



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

June 28, 2022

SUBJECT: Consideration to adopt Resolution No. 23-22 authorizing the City Manager to execute a subdivision improvement agreement for Bear Ridge Family Apartments

PREPARED BY: Dane H. Schilling – City Engineer

Recommendation

City staff recommends the City Council adopt Resolution No. 23-22 authorizing the City Manager to execute a subdivision improvement agreement for Bear Ridge Family Apartments (Attachment 1).

Background and Discussion

The Bear Ridge Family Apartments Project (Project) is an 8.21-acre site located at 1989 Spenceville Road, adjacent to and south of the Wheatland Ranch residential subdivision. Previous City approvals and related events for the Bear Ridge Family Apartments are listed below:

- December 22, 2021: The City received Pacific West Communities' application for a Parcel Map located at 1989 Spenceville Road (APN 015-360-001).
- February 10, 2022, the City of Wheatland determined the project application was complete.
- March 22, 2022 the Wheatland City council adopted Resolution No. 10-22, authorizing and directing the execution of a Joint Exercise of Powers Agreement relating to the California Municipal Finance Authority and approving the issuance of revenue bonds by the authority for the purpose of financing or refinancing the acquisition, construction, and improvement of certain facilities (Bear Ridge Family Apartments Affordable Housing Project) for the benefit of Wheatland Pacific Associates, a California Limited Partnership."
- March 29, 2022, the Wheatland Planning Commission approved a Tentative Parcel Map splitting the site into separate parcels.
- April 26, 2022, the City Council adopted Resolution No. 14-22 authorizing the City Manager to accept associated dedications of land and approving the final map.

The Project involves constructing approximately \$728,000 in public streets, utilities and improvements (Public Improvements) as described in the improvement plans and in compliance with the Final Map and associated conditions of approval. The City Engineer has reviewed proposed improvement plans for the Public Improvements and found them to be in compliance with prior City approvals, and in conformance with the City's design and construction standards.

A Subdivision Improvement Agreement (SIA) is a contract obligating the developer to complete all required public improvements required by the final map within a specified time period, and also requiring bonding of the value of those improvements to ensure the improvements are completed.

Alternatives

The City Council may choose not to authorize the City Manager to enter into a SIA for the public improvements for the Project. Failure to approve the SIA would leave the city without recourse should the developer fail to complete the required public improvements.

Fiscal Impact

No direct fiscal impact to the City is anticipated.

Attachments

1. Resolution No. 23-22
2. Subdivision Improvement Agreement

RESOLUTION NO. 23-22

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUBDIVISION IMPROVEMENT
AGREEMENT FOR PHASE 1 OF THE BEAR RIDGE FAMILY APARTMENTS PROJECT
ASSESSOR PARCEL NUMBER 015-036-001**

WHEREAS, on December 22, 2021, Pacific West Communities (“Developer”), submitted an application for a Tentative Parcel Map located at 1989 Spenceville Road (APN 015-360-001) for the Bear Ridge Family Apartments (“Project”); and

WHEREAS, on February 10, 2022, the City of Wheatland determined the Project application was complete; and

WHEREAS, a Tentative Parcel Map for the Project was prepared by the Developer in accordance with Title 17, Chapter 17.07 of the Wheatland Municipal Code; and

WHEREAS, on March 22, 2022 the Wheatland City Council adopted Resolution No. 10-22, authorizing and directing the execution of a Joint Exercise of Powers Agreement relating to the California Municipal Finance Authority and approving the issuance of revenue bonds by the authority for the purpose of financing or refinancing the acquisition, construction, and improvement of Bear Ridge Family Apartments Affordable Housing Project for the benefit of Wheatland Pacific Associates, a California Limited Partnership.”; and

WHEREAS, on March 29, 2022, the Wheatland Planning Commission adopted Resolution No. 2022-02 approving the requested Tentative Parcel Map and conditions of approval for the Project; and

