

CITY OF YUBA CITY
STAFF REPORT

Date: May 18, 2021
To: Honorable Mayor & Members of the City Council
From: Development Services Department
Presentation By: Benjamin Moody, Development Services Director

Summary:

Subject: Richland Village Affordable Housing – Regional Housing Authority Funding Request

Recommendation: A. Approve a funding amount contingent on the successful project approval from the state Affordable Housing and Sustainable Communities program, for a proposed multiphase 176-unit affordable housing complex and authorize the City Manager to execute any associated documentation related to the commitment of the funding.

B. Establish a funding commitment time duration of two years, to coincide with the validity of the initial development plan approval period. Any extensions of the funding duration are to be null and void without reconsideration by Council.

C. Adopt a Resolution to execute a Cooperation Agreement between The City of Yuba City, the Regional Housing Authority, and Sutter County Affordable Homes to Comply with the Requirements of grant application under the Affordable Housing and Sustainable Communities Funding Program for Richland Village Affordable Housing.

Fiscal Impact: Varies depending on City Council selected Fiscal Alternative impacting the following accounts:

- Low-Mod Income Housing Asset Fund
 - Homes 2 Families Capital and Maintenance Accounts
 - SB2 Permanent Local Housing Allocation (PLHA)
-

Purpose:

To assist in the production of additional affordable housing in Yuba City.

Background:

In October 2020 the City received a development plan application for the entitlement of a multiphase 176-unit apartment complex from the Regional Housing Authority (RHA) located in the Richland Housing area, adjacent to the airport, see Attachment B.

The development titled “Richland Village” proposes to construct, a 176-unit affordable apartment home community on a 4.9-acre site at 470 Bernard Drive (APN 53-470-091) in Yuba City. The

community will consist of one, two, and three-bedroom units in eight residential buildings, with a 2,795 square foot community center, and outdoor amenity spaces.

- *The project was originally planned for phased construction due to financing limit, but with recent changes to the low-income tax code with the passing of the federal stimulus law the project is proposed to be constructed in one phase at an estimated cost of \$66M*

The Developer, Sutter County Affordable Homes (SCAH), is an affiliate 501(c)(3) Public Non-Profit entity of the RHA. They are applying for project financing through the California Department of Housing and Community Development’s (HCD), Affordable Housing and Sustainable Communities (AHSC) program, with the applications being due June 2021. If AHSC funds are awarded, the RHA will then apply for Low-Income Housing Tax-Credits to the California Tax Credit Allocation Committee. Additionally, RHA is considering applying for HCD-HOME funds in an upcoming funding round.

In January 2021 an initial funding request was presented before the City Council. During that meeting it was agreed that an Ad Hoc Committee would be established in order to further discuss the Richland Village project and RHA’s plans in the community.

Analysis:

In order to finance the Richland Village development project, the RHA is applying through a competitive program with HCD. With the idea that the project will be more competitive for available funding, if matching funds are designated in the application.

To help provide those matching funds, the RHA has requested City funding, contingent on the successful application, via funds designated in the City’s Low-Mod Income Housing Asset Fund, Homes 2 Families Capital & Maintenance Accounts, and funds to be received through the City’s SB2 Permanent Local Housing Allocation (PLHA).

The current fund balance for those programs are:

| | |
|--|--|
| Low-Mod Housing Asset Fund | \$1,093,971.30 |
| Home 2 Families Capital & Maintenance Account | Capital Reserves: \$9,460.61 Operating Reserves: \$287,282.43 |
| SB2 – PLHA (50% of available funds* are currently designated for housing) | \$886,825 of \$1,867,000 total 5-year projection |

*SB2 funding is received in annual allotments based on actual revenues, with the City planning to retain 5% for administration.

Low-Mod Housing Asset Fund

The Low-Mod Housing Asset Fund is from the City’s sale of homes located on the north side of Bridge Street, for the future roadway widening project. The homes were originally purchased with Homes 2 Families (H2F) funds, for low-income housing, with origins tied to the past Redevelopment Agency (RDA). With the purchase of the homes for roadway purposes using Road Impact Fees, the proceeds were set aside into the Low-Mod Housing Asset Fund.

The Low-Mod Housing Asset Fund can be used for new deed restricted affordable housing projects and construction of homeless shelters. The funds cannot be used for routine maintenance or general operations of affordable housing projects or homeless shelters.

Homes 2 Families Account

The Homes 2 Families Account (H2F) is held by the RHA and was generated through rent payments from tenants. H2F was a City-initiated project where 19 single-family homes were purchased and then managed by the Regional Housing Authority. The City currently has nine H2F homes in the program.

SB2 – PLHA

Senate Bill 2 (SB2) was signed into law by Governor Brown on September 29, 2017 and took effect January 1, 2018. It created a \$75 fee on certain real estate transaction documents when they are recorded, capped at \$225 per transaction. The fee does not apply to sales of residential and commercial properties but instead to other transactions like mortgage refinancing and county fixture filings.

SB2 established the Building Homes and Jobs Trust Fund, beginning in 2019, which allocates funds to local governments for eligible housing activities, with the intent to provide a permanent source of funding to local governments for housing-related projects and programs that address the unmet housing needs in their communities. This funding program is referenced as SB2 – Permanent Local Housing Allocation (PLHA).

At the Council's July 21st, 2020 meeting, Council designated 50% of the available annual funds, for the predevelopment, development, acquisition, rehabilitation, and preservation of affordable, multifamily rental housing projects identified by the City. With the other 50% designated to help fund supportive services and programs for the local homeless population and other qualified homeless services providers.

If there is a shift in priorities, staff is able to re-allocate 10% of the funding without having to amend the PLHA Funding Plan with HCD. Should Council decide to allocate funding in excess of the 10% threshold, Council will need to approve an updated PLHA Funding Plan and submit to HCD for review and approval prior to distributing the funding.

- *Additional consideration/formalities may be required with the use of this funding source, with the funds being received in annual allotments vs. a lump sum payment based on multiple years of accrual.*

Cooperation Agreement

Developer SCAH is applying for AHSC grant funding for (i) construction of the Richland housing project; (ii) the construction of certain sustainable transportation infrastructure (the "STI Improvements"); and (iii) the construction of certain transportation related amenities (the "TRA Improvements"); and (iv) certain costs related to the purchase of Yuba-Sutter Transit Authority fare passes and workforce development programming. In order to facilitate the grant funding process, SCAH is requesting the City confirm SCAH will be allowed to install certain improvements within the City's right of way. SCAH will be required to provide bonds, insurance, and be required to indemnify the City. If no grant funding is obtained, the Agreement will automatically terminate.

Fiscal Impact:

The funding request proposes to utilize available funds from the City:

- Low-Mod Housing Asset Fund: \$1,000,000
- Home 2 Families Capital & Maintenance Account: \$200,000
- SB2 – PLHA: \$1,000,000

Total request is \$2,200,000 for the entire 176-unit development.

The project cost for 176 units is estimated in the amount of \$66M when budgeting for the entire project, including relocation costs, financing terms/requirements, design, construction, fees, etc. Placing the cost at approximately \$375,000/unit.

The current 40-unit New Haven Apartment complex development is budgeted at an approximate cost of \$325,000/unit. In 2019 the average cost for an affordable housing unit in California was approximately \$480,000/unit. The highest in the nation. Portions of the high costs for affordable housing are attributable to prevailing wage requirements, high construction and material costs, owners/contractors meeting federal and state requirements, anticipated time delays and costs associated with project financing.



The RHA has worked with City staff to provide a project design that tries to find a balance between the lowest cost options and meeting federal and City design standards to produce a product that is attractive, durable, yet reasonably value engineered.

Low-Mod Housing Asset Fund

The requested amount would utilize the current majority of available Low-Mod Housing Asset Funds. At the June 4, 2019 City Council meeting, Council members expressed a willingness to reserve a minimum balance in the fund for potential “temporary” housing needs associated with

homelessness. Since that time funding associated with SB2 – PLHA and Federal CARES act funding have become available to help offset a small portion of those needs, but are potentially more restrictive in use.

Home 2 Families

The RHA proposes to reduce the H2F fund to a level that will remain viable to manage the remaining nine homes in the program.

SB2 – PLHA

The requested amount would utilize approximately 56% of the total available SB2 – PLHA funds. Thus, reducing the available funds for homelessness related items to 44% under the program.

- *The RHA recognizes that this is a substantial request and therefore will respectfully accept any amount the City Council is willing to commit towards the project. With the basis that the higher the funding match provided increases the project's competitiveness and ultimate likelihood of receiving grant funding.*

The RHA is also anticipating to approach Sutter County to request the deferral and/or waiver of a portion of their development impact fees to aid the project application and financing. Sutter County's current multi-family impact fee is \$2,577/unit, totaling approximately \$455,000 for improvements, with the community center.

Should the project be awarded and proceed, the project would be subject to standard City development costs, including; building, planning, fire, infrastructure, utility, and impact fees.

- *City impact fees, (not including utility connection costs or levee fees), for the 176 multi-family units, with the Community Center total to approximately \$1.6M.*

Due to the competitive arena associated with the financing of affordable housing and the needed coordination of multiple funding sources for the project, the RHA requests Council ***consider the commitment of the funds to be valid up to the expiration of the entitlements.***

The City's Municipal Code establishes a two-year period from approval of the entitlement, with the ability for time extension requests to be considered by the Council prior to the expiration date, for the development plan to remain valid.

Based on feedback to reserve funding in the City's Low-Mod program, Affordable Housing needs in the community, and a willingness to provide as complete a match as possible for the success of the application, please see the following proposed funding alternatives for consideration.

Funding Alternatives:

- A. Full Requested amount - \$2.2M (\$1M Lod-Mod, \$200K Homes 2 Families, \$1M SB2)
- B. Alternative amount - \$1.5 (\$240K Low-Mod, \$200K Homes 2 Families, \$1.06M SB2)
- C. Alternative amount - \$887K (\$887 SB2)

Alternatives:

1. Propose alternative funding amounts and sources.
2. Propose alternative durations of commitment for funding.
3. Do not approve the request at this time.
4. Provide staff with further direction.

Recommendation:

A. Approve a funding amount contingent on the successful project approval from the state Affordable Housing and Sustainable Communities program, for a proposed multiphase 176-unit affordable housing complex and authorize the City Manager to execute any associated documentation related to the commitment of the funding.

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Attachments:

1. RHA Funding Request
2. Project Location / Site Plan
3. Proposed Development Project Elevations
4. Resolution (Exhibit A: Affordable Housing And Sustainable Communities Implementation And Cooperation Agreement)

Prepared By:

/s/ Benjamin K. Moody
Benjamin K. Moody
Development Services Director

Submitted By:

/s/ Dave Vaughn
Dave Vaughn
City Manager

Reviewed by:

Public Works

DL

Finance

SM

City Attorney

SLC by email

ATTACHMENT 1



REGIONAL HOUSING AUTHORITY

Serving the Cities of Live Oak, Yuba City and Colusa • Counties of Sutter, Nevada, Colusa and Yuba

1455 Butte House Road • Yuba City, CA 95993

Phone: (530) 671-0220 • Toll Free: (888) 671-0220 • TTY: (866) 735-2929 • Fax: (530) 673-0775

www.RegionalHA.org

December 1, 2020

Ben Moody
Development Services Director
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

**Re: Richland Village
470 Bernard Drive, Yuba City**

Dear Mr. Moody:

Per our recent discussions, this letter serves as a follow up to our conversations regarding the financial request of the City for the project. As you know, we are applying to State-HCD in February 2021 for financing from the Affordable Housing & Sustainable Communities (AHSC) program. Enclosed with this letter is a project description narrative for your reference.

