

# Exhibit F

Recording requested by, and  
When recorded return to:

City of Wheatland  
P.O. Box 395  
313 Main Street  
Wheatland, CA 95692

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*Exempt from recording fees (Government Code sections 6103 & 27383)*

## **CITY OF WHEATLAND DEVELOPMENT AGREEMENT CONCERNING ALMOND ESTATES NORTH SUBDIVISION**

This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2008, by and between the City of Wheatland, a general law city ("City"), and K. Hovnanian Communities, Inc., a California corporation ("Developer") (collectively the "Parties"), who agree as follows:

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

**1.1. Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq. (the "Development Agreement Law"), which authorizes the City and a property owner to enter into a development agreement, establishing certain development rights in the real property that is the subject of a development project application. This Agreement is entered into pursuant to the authority of the Development Agreement Law and City's development agreement ordinance (Wheatland Municipal Code ch. 17.49; Ordinance No. 330).

**1.2. Agreement Goals.** City and Developer desire to enter into this Agreement relating to the Property in order to facilitate the creation of a physical environment that will conform to and complement the goals of the City, protect natural resources from adverse impacts, assist in implementing the goals of the City of Wheatland General Plan, and reduce the economic risks of development to Developer and City.

**1.3. Property.** The subject of this Agreement is the development of that certain parcel of land located within the City, consisting of approximately 43 acres (the "Property") as described in Exhibit A, attached hereto and incorporated herein by this reference. Developer owns the Property in fee. The Property (Yuba County APN 15-140-046) also is shown on that approved tentative subdivision map accompanying City Resolution No. \_\_\_\_-08 and on file in City Hall.

**1.4. Approval of Agreement.** On \_\_\_\_\_, 2008, the City Planning Commission, in a duly noticed and conducted public hearing, considered this Agreement and recommended that the City Council approve this Agreement. On \_\_\_\_\_, 2008, after a duly noticed and conducted public hearing, the City Council adopted this Agreement pursuant to Ordinance No. \_\_\_\_.

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**1.5. CEQA.** City caused a final environmental impact report (“EIR”) to be prepared and certified pursuant to the California Environmental Quality Act (CEQA) for the Almond Estates North development project described below, which encompasses this Agreement. See City Council Resolution No. \_\_\_-08. The City Council has determined that all environmental impacts associated with the development of the Project as provided under this Agreement have been adequately addressed in the EIR, and that the adoption of this Agreement will not result in any new or different environmental impacts than those considered in the certified EIR; therefore, the City Council determines that no further environmental review relating to the adoption of this Agreement is required under CEQA.

**1.6. Entitlements.** The City Council has approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:

1.6.1. The City’s General Plan as it exists on the Effective Date;

1.6.2. The R-1 zoning of the Property;

1.6.3. Vesting Large Lot/Small Lot Tentative Subdivision Map of the Property as approved by Resolution No. \_\_\_-08, adopted on \_\_\_\_\_, 2008 (the “Tentative Map”) and the related Tentative Map conditions of approval;

1.6.4. CEQA Mitigation Monitoring Plan dated \_\_\_\_\_, 2008 approved by Resolution No. \_\_\_-08;

1.6.5. Such other ordinances, rules, regulations and official policies governing permitted uses of the Property, density, design, development, improvement and construction standards and specifications applicable to development of the Property in force on the Effective Date, except as they may be in conflict with a provision of this Agreement; and,

1.6.6. This Development Agreement as approved by Ordinance No. \_\_\_\_ (the “Adopting Ordinance”), adopted on \_\_\_\_\_, 2008 (the “Approval Date”) and as effective on \_\_\_\_\_, 2008 (the “Effective Date”).

The approvals and entitlements described above are referred to as the “Entitlements.” The development of the Property in accordance with the Entitlements is the “Project” for purposes of this Agreement.

**1.7. General Plan.** Development of the Property in accordance with this Agreement and the other Entitlements will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings, the City finds and declares that this Agreement is consistent with the City General Plan, as amended.