WHEREAS, in order to provide public streets, utilities and improvements to serve the Project, the Developer will grant property in fee title and grant easements as shown on the Final Map; and

WHEREAS, AMG & Associates, LLC, a California limited liability company filed a Final Map entitled “Bear Ridge Family Apartments” with the City Engineer and requested approval of said Final Map; and

WHEREAS, on April 26, 2022, the City Council 1) authorized the City Manager to sign certificates of acceptance on behalf of the City of Wheatland for any easements necessary for the ownership, operation and maintenance of public infrastructure to be constructed with the approved the Final Map and proposed improvements, and 2) approved the Final Map and authorized the City Clerk to sign said Final Map on behalf of the City of Wheatland; and,

WHEREAS, the City has required that the Developer enter into a Subdivision Improvement Agreement for any public improvements to be constructed with the Project.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of City of Wheatland, State of California, that the City Manager is hereby authorized to sign a subdivision improvement agreement on behalf of the City of Wheatland for the construction of public infrastructure associated with the Bear Ridge Family Apartments.

PASSED AND ADOPTED by the City Council of City of Wheatland, State of California this 28th day of June 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Rick West, Mayor

ATTEST:

Lisa Thomason, City Clerk

**CITY OF WHEATLAND
SUBDIVISION IMPROVEMENT AGREEMENT
Bear Ridge Family Apartments
Wheatland Pacific Associates, a California Limited Partnership
APN 015-036-001**

This Agreement is made this ____ day of _____, 2022, between the City of Wheatland, a general law city (“City”), and Wheatland Pacific Associates, a California Limited Partnership (“Developer”), who agree as follows:

1. Recitals. This Agreement is made with reference to the following background recitals:

1.1. On December 22, 2021, Pacific West Communities, submitted an application for a Tentative Parcel Map located at 1989 Spenceville Road (APN 015-360-001) for the Bear Ridge Family Apartments (“Subdivision”).

1.2. A Tentative Parcel Map for the Project was prepared by the Developer in accordance with Title 17, Chapter 17.07 of the Wheatland Municipal Code.

1.3. On March 29, 2022, the Wheatland Planning Commission adopted Resolution No. 2022-02 approving the requested Tentative Parcel Map and conditions of approval for the Subdivision.

1.4. AMG & Associates, LLC, a California limited liability company has filed a Final Map entitled “Bear Ridge Family Apartments“ with the City Engineer and has requested approval of said Final Map.

1.5. The City Engineer has reviewed said Final Map for its conformity with the approved Tentative Parcel Map and has determined that the Final Map substantially conforms with all requirements of said Tentative Map, associated conditions of approval and the Subdivision Map Act.

1.6. Upon review and recommendation of the City Engineer, City Council has determined that the Final Map substantially complies with the Subdivision Map Act, City subdivision ordinance and related ordinances, tentative map, and tentative map conditions of approval.

1.7. In developing the Subdivision, the Developer prepared improvement plans for the public streets, utilities, improvements and facilities to be constructed and installed as part of Phase 1 of the Subdivision. Developer plans to install and construct the public streets, utilities, improvements and facilities as described in the City-approved Subdivision Phase improvement plans (the “Work”) in compliance with the Final Map and associated conditions of approval.

1.8. Developer has requested approval of the Final Map prior to the construction, installation and completion of the Work.

1.9. Upon the closing of the construction loan, Wheatland Pacific Associates, a California Limited Partnership will be the owner of the development.

2. Final Map Approval. Subject to Developer's compliance with the terms of this Agreement, City approves the Final Map, accepts all offers of dedication made in connection with the Final Map, and consents to the recording of the Final Map.