For feasibility purposes, we must phase the project into two phases, with the first phase totaling 92 dwelling units and the community center.

As you know, local government funds are vital for the financial feasibility of the project, and for competitive purposes as well. The total hard construction cost of the first phase is approximately \$26,000,000. This number is a moving target as construction costs continue to rise, and equity rates in the capital markets continue to be unstable and lower than the pre-COVID days. However, the cost analysis was prepared in consultation with the General Contractor, and we used our analysis of current projects under construction and in the pipeline to confirm market costs. This project will trigger the higher of State prevailing wages, and federal Davis-Bacon wages.

The financial commitment requested of the City is the following:

- \$1,200,000 from the City's earmarked Low-Mod Income Housing Fund (formerly RDA)
- \$1,000,000 from the City's SB2 Permanent Local Housing Allocation (PLHA)

I would be happy to answer any questions you may have or provide any additional information you may need. Our application to State-HCD is due February 1, 2020, therefore a letter of commitment for our application would be ideal about a week prior, giving us enough time to package the application for submission.

Please feel free to call or email at any time, I can be reached at (530) 671-0220 ext. 113, or by email at g.becerra@regionalha.org.



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I look forward to hearing from you and partnering with the City on this project.

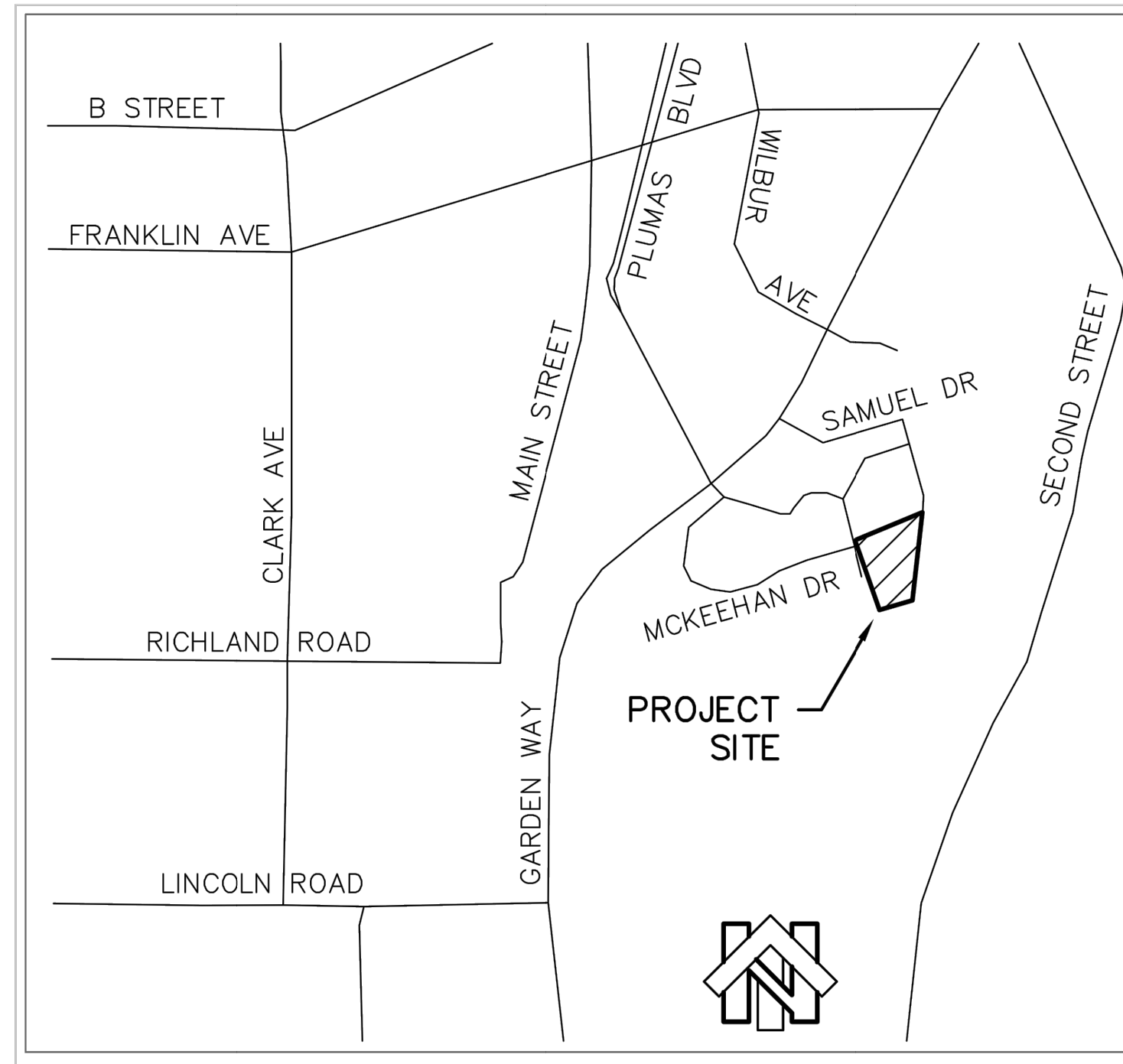
Sincerely,

Gustavo Becerra
Executive Director

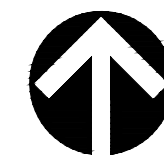
ATTACHMENT 2

RICHLAND VILLAGE

470 BERNARD DRIVE
YUBA CITY, CALIFORNIA



VICINITY MAP
NOT TO SCALE



PROJECT SUMMARY

PROJECT LOCATION JURISDICTION RICHLAND VILLAGE
470 BERNARD DRIVE YUBA CITY, CA.
YUBA CITY

APN 53-470-091
SITE AREA 4.92 ACRES

DWELLING UNITS

| | | |
|-----------------------------|------------|--------------|
| 1 BEDROOM UNITS | 88 | 50% |
| 2 BEDROOM UNITS | 44 | 25% |
| 3 BEDROOM UNITS | 44 | 25% |
| TOTAL DWELLING UNITS | 176 | UNITS |

PARKING SUMMARY

PARKING REQUIRED
1.1 SPACE PER UNIT

TOTAL PARKING REQUIRED = 194

PARKING PROVIDED

| | |
|------------------------|-----|
| FULL SIZE SPACES | 124 |
| COMPACT PARKING SPACES | 52 |
| ACCESSIBLE SPACES | 8 |

TOTAL PARKING PROVIDED: 184 SPACES
PARKING RATION: 1.1 SPACES PER UNIT

PROJECT DIRECTORY

DEVELOPER SUTTER COMMUNITY AFFORDABLE HOUSING
ATTENTION: GUS BECERRA
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EMAIL: tomsoc@aol.com

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BUILDING AREA SUMMARY

| | UNIT TYPES A-AC, A 1 BD/1BA | B-AC, B 2 BD/1BA | C-AC, C 3 BD/2BA | TOTAL UNITS PER BLDG | TOTAL UNIT / BLDG SQ. FT. | TOTAL COVERED WALKWAY | TOTAL INTERIOR AND COVERED WALKWAY |
|---------------------------------|-----------------------------------|---------------------|---------------------|-------------------------|---------------------------------|-----------------------------|---|
| LIVING SQ. FT. | 512 | 687 | 920 | | | | |
| STORAGE SQ. FT. | 20 | 20 | 28 | | | | |
| WH/CLOSET SQ. FT. | - | - | - | | | | |
| PATIO SQ. FT. (COVERED) | 65 | 98 | 142 | | | | |
| BUILDING & TYPE | | | | | | | |
| BUILDING 1 - TYPE 1 | 12 | 6 | 6 | 24 | 18,873 | 840 | 19,713 |
| BUILDING 2 - TYPE 4 | 12 | 6 | 6 | 24 | 18,873 | 630 | 19,503 |
| BUILDING 3 - TYPE 1 | 12 | 6 | 6 | 24 | 18,873 | 840 | 19,713 |
| BUILDING 4 - TYPE 4 | 12 | 6 | 6 | 24 | 18,873 | 840 | 19,713 |
| BUILDING 5 - TYPE 1 | 12 | 6 | 6 | 24 | 18,873 | 840 | 19,713 |
| BUILDING 6 - TYPE 5 | 10 | 5 | 5 | 20 | 16,873 | 630 | 19,503 |
| BUILDING 7 - TYPE 2 | 10 | 5 | 5 | 20 | 15,728 | 630 | 16,358 |
| BUILDING 8 - TYPE 3 | 8 | 4 | 4 | 16 | 12,583 | 420 | 13,003 |
| TOTAL RATIO | 88 50% | 44 25% | 44 25% | 176 100% | 141,849 | 5,670 | 147,519 |
| COMMUNITY CENTER | | | | 1 | 2,795 | 1,245 | 4,040 |
| LAUNDRY/MAINTENANCE/ STORAGE | | | | 1 | 572 | | 572 |
| BIKE SHELTERS | | | | 2 | 792 | | 1584 |

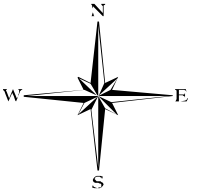
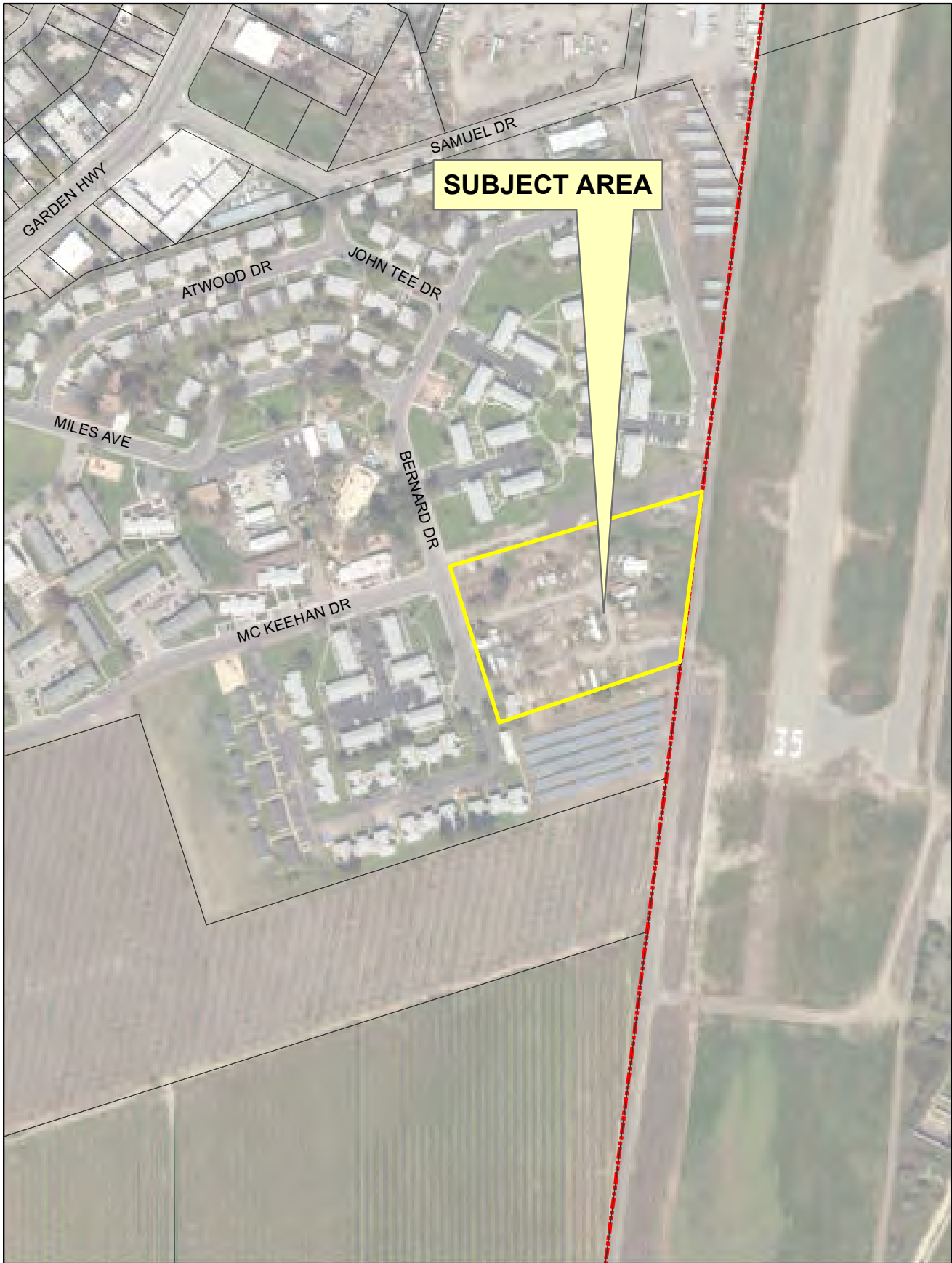
DECEMBER 4, 2020

