

RESOLUTION NO. 2008-313

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF ROCKLIN
APPROVING A FEE DEFERRAL AND LETTER OF CREDIT
AGREEMENT WITH WHITNEY ROCKLIN L.P.
(Whitney Ranch Apartments)

WHEREAS, St. Anton Partners LLC and their affiliated limited partnership Whitney Rocklin L.P. have received approval of a design review entitlement and use permit to construct a 156-unit apartment complex, 154 units of which will be available for low income and very low income tenants (the "Project");

WHEREAS, to further the City's goal to provide affordable housing opportunities in the Northwest Rocklin annexation area and to ensure that the Developer secures the necessary financing to complete construction of the Project, the City desires to defer payment of certain development fees.

NOW, THEREFORE, the City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin does hereby approve and authorize the City Manager to execute the Whitney Ranch Apartments Project Fee Deferral and Letter of Credit Agreement in the form attached hereto as Exhibit "A".

Section 2. The City Clerk is hereby directed to record or have recorded the Fee Deferral and Letter of Credit Agreement in the Office of the Placer County Recorder when the document has been fully executed and notarized.

Section 3. This resolution shall not be approved or valid unless and until the following resolutions and ordinances are approved:

- (1) Design Review, DR-2008-10;
- (2) Conditional Use Permit, U-2008-08;
- (3) Third Amendment to Development Agreement, DA-2001-01C;
- (4) Resolution of the Redevelopment Agency of the City of Rocklin Approving a Loan to Whitney Rocklin L.P. in the amount of \$1,730,000; and
- (5) Resolution of the Redevelopment Agency of the City of Rocklin Approving a Loan to Pacific Housing, Inc. in the amount of \$2,100,000.

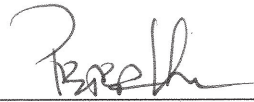
PASSED AND ADOPTED this 9th day of December, 2008, by the following roll call vote:

AYES: Councilmembers: Storey, Magnuson, Lund, Yuill, Hill

NOES: Councilmembers: None

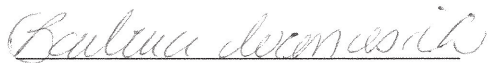
ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None



Peter Hill, Mayor

ATTEST:



Barbara Ivanusich, City Clerk

Public\Clerk\Reso\CC Reso Whitney Ranch Fee Deferral Agreement 12-2-08.doc

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:



PLACER, County Recorder
JIM MCCAULEY

DOC- 2009-0026235-00

Wednesday, APR 01, 2009 12:15:56

NOC \$0.00

Ttl Pd \$0.00

Rcpt # 0001902917

had/HD/1-11

City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677
Attn: City Clerk

No fee for recording document
Per Government Code Section 27383

**WHITNEY RANCH APARTMENTS PROJECT FEE DEFERRAL AND
LETTER OF CREDIT AGREEMENT**
(Whitney Rocklin L.P.)

This WHITNEY RANCH APARTMENTS PROJECT FEE DEFERRAL AGREEMENT ("Agreement") is entered into this 9th day of December, 2008, by and between the CITY OF ROCKLIN, a municipal corporation (the "City") and Whitney Rocklin L.P. a California limited partnership (the "Developer").

RECITALS

1. The City Council of the City of Rocklin approved the Developer's multifamily affordable housing project known as Whitney Ranch Apartments located at the southwest corner of the intersection of Wildcat Boulevard and West Ranch View Drive. Assessor's Parcel Numbers 017-172-006 and a portion of 017-172-005 (the "Project"). With the exception of two (2) manager units, the entire 156 unit apartment complex will be restricted to be leased to low and very low income occupants.

2. Developer is required by City ordinances and conditions of approval to pay certain development fees prior to issuance of building permits for the Project. These fees are identified on Exhibit 1 to this agreement attached hereto and incorporated herein by this reference. These fees are hereinafter referred to as the "Development Fees".

3. Developer has informed City that if it is required to pay all development fees before obtaining a building permit for the Project, the Project will be financially infeasible.

4. To facilitate the development of affordable housing in the City, meet the requirements of state housing regulations and law, and to fulfill the City's General Plan Housing

Elements goals for providing affordable housing for low and very low income families and individuals, the City and Developer acknowledge that it is in the best interests of City and Developer to enter into this Agreement.