3. Payments for City Services.

3.1. City has already incurred staff and consultant costs for engineering, administrative and legal services in connection with the review and approval of Work plans and specifications for the Work to be undertaken pursuant to this Agreement. City will present Developer with the invoices for all work that has been undertaken by its staff and consultants up through the effective date of this Agreement. City shall provide an accounting for its hours charged and costs incurred by City staff but is not required to provide invoices to Developer for City staff costs and expenses. For City consultants, City shall provide Developer with an electronic copy of the Consultants' invoices. Within ten (10) calendar days of receiving those invoices, Developer shall pay the full amount of such invoice, including a ten percent (10%) City processing fee that will be added to all consultant invoices. Developer shall have ten (10) calendar days after receipt of electronic copy of such invoices to notify the City in writing of any disputed amounts in the Consultants' invoices, which will initiate the following dispute resolution process as to the disputed amount. Developer shall pay any undisputed amount of such invoices during the dispute resolution process. As to the amount in dispute, City and Developer shall meet and confer within five (5) calendar days thereafter to resolve any dispute. Such meetings may take place telephonically.

3.2. Within 10 calendar days after execution of this agreement the Developer will advance to City a supplemental deposit in the amount of \$10,000 (in addition to any deposits for other phases) to fund the City engineering, administrative and legal services to be performed by City in connection with the inspection of construction, testing of improvements, and other costs incurred by City in the performance of its duties under this Agreement. City will draw on this deposit to pay or reimburse periodic invoices from the City consultants and to reimburse City for the cost of City staff time and materials. At no time will the deposit fall below \$10,000. If, before completion of the Work, the amount remaining in the deposit becomes depleted such that, after payment of all outstanding invoices, the deposit will be reduced to 25% of the Initial Deposit, City will require additional deposits to cover additional anticipated City costs. The Developer shall pay the City the amount of the additional deposit within ten (10) calendar days. No work will occur on any task under this Agreement until the City has received the required deposit from Developer. If any requested deposit or payment is not timely made, City may so notify Developer and it will have ten (10) calendar days to cure the default. If the deposit or payment remains unpaid at the end of the ten-day "cure" period, then City may terminate this Agreement. Landowner shall not be entitled to interest on deposits made hereunder. After payment of any outstanding invoices, City will refund to Developer any deposit remaining upon termination of the Agreement without interest. Any Developer deposit remaining upon completion and acceptance of the Work will be refunded without interest to Developer. If the final total City costs exceed the amount of the deposit(s), Developer must pay the difference upon demand and before the City accepts the Work. City shall establish a separate account for the purpose of accounting separately for this deposit and any future deposits and the charges against the deposits. City shall provide, within thirty (30) days of the end of any given month, a monthly accounting report to Developer of the prior month's expenditures paid by Developer and showing the services

and costs funded under this provision. Developer and its employees, accountants, attorneys and agents may review, inspect, copy and audit these records, including all source documents.

4. Plans and Specifications. Developer designed and prepared detailed plans, specifications and drawings for the construction and installation of the Work, including landscape plans, and submitted them to City for review and approval by the City Engineer. The plans, specifications and drawings must comply with this Agreement, the Development Agreement, Subdivision Map Act, Final Map, tentative map, tentative map conditions of approval, City subdivision ordinance, and other applicable City ordinances and federal and state laws, regulations and codes, and City staff and consultants will review the Work plans and specifications to ensure that they meet all applicable standards and requirements. Developer shall not commence any portion of the Work until the City Engineer has approved the plans, specifications and drawings. The plans, specifications and drawings for the Work may be modified by Developer prior to or during the course of construction, provided that any material modification is first approved in writing by the City Engineer. During the course of construction, Developer or its contractor(s) shall keep accurate records on a set of improvement plans of all additions, deletions and changes to the Work not otherwise shown on the plans (known as "as-built" or "record" drawings).