Richland Village
470 Bernard Drive
Yuba City, California

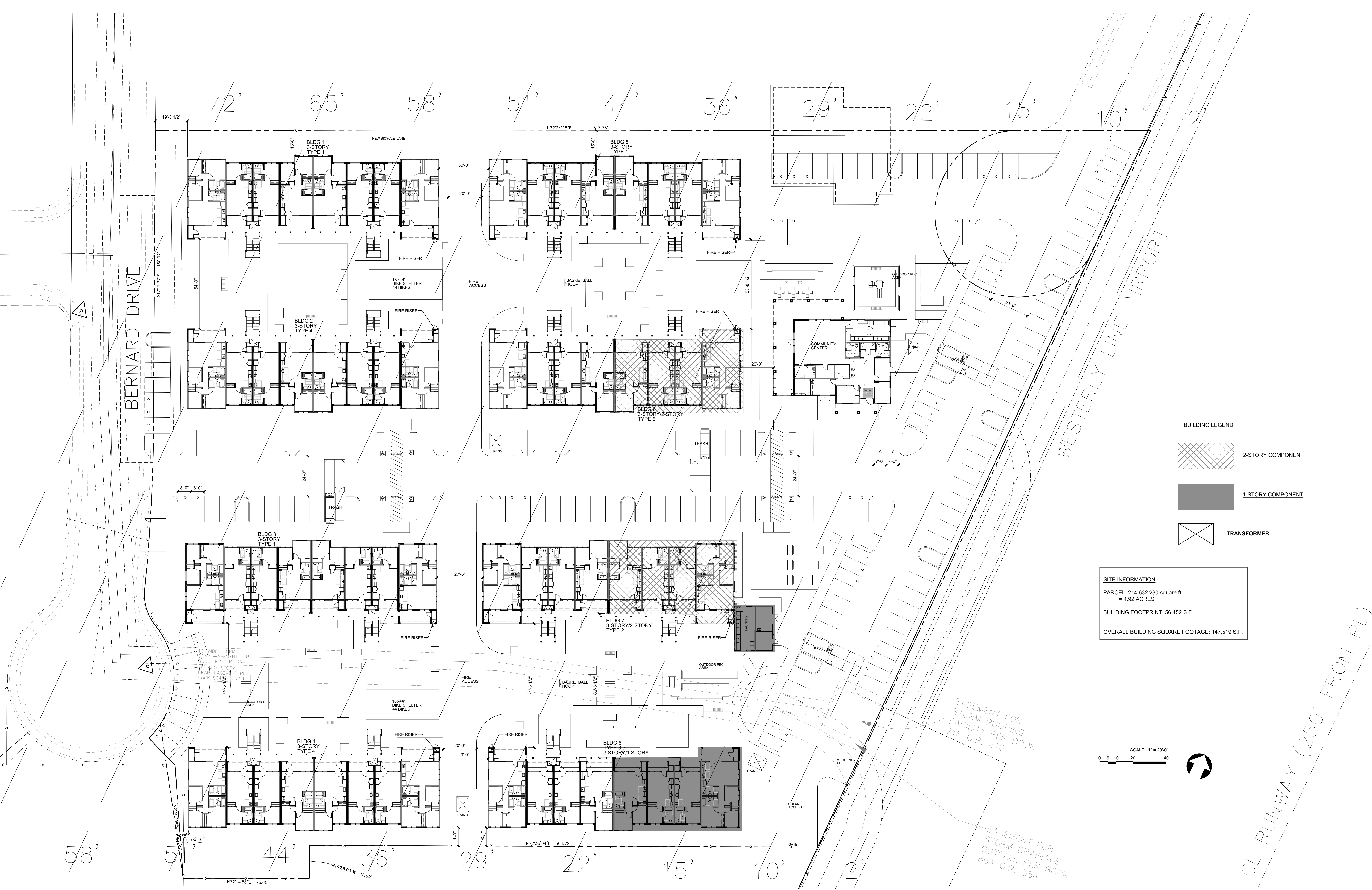
COVER SHEET



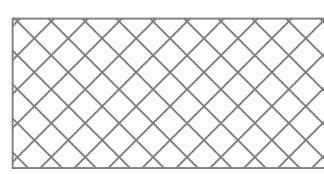

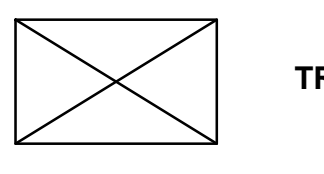
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Development Plan 20-03: Richland Village Apartments

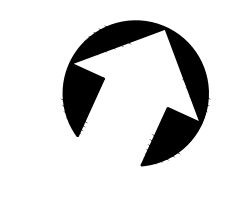


BUILDING LEGEND

-  2-STORY COMPONENT
-  1-STORY COMPONENT
-  TRANSFORMER

SITE INFORMATION
 PARCEL: 214,632.230 square ft.
 = 4.92 ACRES
 BUILDING FOOTPRINT: 56,452 S.F.
 OVERALL BUILDING SQUARE FOOTAGE: 147,519 S.F.

SCALE: 1" = 20'-0"
 0 5 10 20 40



EASEMENT FOR STORM PUMPING FACILITY PER BOOK 716 O.R. 610

EASEMENT FOR STORM DRAINAGE OUTFALL PER BOOK 864 O.R. 354

CL RUNWAY (250' FROM PL)

Richland Village

470 Bernard Drive
 Yuba City, California

SITE PLAN



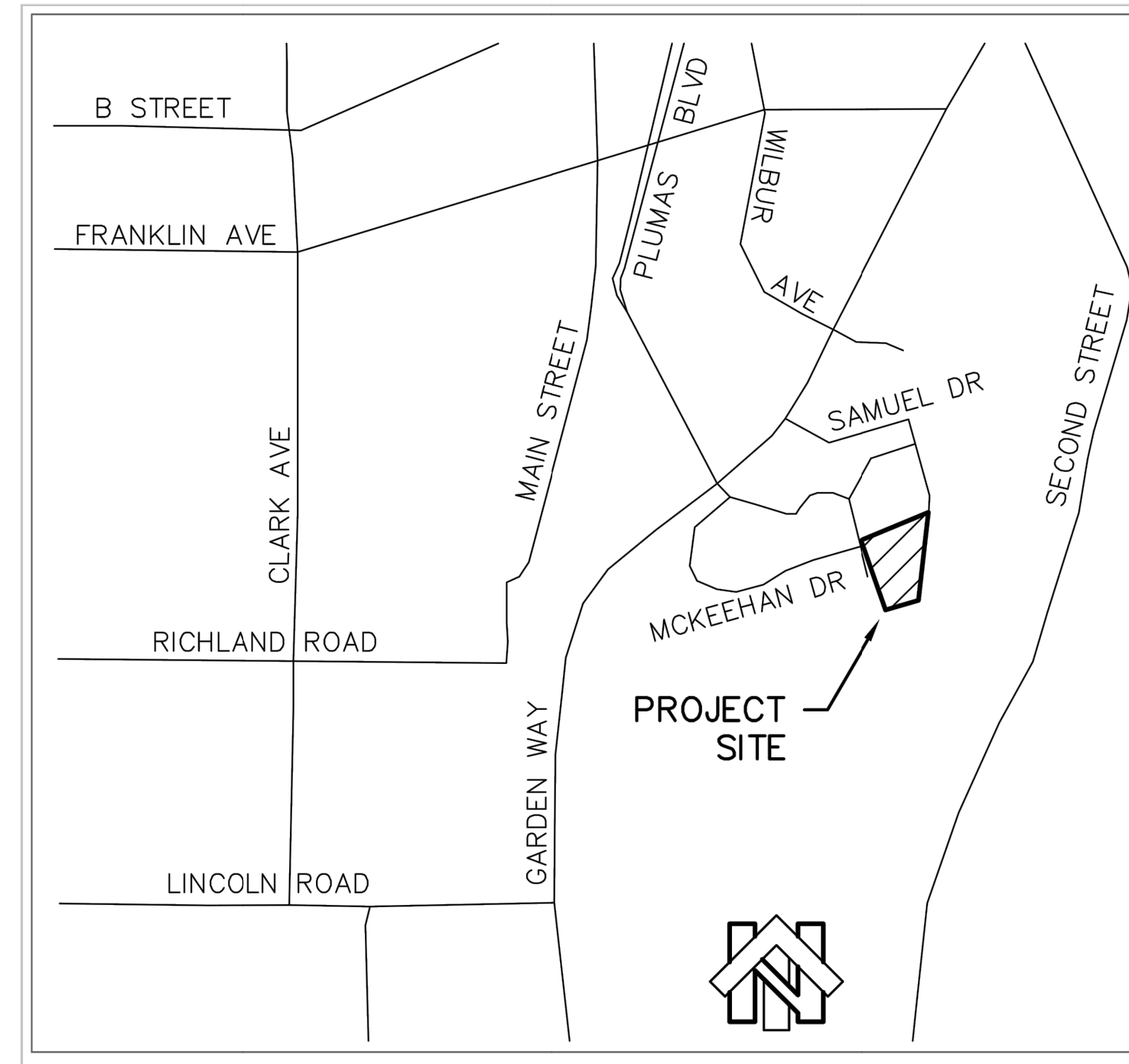
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DECEMBER 4, 2020

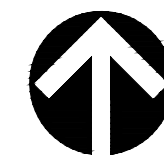
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| BUILDING 7 - TYPE 2 | 10 | 5 | 5 | 20 | 15,728 | 630 | 16,358 |
| BUILDING 8 - TYPE 3 | 8 | 4 | 4 | 16 | 12,583 | 420 | 13,003 |
| TOTAL | 88 | 44 | 44 | 176 | 141,849 | 5,670 | 147,519 |
| RATIO | 50% | 25% | 25% | 100% | | | |
| COMMUNITY CENTER | | | | 1 | 2,795 | 1,245 | 4,040 |
| LAUNDRY/MAINTENANCE/ STORAGE | | | | 1 | 572 | | 572 |
| BIKE SHELTERS | | | | 2 | 792 | | 1584 |