**1.8. Substantial Costs to Developer.** Developer has incurred and will incur substantial costs in order to comply with conditions of approval of the Entitlements and to assure development of the Property in accordance with the Entitlements, including the terms of this Agreement.

**1.9. Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, which services and facilities will be provided by City to such development, subject to the performance of the obligations of Developer under this Agreement. Developer agrees to contribute to the costs of such public facilities and services as are required to mitigate impacts of the development of the Property on the City, and City agrees to provide such public facilities

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and services to assure that Developer may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Developer recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide the facilities and services necessary for development of the Property, Developer would not and could not commit to provide the mitigation as set forth in this Agreement. City's vesting of the right to develop the Property is in reliance upon and in consideration of the agreement of Developer to make contributions toward the cost of public improvements and services as provided in this Agreement to mitigate the impacts of development of the Property as such development occurs.

**1.10. Developer's Faithful Performance.** The Parties acknowledge and agree that Developer's performance in developing the Project on the Property and in constructing and installing certain public improvements and complying with the Entitlements and the terms of this Agreement will fulfill substantial public needs. The City acknowledges and agrees that there is good and valuable consideration to the City resulting from Developer's assurances and faithful performance of this Agreement, and that the same is in balance with the benefits conferred by the City on the Project. The Parties further acknowledge and agree that the exchanged consideration is fair, just and reasonable.

## **2. GENERAL PROVISIONS.**

**2.1. Property Description and Binding Covenants.** The Property is that real property described and shown in Exhibit A. It is intended and determined the provisions of this Agreement shall constitute covenants that shall run with the Property for the term of this Agreement and the benefits and burdens of this Agreement shall bind and inure to all successors-in-interest of the Parties.

### **2.2. Term.**

2.2.1. Commencement; Expiration. The term of this Agreement shall commence upon the Effective Date, and shall extend for a period of ten (10) years thereafter, unless the term is terminated, modified or extended as provided by this Agreement or by mutual written consent of the Parties ("Term"). If litigation is filed against City and/or Developer challenging the approval of this Agreement and/or the Entitlements, then the term of this Agreement shall be extended for the period of time from the date of filing the complaint until the date that the litigation is dismissed or otherwise finally concluded. If a federal or state agency with jurisdiction issues an order that prohibits development of the Project, then the term of this Agreement shall be extended for the period of time that the order and prohibition are in effect. If there is uncertainty regarding the date of final conclusion of any litigation or the time period that a federal or state agency order and prohibition are in effect, then that uncertainty shall be decided by the City Attorney, using reasonable judgment.

2.2.1.1. The inability to develop the Property pending completion of certain flood control improvements (see Section 3.13) shall not be considered cause or grounds for the extension of the term of this Agreement, unless otherwise determined by the City Council.

2.2.2. Automatic Termination Upon Completion and Sale of Residential Unit. This Agreement shall be terminated automatically, without any further action by any party or need to record any additional document, with respect to any single family residential lot within the Property, upon completion of construction of, and issuance by the City of a final inspection for, a dwelling unit upon such residential lot and conveyance of such improved residential lot by Developer to a bona-fide good-faith purchaser. In connection with its issuance of a final inspection for such improved lot, and prior to issuing a certificate

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of occupancy, City shall confirm that the lot is included within the Community Facilities District (“CFD”) Services District required by Section 3.11.2 or other financing mechanism acceptable to the City. The termination of this Agreement for any such residential lot as provided for in this section shall not in any way be construed to terminate or modify any assessment district or Mello-Roos community facilities district lien affecting such lot at the time of termination.

2.2.3. Amendment of Agreement. This Agreement may be amended from time to time by mutual written consent of the Parties in accordance with the Development Agreement Law. Amendment by City requires approval by the City Council of City. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is(are) subject to or affected by such amendment. The Parties acknowledge that under the City Zoning Code and applicable rules, regulations and policies of the City, the Planning Director has the discretion to approve minor modifications to approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval by the Planning Director of any minor modifications to the Entitlements that are consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective.