5. Performance of Work by Developer. Developer, at its sole cost and expense, shall furnish, construct and install the Work, furnish all necessary materials, and, where necessary, pay the cost of acquiring land or rights-of-way necessary for the construction and installation of the Work. Construction shall be in accordance with the City-approved plans, specifications and drawings, this Agreement, the Development Agreement, Subdivision Map Act, Final Map, tentative map, tentative map conditions of approval, City subdivision ordinance, and other applicable city ordinances and federal and state laws, regulations and codes. Construction must be performed in a good and workmanlike manner and consistent with generally accepted construction practices. All work and construction are subject to the satisfaction of the City public works inspector and City Engineer. Developer shall give City at least 48 hours advance notice of the commencement of construction of the Work and schedule a pre-construction meeting with its contractor(s) and the City Engineer at least 10-business days prior to commencement of construction of the Work. Any construction performed without notice to, and inspection by, City shall be subject to rejection. Prior to commencing construction of any portion of the Work, Developer or its contractor(s) must submit to City a written list of materials and supplies, in a form acceptable to City, showing the particular manufacturer and specifications of all materials and supplies proposed to be installed by Developer. The City will either disapprove with reasons or approve the list of materials or supplies. Only materials and supplies approved in advance by City may be installed on the Work.

6. Licensed Contractor. Developer's contractor(s) on the Work must be licensed pursuant to the California Business and Professions Code to do the Work, and the contractor(s) will be subject to the City's reasonable approval. City may request evidence that the contractor(s) has satisfactorily constructed other projects of like kind and magnitude or comparable difficulty. To the extent required by law, Developer and its contractor(s), and any contract entered into by Developer and its contractor(s), must comply with California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other

requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code division 2, part 7, chapter 1 (sections 1720-1861).)

7. Improvement Security. Within 30 days after the execution of this Agreement, Developer shall furnish City with the following improvement security:

7.1. Faithful performance bond, letter of credit or money deposit in the sum of 100% of the estimated cost of construction of the Work (as determined by the City Engineer), conditioned upon the faithful completion of the Work under this Agreement.

7.2. Payment bond, labor and materials bond, letter of credit or money deposit in the sum of 50% of the estimated cost of construction of the Work (as determined by the City Engineer), securing payment to the contractor(s), subcontractors, and persons furnishing labor, materials or equipment for the Work.

The type, form and issuer of the improvement security shall comply with chapter 5 of the Subdivision Map Act (Government Code sections 66499 through 66499.10) and shall be subject to City Attorney approval. No change, alteration, or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement. The City will not record the Final Map until after it receives improvement security in accordance with this section.

8. Permits and Easements. Developer, at its sole cost and expense, must obtain and comply with all federal, state and local permits, licenses, approvals, and entitlements, including but not limited to grading and encroachment permits, to do the Work. Developer must obtain all real property and permanent and temporary easements, of a width as determined by City, necessary for the Work and for ingress and egress to and from the Work for construction, installation, operation, maintenance, repair, removal, replacement and improvement prior to commencement of construction of the Work. Deeds and easements shall be in a form approved by City, which approval shall not be unreasonably conditioned, withheld or delayed. Developer shall give all notices and comply with all federal, state and local statutes, laws, ordinances, rules and regulations that apply to the construction of the Work.

9. Inspections. City may during the course of construction inspect and test all or part of the construction or material being used in construction of the Work. Upon completion of construction of the Work, Developer shall notify City of the completion and request a final inspection of the Work. The completed Work shall be inspected and tested to meet City requirements under this Agreement and the Development Agreement. No Work or portion of Work shall be accepted without meeting City inspection and testing requirements. The inspection and testing of the Work, or failure to inspect or test, shall not relieve Developer of its obligation to construct the Work in accordance with this Agreement. If all or any portion of the Work, or any materials or supplies used in connection with the Work, are found to be defective, substandard or nonconforming within one year after City's acceptance of the Work, then such Work shall be replaced, repaired, or otherwise remedied to the satisfaction of City. Developer shall cooperate with and assist City in performing inspection and testing of the Work. Developer must pay the costs of inspections and tests by City and the City Engineer. Developer also will be responsible for all costs incurred in the testing of the Work as needed or required by other governmental agencies having jurisdiction.