DECEMBER 4, 2020

Richland Village
470 Bernard Drive
Yuba City, California

COVER SHEET

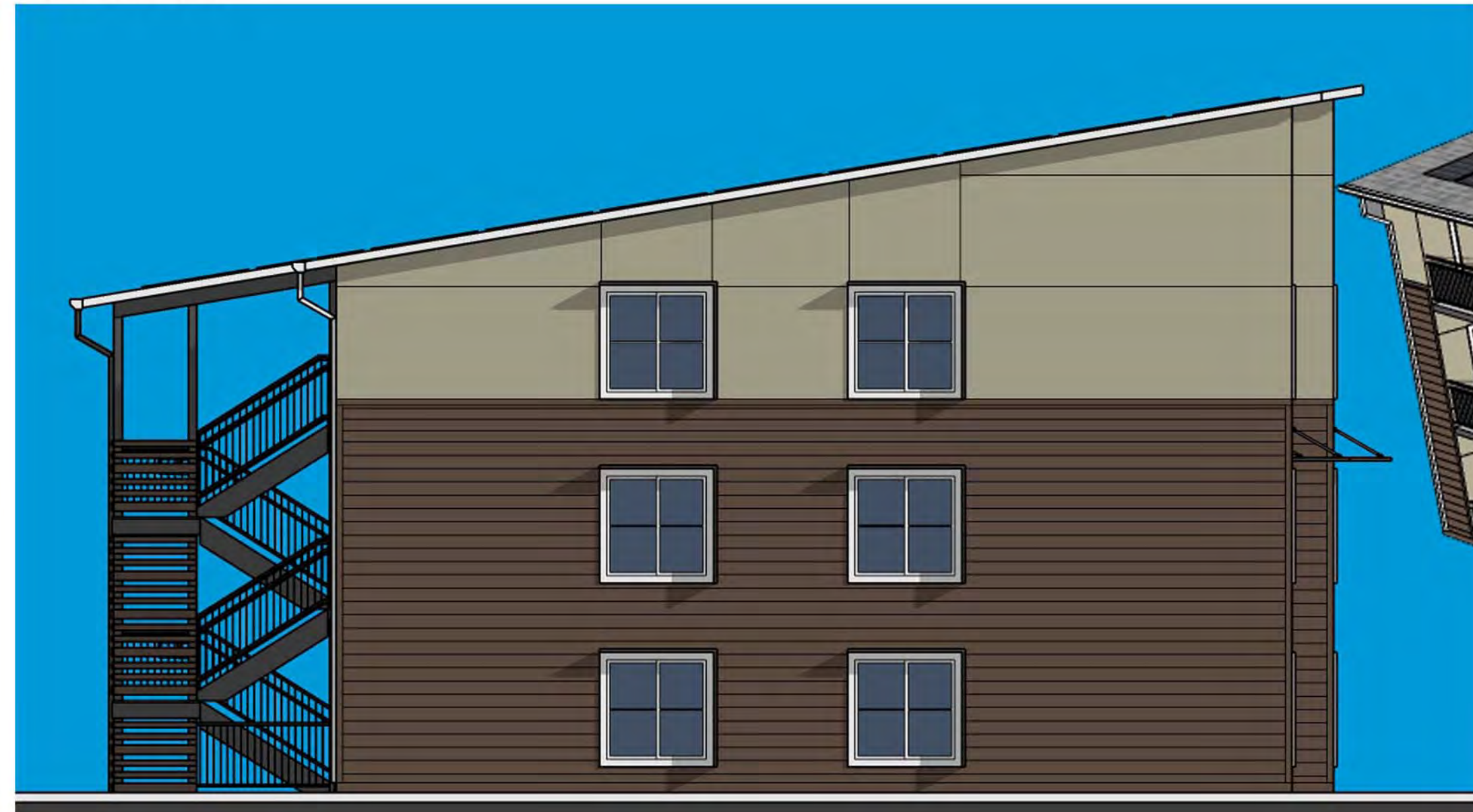


A0

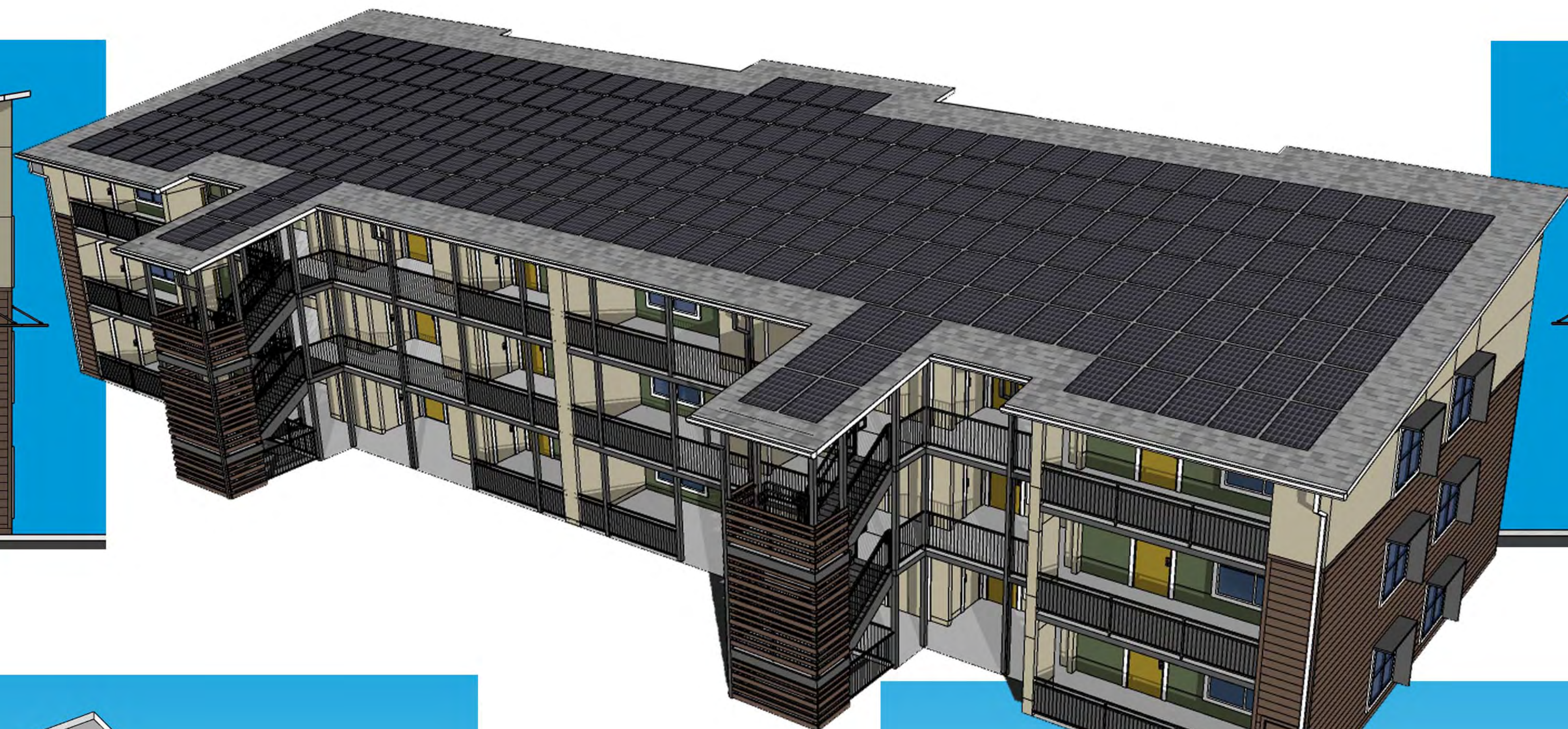
South Elevation



East Elevation



West Elevation



Northwest Perspective



Southeast Perspective



Richland Village

470 Bernard Drive
Yuba City, California

TYPE 1 - COLORED BUILDING RENDERINGS



DECEMBER 4, 2020

A3.7



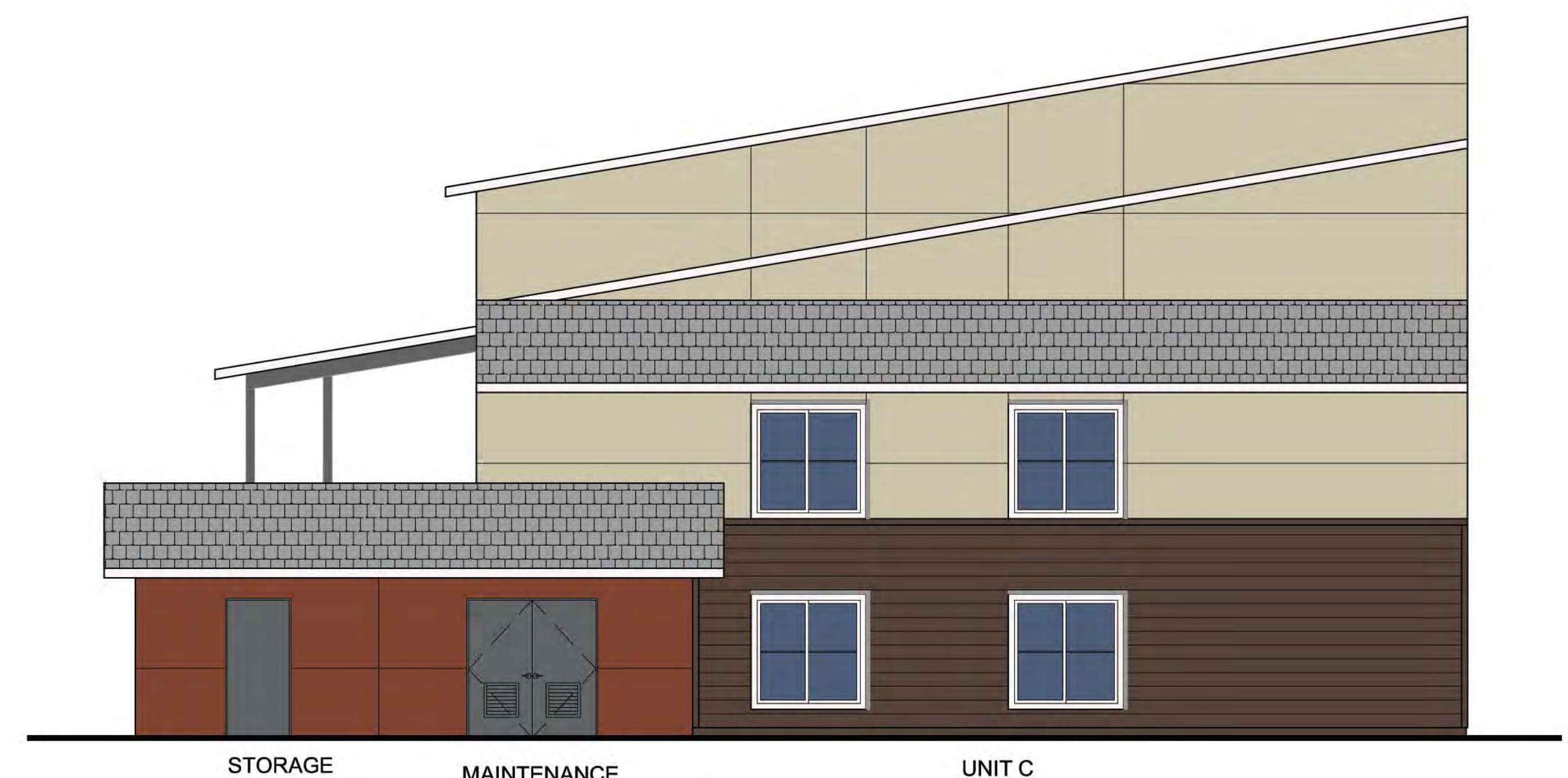
BUILDING 7 - TYPE 2 - NORTH ELEVATION



BUILDING 7 - TYPE 2 - SOUTH ELEVATION



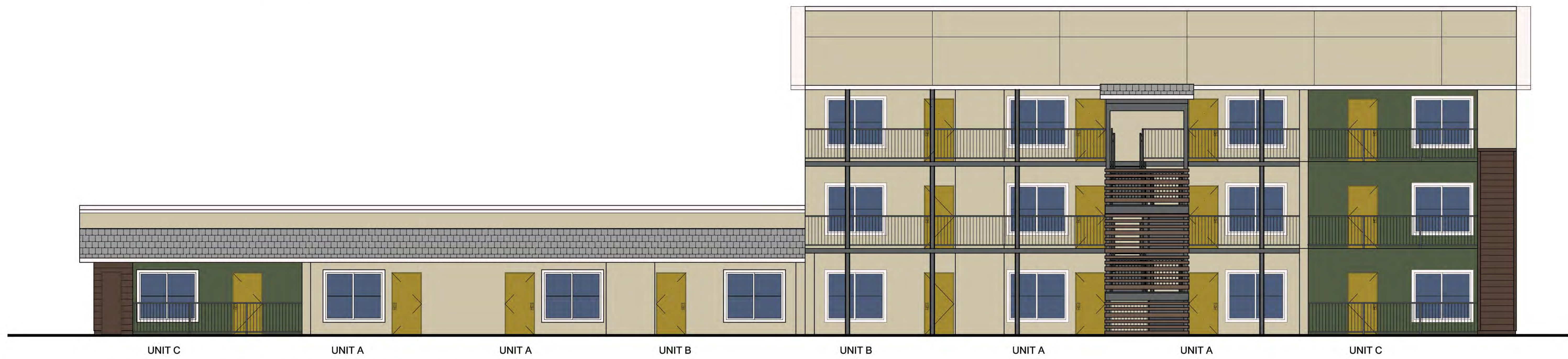
BUILDING 7 - TYPE 2 - WEST ELEVATION



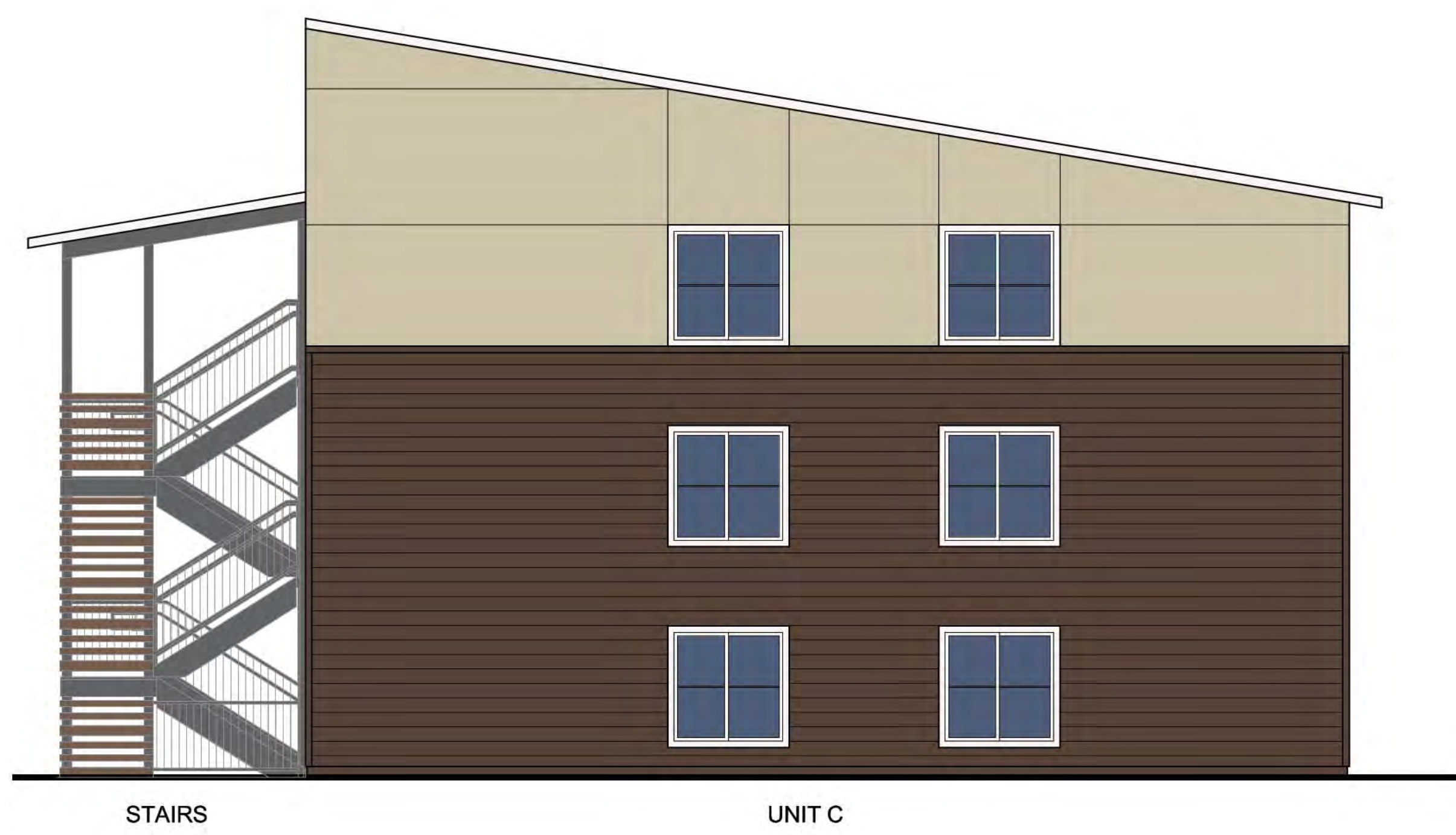
BUILDING 7 - TYPE 2 - EAST ELEVATION



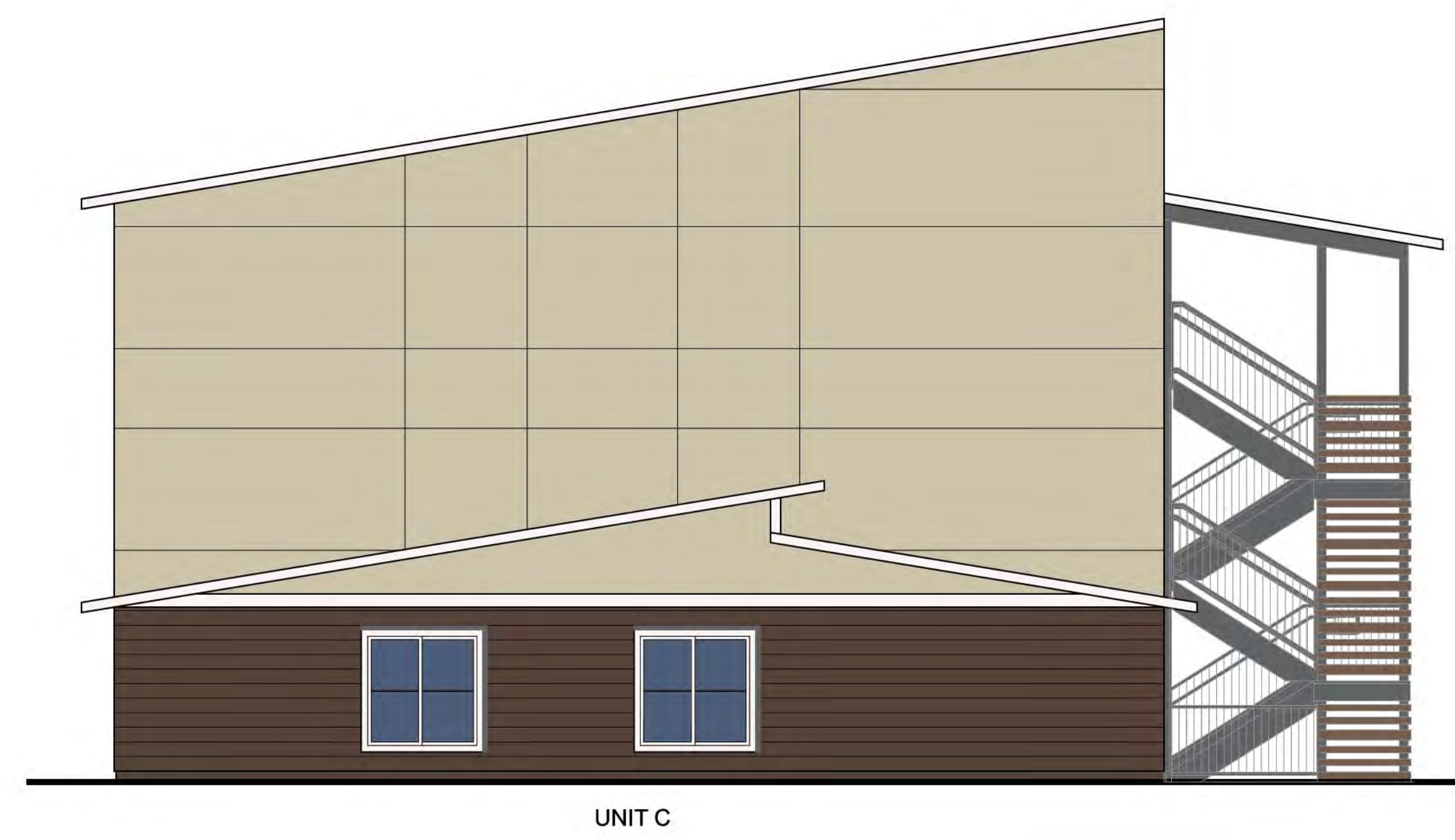
BUILDING 8 - TYPE 3 - NORTH ELEVATION



BUILDING 8 - TYPE 3 - SOUTH ELEVATION



BUILDING 8 - TYPE 3 - WEST ELEVATION



BUILDING 8 - TYPE 3 - EAST ELEVATION

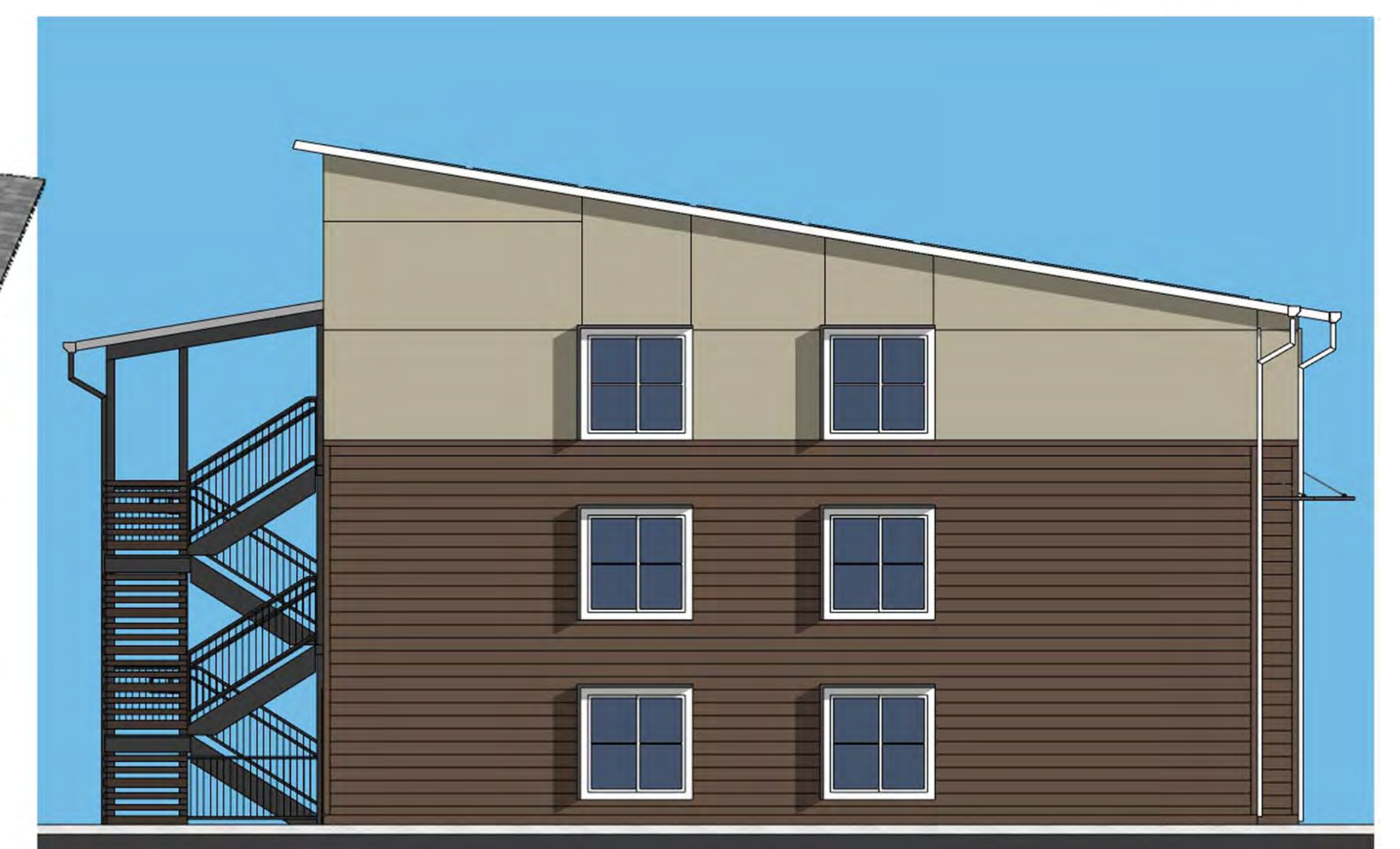
North Elevation



East Elevation



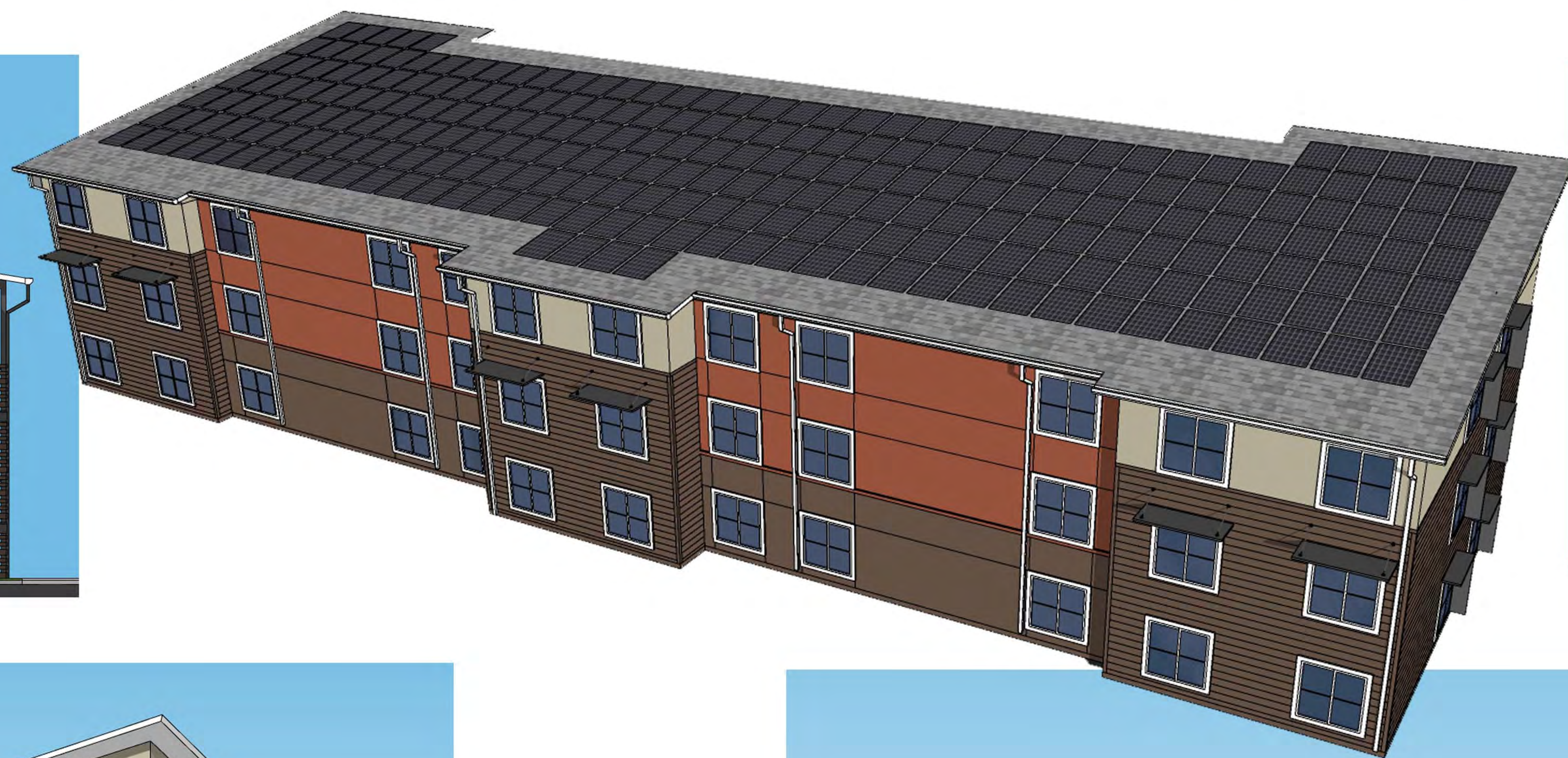
West Elevation

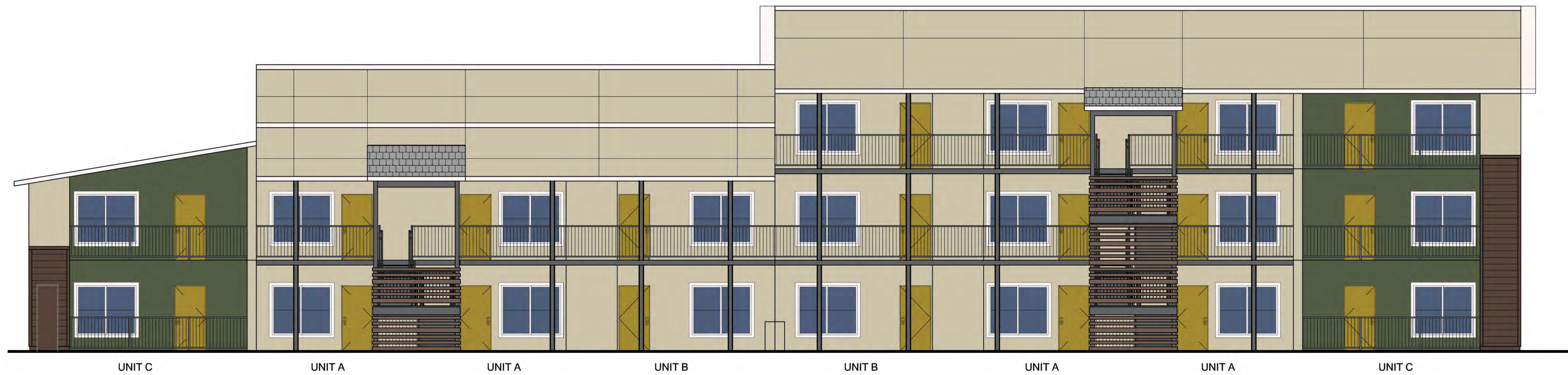


Northwest Perspective



Southeast Perspective





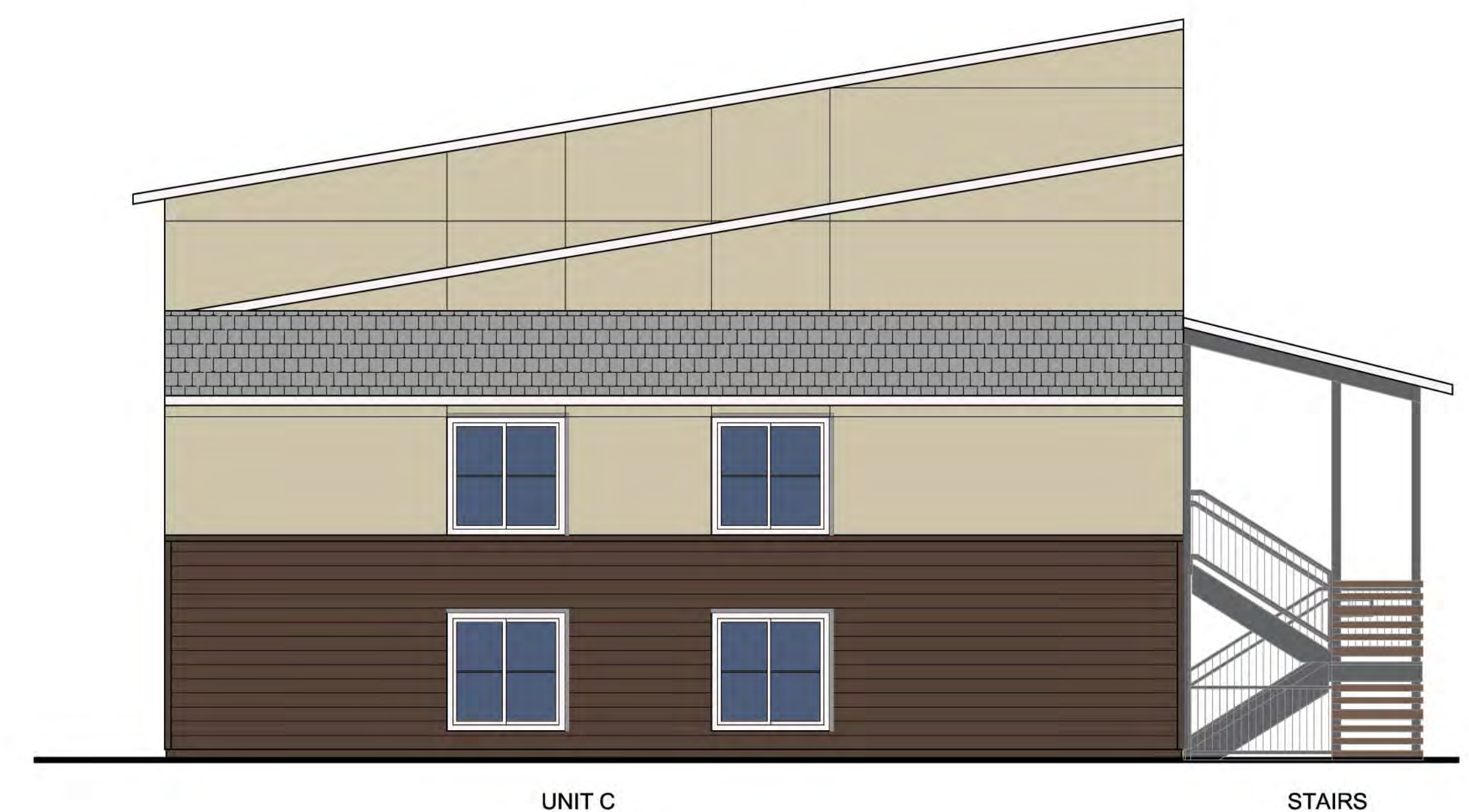
BUILDING 6 - TYPE 5 - NORTH ELEVATION



BUILDING 6 - TYPE 5 - SOUTH ELEVATION



BUILDING 6 - TYPE 5 - WEST ELEVATION



BUILDING 6 - TYPE 5 - EAST ELEVATION



South Elevation



North Elevation



Southeast Perspective

Northwest Perspective



Richland Village

470 Bernard Drive
Yuba City, California

COMMUNITY CENTER - COLORED BUILDING RENDERINGS



DECEMBER 4, 2020

A3.12

ATTACHMENT 4

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
TO EXECUTE A COOPERATION AGREEMENT BETWEEN THE CITY OF YUBA CITY, THE
REGIONAL HOUSING AUTHORITY, AND SUTTER COUNTY AFFORDABLE HOMES TO
COMPLY WITH THE REQUIREMENT OF GRANT APPLICATION UNDER THE
AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES FUNDING PROGRAM FOR
RICHLAND VILLAGE AFFORDABLE HOUSING (APN 53-470-091)**

WHEREAS, the City received development plan application for the entitlement of a multiphase 176-unit apartment complex from the Regional Housing Authority (RHA) located in the Richland Housing area; and

WHEREAS, the development titled "Richland Village" proposes to construct a 176-unit affordable apartment home community on a 4.9-acre site at 470 Bernard Drive (APN 53-470-091) in Yuba City; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 17, 2020, and considered all of the project and environmental information presented by staff, public testimony and all of the background information.

WHEREAS, following the close of the public hearing on the matter the Planning Commission unanimously voted to approve Development Plan 20-03, Richland Village; and

WHEREAS, on January 19, 2021, the City Council held a duly noted public hearing on Development Plan 20-03, Richland Village; and

WHEREAS, a public hearing was held, and the opportunity for public comment was provided; and

WHEREAS, following the close of the public hearing on the matter the City Council unanimously voted to approve Development Plan 20-03, Richland Village; and

WHEREAS, Sutter County Affordable Homes ("SCAH") is an affiliate 501(c)(3) public non-profit entity of RHA, and desires to construct "Richland Village." SCAH plans to create a limited partnership to construct, own and operate the Housing Project; and