2.2.4. Operating Memoranda. The City and Developer may implement or clarify provisions of this Agreement through the execution of an “Operating Memorandum” approved by the City and Developer, from time to time during the Term. Any such Operating Memoranda shall be automatically deemed a part of this Agreement, but approval, implementation and/or amendment thereof shall not constitute or require an amendment to this Agreement or require public notice or hearing. In the event a provision in any Operating Memorandum conflicts with this Agreement, this Agreement shall prevail. The City Manager is authorized to approve any Operating Memorandum or amendment thereto on behalf of the City, but may request City Council review and approval of any proposed Memorandum, if he or she deems it necessary or desirable. An Operating Memorandum shall not be used to approve or implement a substantive amendment of this Agreement.

2.2.5. Recordation. Except when this Agreement is automatically terminated due to the expiration of its term or per Section 2.2.2, the City shall cause any amendment to it or any other termination of it to be recorded, at Developer’s expense with the County Recorder within ten (10) days of the date of the amendment or termination becoming effective. Any amendment or termination of this Agreement to be recorded that affects less than all the Property shall describe the portion that is the subject of such amendment or termination. When reasonably required by a title company, the City shall record, at no expense to the City, a notice of termination applicable to any parcel(s) for which automatic termination has occurred.

### **2.3. Development of the Property.**

2.3.1. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in this Agreement and the other Entitlements.

2.3.2. Vested Entitlements. Subject to the provisions of this Agreement, City hereby grants a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the other Entitlements. The Project land uses allowed by the Entitlements are permitted to be developed in accordance with the Entitlements, as such Entitlements provide on the Effective Date of this Agreement. Developer’s vested right to proceed with the development of the Property shall be subject to subsequent City building permit approvals.

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2.3.3. Future City Rules and Regulations. To the extent any future City rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land for public purposes under the Entitlements as provided in this Agreement, the terms of the Entitlements and this Agreement shall prevail, unless the Parties agree otherwise in writing or agree to amend this Agreement. Except as otherwise provided by this Agreement (including, but not limited to, section 2.4), neither the City, any agency of the City, nor the voters shall enact and apply to the Property any ordinance, resolution or other measure that relates to the rate, timing or sequencing of the development or construction of the Property on all or any part of the Property that is in conflict with this Agreement, or any amendments thereto, or that reduces the development rights provided by this Agreement. Without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section specifically, an ordinance, resolution or other measure, including an initiative, shall be deemed to conflict with this Agreement if the ordinance, resolution or other measure seeks to accomplish any one or more of the following results, either with specific reference to the Property or as part of a general enactment that applies to this Property would or could:

- (a) Limit or reduce the density or intensity of the Project development or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings;
- (b) Expand or increase Developer's obligations with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements or structures;
- (c) Directly limit public services or facilities otherwise available (e.g., water, drainage, sewer or sewage treatment capacity) to, within, or available for use by the Project;
- (d) Limit or control in any manner the timing or phasing of the construction/development of the Project;
- (e) Limit the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Entitlements;
- (f) Limit the processing of applications for, or procurement of, approvals as may be required to implement the Project; and/or
- (g) Establish, enact or increase in any manner applicable to the Project, or impose against the Project, any development fees other than those specifically permitted by this Agreement.

Clauses (a) through (g) above are intended as examples, and not as a comprehensive or exclusive list of new development requirements that would or could conflict with this Agreement. To the extent any future rules, ordinances, fees, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation or dedication of land under the Entitlements or under any other terms of this Agreement, such rules, ordinances, fees, regulations or policies shall be applicable.

**2.4. Exceptions; Application of Changes.** This Agreement shall not preclude, prohibit or limit the application of any of the following to the Property or Project:

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2.4.1. Any new or amended City-wide ordinance, resolution, rule, regulation or policy that does not conflict with this Agreement, the Entitlements or those ordinances, resolutions, rules, regulations and policies in effect at the Effective Date, and that is generally applied equally to all real property in the City with similar zoning designations and/or land uses.

2.4.2. Any new or amended City ordinance, resolution, rule, regulation or policy that is mandated by changes in applicable federal or state law or regulation that may be applicable to the Property or Project., but then, only to the extent required to comply with federal or state law or regulation.