10. Time for Performance; Termination.

10.1. Developer shall complete construction of the Work within twelve (12) months from the date of this Agreement. Time is of the essence of this Agreement. Upon a showing of good cause by Developer, City may extend these deadlines in writing. However, the City may require modifications to previously approved plans, specifications and drawings for the Work if more than two years pass between the date of the approval and acceptance of the Work. Any extension granted by City may be done without notice to any of Developer's sureties, and the extension shall not relieve any surety's liability. The granting of any extension also may be conditioned by City by requiring acceptable new or amended improvement security pursuant to section 7. If construction of the Work has not been completed and accepted by City within these deadlines, and any extensions, City may terminate this Agreement at any time thereafter by giving thirty (30) days written notice of intent to terminate to Developer.

10.2. Developer may terminate this Agreement at any time prior to commencement of construction of any of the Work by giving written notice to City. After commencement of Work, Developer may terminate this Agreement only with the written consent of City, which consent may be given subject to reasonable conditions as necessary or appropriate to protect the public health, safety, aesthetics or welfare.

11. Maintenance Guarantee and Maintenance Assessment District.

11.1. Developer unconditionally guarantees, for one year from the date of City's notice of acceptance of the Work, all Work constructed, installed and furnished under this Agreement. During the one year guarantee period, Developer at its sole cost and expense, will (a) correct, repair, replace or reconstruct to the satisfaction of City any and all Work, the construction, installation and/or materials of which may prove defective, nonconforming or improperly installed, ordinary wear and tear excepted, (b) maintain the plants and landscaping (i.e., water, weed, pest control, sprinkler repair, and dead/dying plant replacement) installed in landscaped medians and other public areas to the satisfaction of City, and (c) reimburse City for all costs associated with City's inspection, review and approval of the Work performed under subsections 11.1(a) and 11.1(b) above.

11.2. Prior to City's final acceptance of the Work, Developer will provide a maintenance bond, extension of the improvement security furnished under section 7.1, letter of credit, cash deposit, or other financial security satisfactory to City ("Maintenance Guarantee") in a sum equal to 10% of the final cost (as determined by the City Engineer) of the Work. The Maintenance Guarantee shall secure Developer's guarantee under section 11.1.

11.3. If Developer and/or its surety fail to comply with a guarantee obligation within a reasonable time, City may have the defect corrected, repaired, replaced or reconstructed as necessary. Developer and its surety under the Maintenance Guarantee shall be jointly and severally liable to City for such costs of correction, repair, replacement or reconstruction, including, but not limited to, administrative, engineering, legal and other costs incurred relating to the correction, repair, etc., and to the costs of collection. City shall bill Developer and its surety for such costs, which bill shall be due and payable within 30 days of its date. Interest shall accrue on any late payment at the rate of 10% per annum.

11.4. Prior to the City's final acceptance of the Work and prior to occupancy, the Property shall be annexed into the Wheatland Ranch/Ryan Town Lighting and Landscaping District (LLD) for the funding of on-going maintenance of landscaping and lighting in public areas created by the Work.

12. Transfer of Property and Easements. This section applies to any necessary transfers of real property interests not otherwise provided for by Final Map dedication. After City has finally inspected and approved the Work, and before City accepts the Work, Developer shall deliver conveyance documents satisfactory in form and content to City, transferring ownership of the completed Work to City, together with all real property, interests in real property, easements and rights-of-way that are necessary or appropriate in the opinion of City for the ownership and operation of the Work. Title to the Work and the interests in real property transferred shall be good, clear, and marketable title, free and clear of all encumbrances, liens or charges, except as may be approved by City. Developer shall obtain and pay any land transaction costs and costs of title insurance deemed necessary by City. City shall not accept the Work until the conveyance documents transferring the Work and real property interests have been accepted by the City Council.