WHEREAS, SCAH currently does not have sufficient funding to construct the Project. However, the State of California, the Strategic Growth Council ("SGC") and the Department of Housing and Community Development ("HCD") recently issued a Notice of Funding Availability dated February 26, 2021 (the "AHSC NOFA"), under the Affordable Housing and Sustainable Communities ("AHSC") Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200; and

WHEREAS, Developer is applying for AHSC Funds in response to the AHSC NOFA to provide funding for (i) construction of Housing Project; (ii) the construction of certain sustainable transportation infrastructure (the "STI Improvements"); and (iii) the construction of certain transportation related amenities (the "TRA Improvements"); and (iv) certain costs related to the purchase of Yuba-Sutter Transit Authority fare passes and workforce development programming (the "AHSC Programs"); and

WHEREAS, the Developer's AHSC Application seeks an award to the Developer in an aggregate amount of approximately \$30 million in AHSC Funds consisting of: (i) approximately \$17.4 million of AHSC loan Funds for a permanent loan ("AHSC Loan") as well as approximately \$3.1 million in Housing Related Infrastructure grant funds (HRI) which together will be disbursed to a limited partnership formed by the Developer to construct, own and operate the Housing Project (the "Partnership"), for construction of the Housing Project; and ii) approximately \$9.5 million of the AHSC grant funds for the purpose of reimbursing the cost of the STI Improvements, and the TRA Improvements and the AHSC Programs; and

WHEREAS, the City and RHA are non-applicants, desire to cooperate with the Developer to allow completion of specific STI Improvements and TRA Improvements as set forth in the Agreement. The Parties acknowledge that the exact scope of the STI Improvements and TRA Improvements may vary depending on funding amounts and construction costs, and desire to complete the improvements subject to the terms of this Agreement; and

WHEREAS, in connection with the AHSC Grants and AHSC Loan, Developer is required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project, completion of the STI and TRA Improvements, and funding of the AHSC Programs, as described in the AHSC Application.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Yuba City as follows:

Section 1. Recitals. The City Council finds that all of the facts set forth in the recitals above of this Resolution are true and correct and incorporated herein.

Section 2. CEQA Findings. The City Council finds that the project has already been environmentally assessed pursuant to California Environment Quality Act (CEQA) , and no further action is required under CEQA.

Section 3. Cooperation Agreement Adoption. The City Council approves the "Affordable Housing And Sustainable Communities Implementation And Cooperation Agreement" ("Agreement"), attached hereto as Exhibit "A," between the City of Yuba City, the RHA, and SCAH, and authorizes the City Manager to execute the same. The City Manager is authorized to make any non-material, technical, and clerical edits and corrections to the Agreement subject to approval as to form by City Attorney.

Section 4. Application Materials and Certifications. The City Manager is further authorized to submit application materials related to the AHSC Grant; provide certifications (including those regarding compliance with City requirements), documents, or submit material or letter required or requested by any funding agency consistent with the same; and to otherwise take any other action to effectuate the intent of the Agreement.

Section 4. Effective Date. This Resolution shall become effective immediately.