AGREEMENT

5. Deferral of Development Fees. City agrees to defer payment of the fees listed in Exhibit 1 to this Agreement (hereinafter the "Development Fees). City shall defer payment of Developer's Development Fees until the earlier of the following occurrences: (a) eighteen (18) months from the date the first building permit is issued; or (b) before the City issues the first certificate of occupancy (temporary or permanent) for the Project. The current estimate of the amount of the Development Fees to be deferred is Eight Hundred Seventy Five Thousand Seven Hundred Eighty Four dollars. (\$875,784)

6. Letter of Credit. Developer agrees to provide financial security for the deferral of the Development Fees in the form of an irrevocable standby letter of credit in the amount of one hundred and ten percent of the estimated cost of the Development Fees. Prior to issuance of the first building permit for the Project, Developer shall either pay all of the then programmed Development Fees, or tender to City an irrevocable standby letter of credit in the amount of Nine Hundred Sixty Three Thousand Three Hundred Sixty Two Dollars (\$963,362) (the "LOC"). The LOC shall name the City of Rocklin as the beneficiary, and shall provide that the beneficiary has the right to collect the funds secured by the letter of credit for payment of the Development Fees, if Developer fails to pay the City the Development Fees when required by this Agreement.

7. Term of LOC. The LOC shall be issued beginning on the date that the City issues the first building permit for the Project, and shall expire upon Developer's full payment of the Development Fees to the City. If the LOC is based on an annual term, it shall be a condition of the LOC that it shall be automatically renewed without amendment for a period of one year from the present or each future expiration date, unless at least sixty (60) days prior to the expiration date, notice of expiration is given to the City by the Issuer. Upon expiration with notice or termination of the initial LOC, any replacement LOC shall be for an effective period and term of not less than one (1) year) and it shall be a condition of the LOC that it shall be automatically renewed without amendment for a period of one year from the present or each future expiration date ("Anniversary Date"), unless at least sixty (60) days prior to the Anniversary Date, notice of expiration is given to the City by the Issuer. The Developer expressly agrees to renew, extend or replace, or cause the LOC to be renewed, extended or replaced annually thereafter so long as the LOC is required to be maintained and on deposit with the City under the terms of this Agreement. Each renewal or replacement of the LOC (or any extension thereof) shall be provided to the City not later than thirty (30) calendar days prior to each applicable Anniversary Date

8. LOC Rating. The LOC shall be provided by an institution rated and continuously maintaining a rating of "A" or higher, without regard to numerical or other modifiers or, upon prior written approval of City, by an institution having a split rating,

the highest of which shall be at least "A" and the lowest of which shall be at least "BBB" inclusive of any modifier for that category, or, upon prior written approval of the City, by any institution approved by the City.

9. Termination Upon Payment of Fees and Release of Security Upon payment of the Development Fees, this agreement shall terminate and the City shall immediately surrender the LOC to Developer. The City shall execute and record a release, quit claim deed, or other necessary document to ensure that title to the property has been cleared of this obligation and agreement once fully satisfied.

10. Other Security. With the prior, written approval of the City, the LOC may also consist of a replacement or substitute letter of credit, cash deposit, money market funds, line of credit, or other alternate form of security which, in the sole discretion of the City, is deemed to be a cash equivalent (hereinafter "Other Security") and which shall in all other respects, and other provisions, be fully acceptable to and approved by the City in its sole discretion.

11. LOC Rating Downgrade. If both of the ratings (or if a single rating has been assigned, then if such single rating) for the institution supplying the LOC then in effect falls below the "A" category, and a substitute or replacement LOC meeting the requirements herein is not delivered to the beneficiary by Developer within thirty days of the date that such downgrade in ratings is announced, the City shall draw the full amount of the LOC then available without any further notice to Developer.

12. Entirety of Agreement. This Agreement contains the entire agreement of City and Developer with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.

13. Attorney's Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this

Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

14. Counterparts. This Agreement may be signed in two or more counterparts which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original instrument as against any party who signed it.

15. Governing Law. This Agreement shall be governed by and construed in accordance with California law. All disputes must be brought in whichever of the Superior or Municipal Courts of the State of California, Placer County or the Federal Court in the Eastern District of California, has subject matter jurisdiction over the dispute.

