERITAGE"**
Meritage Homes of California, Inc., a California corporation

BY: _____
Jeremy Goulart – Vice President

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, 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 of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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