2.4.3. Any new or amended building codes, including, but not limited to, the California Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code, Uniform Housing Code, and Uniform Sign Code, that generally apply equally to all buildings, structures and real property in City.

2.4.4. Any new or amended City-wide public works improvement standards that are generally applied equally to all real property and public improvements in the City.

2.4.5. Any City sewer or water connection moratorium or limitation or other growth limitation adopted by City ordinance or resolution that is adopted on a uniformly applied, City-wide or area-wide basis and that the City Council finds is necessary to prevent a condition injurious to the health, safety or welfare of City residents, in which case City shall treat Developer in a uniform, equitable and proportionate manner with all similar situated properties that are impacted by that public health, safety or welfare condition. Actions by the City pursuant to this Section 2.4.5 shall trigger an extension of this Agreement pursuant to Section 5.4.

**2.5. Moratorium, Quotas, Restrictions or Other Growth Limitations.** Developer and City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Entitlements. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 that failure of the Parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the intent of the Developer and City to cure that deficiency by acknowledging and providing that Developer shall have the right (without the obligation) to develop the Property in such order and at such rate and at such time as it deems appropriate within the exercise of its subjective business judgment, subject to the terms of this Agreement.

**2.6. Authority of City.** This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use that require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions: (a) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other Entitlements in effect as of the Effective Date of this Agreement, (b) shall not be inconsistent with the Entitlements, and (c) does not conflict with this Agreement.

### **2.7. City Fees.**

2.7.1. Processing Fees and Charges. Developer shall pay those processing, inspection, plan checking, and monitoring fees and charges required by City under the then current and applicable

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regulations (including any post-Effective Date increases in such fees and charges) for processing applications and requests for tentative maps, final map, building permits, inspections of subdivision improvements, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions. Developer also agrees to pay any subsequent approved City fee or charge collected at building permit phase for the preparation or update of City planning, development and housing-related plans, including the General Plan, housing element, master parks plan, trails and bikeway plan, drainage plan and transit plan.

2.7.2. Development Fees. Developer agrees to pay the City development impact fees in accordance with Wheatland Municipal Code chapter 2.27 (and resolutions adopted pursuant to chapter 2.27) in the fee amounts in effect at the Effective Date (the "City Development Fees"), except as follows:

2.7.2.1. The amount of the storm drainage development impact fee shall be \$6,257/residential dwelling unit. A further drainage reimbursement charge is provided for in 3.14.1 (Boswell).

2.7.2.2. The amount of the streets, bridges and signals development impact fee shall be \$5,915/residential dwelling unit.

2.7.2.3. The amount of the wastewater collection development impact fee shall be \$1,155/residential dwelling unit.

2.7.2.4. The amount of the wastewater treatment development impact fee shall be \$1,827/residential dwelling unit.

2.7.3. Commencing January 1, 2009, the amount of the City Development Fees (including the fees described at Sections 2.7.2.1-2.7.2.4, excluding 3.14.1) shall increase based on the previous year's percentage change in the Engineering News-Record (ENR) Construction Cost Index for 20 U.S. Cities. City Development Fees shall be due upon issuance of individual building permits for each single family house, except as otherwise provided under this Agreement or as maybe jointly approved by Developer and the City Manager.

2.7.4. In the event after the Effective Date of the Agreement, the City (or a joint powers agency in which the City is a member) adopts a fee on new development to fund a Highway 65 bypass/relocation and/or a relocation of the existing railroad tracks, then that fee shall apply to Project building permits issued after the adoption of the fee.

2.7.5. Nothing in this Agreement shall apply to, limit or restrict, applicable development fees and similar fees imposed by governmental agencies other than City, including, but not limited to, local school districts, reclamation districts, County of Yuba, and/or regional agencies.

2.7.6. Developer agrees not to oppose, protest or challenge the City Development Fees (as adjusted by the ENR Index) to be imposed and collected pursuant to this Agreement. Except as otherwise provided by this Agreement, nothing in this section shall be construed to limit the right of Developer to oppose, protest or challenge any proposal to adjust existing fees or charges or to adopt new fees or charges. In addition, nothing in this Agreement shall prevent or preclude the City from adopting assessments, fees and charges (other than fees imposed on new development) or special taxes on property within the City to fund capital facilities, public improvements and/or services.