The foregoing Resolution was duly and regularly introduced, passed and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on May 18, 2021 by the following vote:

AYES:

NOES:

ABSENT:

Marc Boomgaarden, Mayor

ATTEST:

Ciara Wakefield, City Clerk Administrator

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

SHANNON CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A:

Affordable Housing And Sustainable Communities Implementation And Cooperation Agreement

EXHIBIT A

**Affordable Housing And Sustainable Communities
Implementation And Cooperation Agreement**

AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES IMPLEMENTATION AND COOPERATION AGREEMENT

THIS AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES IMPLEMENTATION AND COOPERATION AGREEMENT (herein “Agreement”) is made and entered into this _____ day of May, 2021, by and between the CITY OF YUBA CITY, a California municipal corporation (“City”), the Regional Housing Authority, a California public entity (“RHA”), and Sutter Community Affordable Housing, a California nonprofit public benefit corporation (“SCAH” or “Developer”). City, RHA, and SCAH are sometimes hereinafter individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. SCAH is an affiliate 501(c)(3) public non-profit entity of RHA, and desires to construct “Richland Village,” a 176-unit affordable apartment home community on a 4.9-acre site at 470 Bernard Drive (APN 53-470-091) in Yuba City, California (“Housing Project”). The Project will consist of one, two, and three-bedroom units in eight residential buildings, with a 2,795 square foot community center, and outdoor amenity spaces. SCAH plans to create a limited partnership to construct, own and operate the Housing Project (the “Partnership”).

B. SCAH currently does not have sufficient funding to construct the Project. However, the State of California, the Strategic Growth Council (“SGC”) and the Department of Housing and Community Development (“HCD”) recently issued a Notice of Funding Availability dated February 26, 2021 (the “AHSC NOFA”), under the Affordable Housing and Sustainable Communities (“AHSC”) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.

B. Developer is applying for AHSC Funds in response to the AHSC NOFA to provide funding for (i) construction of Housing Project; (ii) the construction of certain sustainable transportation infrastructure (the “STI Improvements”); and (iii) the construction of certain transportation related amenities (the “TRA Improvements”); and (iv) certain costs related to the purchase of Yuba-Sutter Transit Authority fare passes and workforce development programming (the “AHSC Programs”). These improvements are described in more detail in the Final Application to be submitted by June 8th, 2021 (collectively, the “AHSC Application”).

C. The Developer’s AHSC Application seeks an award to the Developer in an aggregate amount of approximately \$30 million in AHSC Funds consisting of: (i) approximately \$17.4 million of AHSC loan Funds for a permanent loan (“AHSC Loan”) as well as approximately \$3.1 million in Housing Related Infrastructure grant funds (HRI) which together will be disbursed to a limited partnership formed by the Developer to construct, own and operate the Housing Project (the “Partnership”), for construction of the Housing Project; and ii) approximately \$9.5 million of the AHSC grant funds for the purpose of reimbursing the cost of the STI Improvements, the TRA Improvements and the AHSC Programs. The AHSC grants shall be referred to collectively as the “AHSC Grants”. The AHSC Loan and the AHSC Grants are collectively referred to herein as the “AHSC Financing.”