16. Notices. All notices of any kind which either party may desire to serve on the other in connection with this Agreement shall be in writing and may be served by personal delivery or registered or certified mail, return receipt requested, or by air courier service. Any notices so served by registered or certified mail, or by air courier, shall have postage fully prepaid, and be addressed to the other party, as follows:

TO CITY: City of Rocklin
 Attn: City Manager
 3970 Rocklin Road
 Rocklin, CA 95677

TO DEVELOPER:

Whitney Rocklin L.P.,
A California limited partnership
Attn: Robert Lawler
1801 I Street, Suite 200
Sacramento, California 95811

17. Binding on Successors. This Agreement shall be binding on all successors in interest of Developer.

18. Recording. This Agreement shall be recorded in the Office of the Placer County Recorder.

SIGNATURES ON FOLLOWING PAGE

The Parties hereto have executed this Agreement as of the first date listed above.

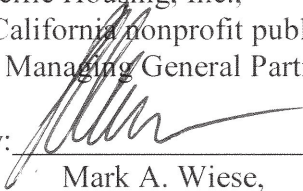
CITY OF ROCKLIN,
a Municipal Corporation:

By: 
Carlos A. Urrutia
City Manager

DEVELOPER:

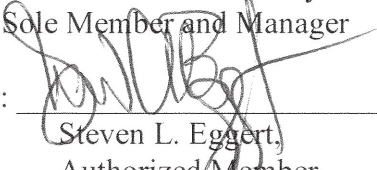
Whitney Rocklin L.P.,
a California limited partnership

By: Pacific Housing, Inc.,
a California nonprofit public benefit corporation,
its Managing General Partner

By: 
Mark A. Wiese,
President

By: Anton Whitney, LLC,
a California limited liability company,
its Co-General Partner

By: St. Anton Capital, LLC,
a California limited liability company,
its Sole Member and Manager

By: 
Steven L. Eggert,
Authorized Member

APPROVED AS TO FORM:


Russell A. Hildebrand, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer }

On 1-9-09 before me, Rhona Wu, Notary Public,
Date Here Insert Name and Title of the Office

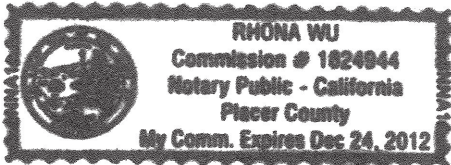
personally appeared Carlos A. Urrutia
Name(s) of Signer(s)

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 [Handwritten Signature]
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: Resolution No. 2008-313

Document Date: 12-9-08 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this statement is attached reads as follows:

Name of Notary: Rhona Wu

Date Commission Expires: December 24, 2012

Commission Number: # 1824944

County of Commission: Placer County

State of Commission: California

Manufacturer Number: NNA1

Place of Execution: Rocklin, California

Signature:  Date: 1-16-09

Firm Name: City of Rocklin

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento



On January 7, 2009 before me, M. Skelton, Notary Public,
Date Here Insert Name and Title of the Officer

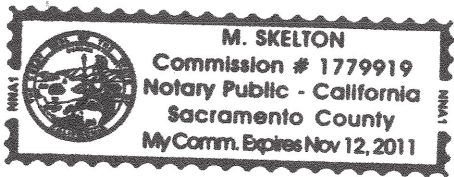
personally appeared Steven L. Eggert, Mark A. Wiese
Name(s) of Signer(s)

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 [Handwritten Signature]
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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

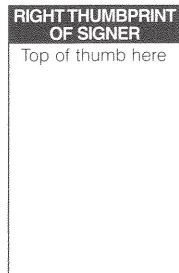
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

EXHIBIT 1
DEVELOPMENT FEES

1. NWRAA GDP & Finance Plan: Northwest Rocklin Annexation Area Community Park Fee
2. RMC Chapter 3.16, Article II – Traffic Circulation Surcharge
3. RMC Chapter 3.16, Article III – Fee for Traffic Signalization and Control
4. RMC Chapter 3.16, Article IV—Traffic Impact Fee
5. RMC Chapter 3.16, Article V—Impact Fee Adjustments
6. NWRAA GDP & Finance Plan: Whitney Ranch Interchange Fee
7. RMC Chapter 3.16, Article VII—Public Facilities Impact Fee