2.7.7. In addition to payment of the City fees described above, Developer also shall be liable for fees, taxes or funding participation provided by Sections 3.11, 3.13 and 3.14.

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**2.8. Compliance with Laws.** Developer shall comply with all applicable federal, state, City (except as restricted by this Section 2), and other governmental statutes, regulations, codes, ordinances and other laws (including permit and license requirements) relating to the development of the Property and including those pertaining to the design and construction of subdivision improvements and City infrastructure.

**2.9. Life of Tentative Subdivision Map.** The Tentative Map is extended from its initial approval period through the Term. In the event that the City terminates this Agreement, then the Tentative Map shall remain valid for one year (365 days) following the effective termination date of this Agreement.

**3. DEVELOPER'S OBLIGATIONS.** All Developer's obligations under this Section 3 shall be at Developer's sole cost and expense, unless expressly provided otherwise.

**3.1. Development, Connection and Mitigation Fees.** Except as otherwise provided herein, any and all required payments of City Development Fees by Developer shall be made at the time and in the amount specified by Section 2.7.

**3.2. School Facilities Mitigation.** Developer agrees that, prior to City approval of each building permit for the Property, Developer shall pay school facilities impact fees applicable to each residential unit or commercial building to the Wheatland School District to mitigate the impacts of development of the Property on elementary and middle schools within the district and to the Wheatland Union High School District to mitigate the impacts of development of the Property on high schools within the district, in accordance with and subject to the requirements of Government Code sections 65995 to 65998 and other applicable state laws. City agrees that so long as Developer is not in default of the obligation to pay school facilities impact fees, City shall not refrain from approving a subdivision map or other such entitlements for the Property or from issuing any building permits for development of the Project consistent with the Entitlements on the basis of adverse impacts of such development on school facilities.

**3.3. Drainage and Special Grading Improvements.** Developer shall provide drainage and special grading improvements as provided in this section.

3.3.1. Drainage Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Drainage Plan for its on-site and off-site drainage facilities to the satisfaction of the City Engineer. The Drainage Plan shall identify the size, location and construction timing of all major drainage facilities proposed for the Property and shall be accompanied by all supporting technical information and calculations required by the City Engineer.

3.3.2. Other Agency Approvals. Prior to issuance of any building permit or grading permit for the Project, Developer shall obtain all permits and agreements as required by other agencies having jurisdiction over drainage, water quality and/or wetlands issues including, but not limited to, the Regional Water Quality Control Board ("RWQCB"), U.S. Army Corps of Engineers, California Department of Fish and Game and Reclamation District No. 2103.

3.3.3. Developer shall prepare and implement a Storm Water Pollution and Prevention Plan and implement, construct and maintain Best Management Practices as required by law and the Storm Water Pollution and Prevention Plan and as approved by the RWQCB, concurrently with the construction of any improvements. Developer shall obtain a permit from the RWQCB for the General Construction Storm Water Permit Compliance Program, as required by law, prior to the start of any construction, including grading.

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3.3.4. Developer shall design, construct and install the storm drain mains and laterals and other drainage improvements in accordance with the approved Drainage Plan and the City's then current public works improvement standards in effect at the time of construction, and including permit acquisition and land and rights-of-way acquisition. All drainage improvements shall be subject to City plan review, construction inspection and final approval.

**3.4. Water System Improvements.** Developer shall provide improvements to the City water system as provided in this section.

3.4.1. Water System Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Water System Plan for the on-site water facilities, to the satisfaction of the City Engineer. The Water System Plan shall identify the size and locations of the water lines, pressure reducing stations and flow monitoring stations required to serve the Property, as well as the construction timing of such improvements, and shall be accompanied by all supporting technical information and calculations required by the City Engineer. The Water System Plan shall comply with the City's water system master plan and then current public works improvement standards.