F. The City and RHA are non-applicants, but, as set forth in this Agreement, desire to cooperate with the Developer on completing specific STI Improvements, and TRA Improvements as set forth in this Agreement. The Parties acknowledge that the exact scope of the STI Improvements

and TRA Improvements may vary depending on funding amounts and construction costs, and desire to complete the improvements subject to the terms of this Agreement.

G. In connection with the AHSC Grants and AHSC Loan, Developer is required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project, completion of the STI and TRA Improvements, and funding of the AHSC Programs, as described in the AHSC Application. The AHSC Application and all standard agreements, disbursement agreements, regulatory agreements and any other agreements required by HCD in connection with the AHSC Financing shall be collectively referred to herein as the "AHSC Documents."

H. The Parties now desire to comply with the Site Control Threshold Requirement per Section 106(a) 11 of the 2019-2020 AHSC Program Guidelines dated February 24, 2021, and enter into a cooperation agreement as set forth herein. It is the intent of the Parties that if Developer is unable to obtain sufficient AHSC Grants and AHSC Loan in order to construct the Housing Project and other items as outlined above, that this Agreement be of no further force and effect.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct, and are incorporated herein by reference.

ARTICLE 1: City and RHA Obligations

1. City Obligations.

a. The City agrees that Developer shall be solely responsible for construction of the proposed STI or TRA components of the AHSC Project for which funding is sought, including construction within the public right of way. The City shall allow for such construction consistent with the requirements of this Agreement, and consistent with any encroachment or other permit required by the City for such improvements.

b. The City agrees that upon notice from Developer, Developer may assign its rights and obligations under this Agreement to the Partnership.

2. RHA obligations.

a. The RHA agrees to cooperate with the Parties to take all actions reasonably necessary to effectuate the purpose of this Agreement, including granting permission to the Developer to complete the STI or TRA components of the AHSC Project that are proposed to be constructed on property owned by RHA.

b. The RHA agrees that upon notice from Developer, Developer may assign its rights and obligations under this Agreement to the Partnership.

ARTICLE 2: Developer Obligations

Developer shall comply with the following:

1. Applications. As between the Parties, Developer shall be solely responsible for applying for AHSC Grants or any AHSC Loan, and complying with all funding source, HCD, and other applicable requirements.

2. Scope of Work and Improvements. Improvements generally anticipated for this project depending on funding availability are generally depicted in the AHSC Application. The Developer shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements for any component of the project. For work within the City right of way, all such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. Upon completion of any work within the public right of way, Developer shall promptly provide an updated “as built” copy of the plan to the City.