13. Notice of Acceptance. City's final acceptance of the Work shall be evidenced by a written notice of acceptance from City to Developer. City shall provide the written notice of acceptance of the Work when City determines that all of the following conditions have been met to City's satisfaction:

13.1. The Work has been completed, and finally inspected, tested and approved by City;

13.2. All costs, charges and fees required by this Agreement, other City-Developer agreement, or City ordinance or resolution to be paid to City by Developer have been so paid in full;

13.3. Developer has submitted an acceptable Maintenance Guarantee;

13.4. The Work and all real property interests have been conveyed to, and accepted by City, in accordance with section 12; and

13.5. Developer has provided to City in satisfactory form and content the following items:

13.5.1 As-built (also known as record) drawings of the completed Work, together with a copy of the contract documents used in the construction of the Work;

13.5.2 Accounting records of the amounts expended for the construction and installation of the Work, with values applicable to the various components of the Work;

13.5.3 Operating manuals, operating instructions, warranties and guarantees received by Developer or its contractor(s) in connection with the Work and any unit of Work or Work materials; and,

13.5.4 Computer disk with electronic file in AutoCAD and PDF formats (acceptable to the City Engineer) containing the Final Map and those portions of the approved improvement plans stored in electronic format.

14. Ownership. After final acceptance of the Work by City, the Work shall become the property of City on the date that the notice of acceptance of the Work is mailed or delivered to Developer (except that the following portions of the Work will not be transferred to City and will remain the operation, maintenance, repair and replacement obligation of Developer and future property owners: the water delivery pipeline and improvements beyond (upstream from) the water meter; and, the sewer lateral from its connection at the sewer main to the building or structure being served. Upon such date, Developer shall be deemed to have conveyed and transferred all of its right, title and interest in and to the completed Work to City. Thereafter, City shall own and be free in every respect to operate, maintain, expand, and improve the Work, as it deems appropriate. City assumes no obligation as to operation and maintenance of the Work until such time as it gives notice of acceptance of the Work.

15. Risk of Loss. Until the date of the notice of acceptance of the Work, all risk of loss or injury, damage or destruction to the Work shall be upon Developer.

16. Indemnification and Hold Harmless. To the extent allowed by law, Developer shall indemnify, protect, defend, and hold harmless City and its officers, employees, engineers, volunteers and agents, from any and all claims, demands or charges and from any loss or liability, including all costs, expenses, reasonable attorney's fees, litigation costs, penalties, and other fees arising out of or in any way connected with performance or failure to perform under this Agreement by Developer or its officers, employees, contractors, subcontractors or agents, except such loss or damage that was caused by the sole negligence or willful misconduct of City. This indemnification shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination. The parties agree and acknowledge that Developer's obligation under this section extends to claims, lawsuits and liability of or against City resulting from the alleged failure to comply with any provision of California Labor Code division 2, part 7, chapter 1 (sections 1720-1861) in connection with the construction of the Work by Developer's contractor(s).

17. Insurance.

17.1. Developer or its contractor(s), at their sole cost and expense, shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

Type	Limits	Scope
Commercial general liability	\$3,000,000/occurrence	at least as broad as ISO occurrence form CG 0001
Automobile liability	\$1,000,000/accident	at least as broad as ISO CA 0001 (code 1, any auto)
Pollution Liability	\$3,000,000/occurrence	At least as broad as ISO occurrence form CG 0039
Workers' compensation	statutory limits	
Employers' liability	\$2,000,000 per accident	

17.2. The general and automobile liability policy(ies) shall be endorsed (consistent with Insurance Code section 11580.04) to name City, its officers, employees, engineers, and agents

as additional insureds regarding liability arising out of the Work. Developer/ contractor's coverage shall be primary and shall apply separately to each insurer subject to a claim or lawsuit, except with respect to the limits of the insurer's liability. City's insurance or self-insurance will be excess and shall not contribute with Developer/ contractor's insurance. Insurance shall be placed with insurers with a current A.M. Best's rating of A-:VII or better unless otherwise acceptable to City. The workers' compensation policy shall be endorsed to include a waiver of subrogation against City and its officers, employees, engineers, volunteers and agents.