3.4.2. Construction. Developer shall design, construct and install the water system improvements in accordance with the approved Water System Plan and City's then current public works improvement standards in effect at the time of construction, and including permit acquisition and land and rights-of-way acquisition. All water system improvements shall be subject to City plan review, construction inspection and final approval.

**3.5. Sewer Improvements.** Developer shall provide improvements to the City sewer system and related funding as described in this section.

3.5.1. Sewer System Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Sewer System Plan for its on-site wastewater facilities, to the satisfaction of the City Engineer. The Sewer System Plan shall identify the size of the sewer lines, pump stations and related facilities required to serve the Property, as well as the construction timing of such improvements, and shall be accompanied by all supporting technical information and calculations required by the City Engineer.

3.5.2. Construction. Developer shall design, construct and install the sewer system improvements in accordance with the approved Sewer System Plan and City's then current public works improvement standards in effect at the time of construction, and including permit acquisition and land and rights-of-way acquisition. All sewer system improvements shall be subject to City plan review, construction inspection and final approval.

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## **3.6. Street Improvements.**

3.6.1. Developer shall design and construct the Project street improvements in the manner and at the time as required pursuant to the Tentative Map, subsequent final subdivision map(s), Subdivision Map Act and City subdivision ordinance. All City street improvements to be designed and constructed by Developer shall comply with the City's then current public works improvement and street and highway standards as determined by the City Engineer. All improvements shall be subject to City plan review, construction inspection and final approval. For improvements subject to the jurisdiction of the State Department of Transportation, Developer also shall comply with the then current Department public works improvement and street and highway standards.

3.6.2. Developer shall pay to City its pro-rata fair share contribution toward the costs of the intersection and signalization improvements in accordance with the requirements of the Mitigation Monitoring Plan.

**3.7. Excise Tax on New Development.** Developer shall pay the Excise Tax on New Development in accordance with the Wheatland Municipal Code chapter 3.30.

**3.8. EIR Mitigation Measures and Conditions of Approval.** Notwithstanding any other provision in this Agreement to the contrary, as and when Developer elects to develop the Property, Developer shall be bound by, and shall perform, all mitigation measures contained in the certified final EIR related to such development that are adopted by the City and identified in the Mitigation Monitoring Plan as being a responsibility of Developer and the Tentative Map conditions of approval.

**3.9. Completion of Improvements.** City requires that all improvements necessary to provide adequate service to the portion of the Property being developed be substantially completed prior to issuance by the City of final inspection or certificates of occupancy for any building or structure on that portion (except model home permits as may be provided by the Subdivision Map Act and City Subdivision Ordinance).

**3.10. Utility System Sequencing and Alignment.** Water, sewer, storm drainage and other utility system improvements to be located within a City street shall be installed prior to or concurrent with the installation of the corresponding street improvement. For water, sewer, storm drainage and other utility system improvements to be installed by Developer, Developer shall be responsible for coordinating the alignment of all such planned and future utilities within the applicable rights-of-way to the satisfaction of the City Engineer.

## **3.11. Community Facilities District and Financing.**

### **3.11.1. Community Facilities District – Capital Improvements.**

3.11.1.1. City and Developer agrees that, if requested by Developer, the Parties will use their best efforts to cause to be formed a Mello-Roos community facilities district ("CFD") and City will levy a special tax for the purpose of financing the acquisition or construction of certain improvements or facilities to be determined by the City and Developer (the "CFD Improvements"). The Parties agree that, to the extent permitted by law, City shall use its best efforts to cause bonds to be issued, in amounts sufficient to finance the acquisition or construction of the CFD Improvements. Any CFD formation and related special tax and bond proceedings shall be subject to the City of Wheatland Local Goals and Policies Concerning the Use of the Mello-Roos Community Facilities Act of 1982, as the same may be

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amended from time to time by the City Council. The Local Goals and Policies shall not be considered an entitlement vested by this Agreement.

3.11.1.2. If the bonds issued by the CFD do not provide sufficient funding for the completion of the CFD Improvements, then Developer shall remain liable for the amount of the shortfall. Nothing in this section shall be construed to limit Developer's option to install the CFD Improvements or other improvements through the use of private financing or to limit reimbursement from bond revenue pursuant to the CSD to the Developer for costs incurred for the construction of the CFD Improvements.