3. Yuba City Standards. Improvements within the right of way shall comply with the latest City Standards. In the event of any conflict between the provisions of the City Standards and this Agreement, the terms of this Agreement shall govern or otherwise directed by the Public Works Director.

4. Compliance with Labor and Wage Laws.

a. The Parties acknowledge that the work within the public right of way to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Developer shall post job site notices, as prescribed by regulation.

b. Registration with DIR. Pursuant to Labor Code section 1771.1, Developer’s contractors and subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

c. Prevailing Wages. Developer shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Developer acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Developer shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Developer shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

d. Penalty for Failure to Pay Prevailing Wages. Developer shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Developer shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the

DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Developer or by any Subcontractor.

e. Payroll Records. Developer shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Developer and each Subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

f. Apprentices. Developer shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Developer shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Developer shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Developer and each of its Subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

g. Eight-Hour Work Day. Developer acknowledges that eight (8) hours labor constitutes a legal day's work. Developer shall comply with and be bound by Labor Code Section 1810.

h. Penalties for Excess Hours. Developer shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Developer shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Developer or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Developer in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

i. Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Developer certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

j. Developer's Responsibility for Contractors and Subcontractors. For every contractor and subcontractor who will perform work under this Agreement, Developer shall be responsible for such contractor's or subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any contractor or subcontractor for work on any

improvement within the public right of way under this Agreement. Developer shall be required to take all actions necessary to enforce such contractual provisions and ensure contractor or subcontractor's compliance, including without limitation, conducting a review of the certified payroll records on a periodic basis or upon becoming aware of the failure of the contractor or subcontractor to pay his or her workers the specified prevailing rate of wages. Developer shall diligently take corrective action to halt or rectify any such failure by any contractor or subcontractor.

5. Licenses, Permits, Fees and Assessments. Developer shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of improvements within the public right of way as required by this Agreement. Developer shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Developer's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

6. Familiarity with Work. By executing this Agreement, Developer warrants that Developer (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Developer warrants that Developer has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of work of improvement within the City's right of way.

7. Discovery of Unknown Conditions. Pursuant to Public Contract Code section 7104, Developer shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Developer believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

8. Unidentified Utilities. Developer shall be solely responsible for the cost of locating, repairing damage, and removing or relocating utility facilities within the public right of way necessary to construct the improvements. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances. If Developer, while performing work in the public right of way, discovers utility facilities not previously identified in the plans or specifications, Developer shall immediately notify City and the utility in writing. Developer must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

9. Trench Excavation. If Developer's work in the public right of way requires the excavation of any trench or trenches five feet or more in depth, Developer shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation.

If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees.

10. Protection and Care of Work and Materials. The Developer shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Developer shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

11. Warranty. Developer warrants all work under the Agreement within the City's right of way (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Developer agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Developer shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Developer shall act as soon as requested by the City in response to an emergency. In addition, Developer shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other Developers) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Developer's obligation hereunder to correct defective work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected work. Developer shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Developer. All warranties and guarantees of contractors, subcontractors, suppliers and manufacturers with respect to any portion of the work within the right of way, whether express or implied, are deemed to be obtained by Developer for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Developer agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Developer fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Developer's sole expense. Developer shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

12. Schedule of Performance. Developer shall submit a construction schedule to City prior to commencing work within the public right of way. Developer shall begin work within five (5) calendar days after receiving a Notice to Proceed from the City and the work shall be completed within a period of time agreed upon within the construction schedule by the City and Developer, including any revisions thereof approved by the City and Developer in writing. Time is of the essence.

13. Inspection and Final Acceptance. City may inspect and accept or reject any of Developer's work under this Agreement, either during performance or when completed. If City finds that Developer's work does not meet the requirements and standards provided in the plans approved by the City, Developer shall remedy any defects in the work at Developer's sole expense following notice by the City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, provisions pertaining to warranty and indemnification and insurance, respectively.

14. Coordination of Work. Prior to commencing work within the public right of way, and concurrent with Developer's submissions of plans for the same to the City for review and approval, Developer shall designate principles of its contractor ("Principals") as being the principals and representatives of Developer authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith. The Principals shall be responsible during the term of this Agreement for directing all activities of Developer and its contractor(s) and devoting sufficient time to personally supervise the services hereunder. All personnel of Developer, and any authorized agents including those of the contractor, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Developer without the express written approval of City. Additionally, Developer shall make every reasonable effort to maintain the stability and continuity of Developer's staff and contractors, if any, assigned to perform the services required under this Agreement. Developer shall notify City of any changes in Developer's staff, contractors, and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

15. Status of Developer. Developer shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Developer shall not at any time or in any manner represent that Developer or any of Developer's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Developer, nor any of Developer's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Developer expressly waives any claim Developer may have to any such rights.

16. Project Manager. The City's Director of Public Works, or his or her designee, is designated as the Project Manager by the City. It shall be the Developer's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Developer shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

17. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Developer, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Developers employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Developer shall perform all services required herein and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be

deemed to be a partner of Developer in its business or otherwise or a joint venturer or a member of any joint enterprise with Developer.

18. Insurance, Indemnification And Bonds

a. Insurance Coverages. Without limiting Developer's indemnification of City, and prior to commencement of any services under this Agreement, Developer shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

- i. General liability insurance. Developer shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
- ii. Automobile liability insurance. Developer shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Developer arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
- iii. Workers' compensation insurance. Developer shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

b. General Insurance Requirements.

- i. Contractors and Subcontractors. Developer shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each contractor or subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.
- ii. Proof of Insurance. Developer shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein. Insurance certificates and endorsements must be approved by City prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- iii. Duration of Coverage. Developer shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Developer, its agents, representatives, employees, contractors, or subcontractors.
- iv. Primary/noncontributing. Coverage provided by Developer shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess

insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

- v. City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Developer. In the alternative, City may cancel this Agreement.
- vi. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Developer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Developer hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- vii. Enforcement of Contract Provisions (non-estoppel). Developer acknowledges and agrees that any actual or alleged failure on the part of the City to inform Developer of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- viii. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Developer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- ix. Notice of Cancellation. Developer agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
- x. Additional Insured Status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- xi. Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

- xii. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- xiii. Pass Through Clause. Developer agrees to ensure that its consultants, contractors, and any other party involved with the project who is brought onto or involved in the project by Developer, provide the same minimum insurance coverage and endorsements required of Developer. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Developer agrees that upon request, all agreements with consultants, contractors, and others engaged in the project will be submitted to City for review.
- xiv. Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Developer ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Developer.
- xv. Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.
- xvi. Timely Notice of Claims. Developer shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Developer's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- xvii. Additional Insurance. Developer shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

19. Indemnification. Developer shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Developer's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Developer, or should City otherwise find Developer's legal counsel unacceptable, then Developer shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Developer shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Developer's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Developer obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Developer shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the active negligence of City.

20. Notification of Third-Party Claims. City shall timely notify Developer of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Developer its reasonable costs incurred in providing such notification.

21. Performance and Labor Bonds. Concurrently with the submission of plans to the City for the work of any improvement within the public right of way and an engineer's estimate for the cost of the same, Developer shall deliver to the City the following bonds:

a. A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total cost of the improvements within the public right of way.

b. A labor and materials bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement in the public right of way, in an amount not less than 100% of the total cost of the improvements within the public right of way.

c. All bonds shall be on a form approved by the City Clerk. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement.

22. Sufficiency of Insurer or Surety. Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Developer agrees that the minimum limits of the insurance policies and the bonds required may be changed accordingly upon receipt of written notice from the City.

23. Use of Documents. Developer agrees that all drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Developer, its employees, subcontractors and agents in the performance of this Agreement, and provided to the City, may be used by the City without any compensation.

24. Assignment. Developer may assign its rights and obligations under this Agreement to the Partnership. Said assignment shall not be effective until i) Developer and the Partnership provide an Assignment and Assumption agreement to the City and RHA, in a form acceptable to the City's Attorney; and ii) the Developer pays the City any outstanding fees, costs, or charges owed or the Partnership agrees to do the same; and iii) the Partnership provides updated bonds, insurance, notice

and contact information, names of the new Principals, etc., consistent with the requirements of this Agreement.

ARTICLE 3: General Conditions

1. Notices. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail as follows:

City:

City of Yuba City
1201 Civic Center Blvd
Yuba City, CA 95993
Attn: Development Services
Telephone: 530-822-4700

With a copy to:

City of Yuba City
1201 Civic Center Blvd
Yuba City, CA 95993
Attn: City Attorney
Telephone: 559-445-1580
Email: schaffin@awattorneys.com

Developer:

Sutter Community Affordable Housing
1455 Butte House Road
Yuba City, CA 95993
Attn: Gustavo Becerra, Secretary/Treasurer

RHA:

Regional Housing Authority
1455 Butte House Road
Yuba City, CA 95993.
Attn: Gustavo Becerra, Executive Director

Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

2. Termination. This Agreement shall automatically terminate if Developer is unable to obtain AHSC Financing as contemplated by this Agreement within one year of the last party to execute this agreement. Upon request of the Developer, the City Manager of the City is authorized to extend the termination date in writing by an additional 12 months, and both Developer and RHA agree to any such extension. If AHSC financing is timely obtained by Developer within one year, as may be extended by the City Manager, this Agreement shall terminate upon the completion of the all obligations under the AHSC Documents related to the construction of those certain bicycle, pedestrian,

lighting and urban greening infrastructure improvements as described in the AHSC Application (collectively “Transportation Obligations”).

3. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

4. No Approval or Waiver of Decision-making Authority. Nothing in this Agreement obligates the City or any other governmental entity, body, or advisory agency, to grant any approval of any matter described herein, nor does it restrict any such entity, body or agency from conditioning any approval of any matter described herein in any manner whatsoever. Nothing in this Agreement obligates City to pursue or defend any claim, demand or action in law or equity, nor does it otherwise limit City’s authority to resolve any such claim, demand or action.

5. No Waiver of Fees or Costs. Nothing in this Agreement obligates the City to waive any fee, charge, or cost associated with any matter described herein. Without limitation, Developer acknowledges that it will be required to pay any fee, or reimburse the City’s cost of, review and processing of plans or review of designs for work within the public right of way, issuance of required permits including encroachment permit(s) for such work, inspections and acceptance of the work, environmental compliance, etc.

6. Limitations of Legal Acts. Except as provided by the Section entitled “Prevailing Party Attorney’s Fees,” in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Developer’s and RHA’s sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

7. Waiver of Terms of Agreement. The waiver by a Party of a breach by another Party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision hereof shall not be deemed to be a waiver of any other provision hereof.

8. Modification. This Agreement may not be modified or amended except by a written instrument signed by the Parties.

9. Prevailing Party Attorneys’ Fees. Should either Party institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to recovery of reasonable attorneys’ fees in connection with said proceeding.

10. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12. Severability. In the event that any part or portion of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement, which

are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

13. Authority. The persons executing this Agreement on behalf of the Parties warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first-above written.

CITY:

CITY OF YUBA CITY,

Marc Boomgaarden, Mayor

SCAH/DEVELOPER:

Sutter Community Affordable Housing

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

Shannon Chaffin, Esq.
Aleshire & Wynder, LLP
City Attorney

RHA:

Regional Housing Authority

Gustavo Becerra, Executive Director