17.3. Prior to commencing the Work, Developer shall provide to City the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), certifying the additional insured coverages. The Developer shall also provide evidence of insurance for all contractors employed on the Work.

17.4. Prior to acceptance of the Work and throughout the duration of the maintenance guarantee as defined in Section 11, Developer shall provide to City the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 2037 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), certifying the additional insured coverages. The Developer shall also provide evidence of insurance for all contractors employed on the Work.

18. Notice of Breach and Default.

18.1. The following constitute a default under this Agreement: (a) Developer refuses or fails to prosecute the Work with such diligence as will ensure its completion within the time specified, or any extension, and such refusal or failure is not cured within 30 days following written notice of such refusal or failure to Developer; (b) Developer fails to complete the Work within the time provided by this Agreement and any extension approved by the City; (c) Developer should be adjudged as bankrupt, Developer files for bankruptcy protection, or Developer makes a general assignment for the benefit of Developer's creditors; (d) a receiver is appointed in the event of Developer's insolvency; or (e) Developer or any of its contractors, subcontractors, agents or employees violate any of the provisions of this Agreement if such violation is not cured within 30 days following written notice of such violation to Developer and Developer's surety (provided, however, that it will not be deemed a default if Developer commences to cure the violation within the 30-day period and thereafter diligently prosecutes the cure to completion).

18.2. In the event Developer is in default of this Agreement beyond any applicable notice or cure period, Developer's surety, if any, shall have the duty to take over and complete the Work in accordance with the terms of this Agreement. If the surety within 30 days after notice of default from City does not give City written notice of its intention to take over the performance of the Agreement or does not commence performance within 30 days after notice to City of such election, then City may take over the Work and prosecute the same to completion by contract, or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer and its surety shall be liable to City for any costs, expenses and damages incurred by City. In such event, City, without liability for so doing,

may take possession of and utilize in completing the Work, such materials, appliances, plant or other property belonging to Developer as may be on the site of the Work.

18.3. If the form of security is other than a bond, then City, after giving notice of breach and default, may proceed to collect against the security in the manner provided by law and the terms of the security instrument.

19. General Provisions.

19.1. Entire Agreement. The parties intend this writing to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter addressed in this Agreement. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced in this Agreement.

19.2. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

19.3. Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter.

19.4. Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. A party's exercise of any remedy under this Agreement will not prejudice or affect the enforcement of any other remedy.

19.5. Severability. If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, so long as the rights and obligations of the parties are not materially and adversely affected.

19.6. Personal Obligation; Successors and Assigns. Developer's obligations under this Agreement are personal obligations of Developer and they do not automatically "run with" the Subdivision property. Developer cannot assign its obligations under this Agreement to any transferee of all or any part of the property or any other third party without the express written consent of City, which consent will not be withheld unreasonably.

19.7. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties.

19.8. Governing Law and Venue. Except as otherwise required by law, this Agreement will be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court litigation and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or

construction of this Agreement.

19.9. Notices. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by facsimile or electronic mail transmission with delivery to the other party confirmed by a successful-delivery confirmation receipt if the document also is sent within two days by prepaid, first class U.S. mail, or (d) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt. Such notices, etc. shall be addressed as follows:

City: City Clerk City of Wheatland 111 C Street Wheatland, CA 95692	Developer: Wheatland Pacific Associates, a California Limited Partnership 430 East State Street, Suite 100 Eagle Idaho 83616 Attn: Don Slattery
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Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) upon receipt of the facsimile machine or electronic mail successful-delivery confirmation, or (d) on the date of delivery as shown on the overnight courier service receipt. Any party may change its contact information by notifying the other party of the change in the manner provided above.

CITY OF WHEATLAND

DEVELOPER

Wheatland Pacific Associates,
a California Limited Partnership

By: _____
Jim Goodwin, City Manager

By: _____
Caleb Roope, General Partner

Attest:

City Clerk