### 3.11.2. Community Facilities District – Services.

3.11.2.1. Formation. No residential building permit, excluding permits for model homes, shall be issued until the Property has been included in a Mello-Roos community facilities district ("CFD") for the purpose of funding City services and maintenance obligations (the "CFD Services"), and no house on the Property shall be completed and sold by Developer until the City has levied a special tax (with Developer's vote in support) to fund the CFD Services. The tax will be considered levied at the time of recording the notice of special tax lien. Developer consents to and shall support the inclusion of the Property in a CFD to fund the CFD Services and further consents to the levy of such special taxes as may be required for these purposes. The purposes and amount of the special tax shall be determined in accordance with Section 3.11.2.2.

3.11.2.2. City agrees to retain a qualified financial consultant(s) and attorney(s) to: (a) prepare a special tax study in consultation with City and Developer that will identify the City services, operations and maintenance work to be funded by the CFD Services special tax and determine the appropriate special tax formula, and (b) prepare the appropriate notices, resolutions, ordinances and other documents and perform other tasks necessary and appropriate to form the CFD Services District and approve and levy the special tax (collectively the "CFD Services District Formation Costs"). Developer agrees to pay the CFD Services District Formation Costs, subject to reimbursement as provided below. Developer agrees to deposit ten thousand dollars (\$10,000.00) with City as initial funding for the CFD Services District Formation Costs. City shall draw on this deposit to pay or reimburse periodic invoices from the City consultants and to reimburse the City for the cost of City staff time and materials. If the deposit nears depletion or becomes depleted before completion of the CFD Services District Formation Costs, City reserves the right to either demand additional deposits to cover the City costs or request payment from Developer on an invoice-by-invoice basis. If any requested deposit or payment is not timely made, City shall notify Developer and it shall have ten (10) days to cure the default. If deposit or payment has not been made within the ten (10)-day period or if the funds become depleted, then all work on the CFD Services District Formation Costs shall cease and be suspended pending receipt of the deposit or payment. City shall allocate Developer deposits into a special fund for the purpose of paying and reimbursing the CFD Services District Formation Costs. Any Developer deposit remaining upon completion of the CFD Services District Formation Costs shall be refunded without interest to Developer. If the final total CFD Services District Formation Costs exceed the amount of the deposit(s), Developer shall pay the difference to the City.

3.11.2.3. City agrees to include reimbursement of the CFD Services District Formation Costs within the special tax formula and to repay to Developer its payment of CFD Services District Formation Costs from the CFD Services special tax proceeds. When the City begins to receive CFD Services special tax revenue, one-half of the tax proceeds will be paid as reimbursement to Developer until the reimbursement obligation under this section is paid in full, and the other one-half will be retained by City for other special tax purposes.

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3.11.2.4. Public Parcel Exclusion. Any real property parcels conveyed or to be conveyed to City or any other governmental agency shall be excluded from any special tax for CFD Services to be imposed by the CFD Services District.

3.11.2.5. Maximum Tax Rate. The maximum annual tax rate shall be determined by the City in consultation with the Developer. The maximum annual tax rate shall be equitable with the rate for the Jones Ranch, Heritage Oaks Estates and other new residential subdivisions.

### 3.11.3. Homeowners Association.

3.11.3.1. Formation. Developer may, at Developer's option, establish a homeowners association with the authority to levy assessments against property owners or alternative private financing mechanism acceptable to City for the purpose of funding some or all of the services and maintenance obligations described in Section 3.12.2. As provided by Section 3.12.2, the homeowners association or other private financing mechanism also may provide for the funding of all or some of the CFD Services obligations, if such CFD Services obligations are not separately funded pursuant to the CFD.

3.11.4. Waiver of Protest Rights. In conjunction with any proceedings creating an assessment district or other applicable financing mechanism pursuant to this Agreement, Developer hereby waives any right to protest that it may have under applicable state law.

## **3.12. Land and Right(s)-of-Way Acquisition.**

3.12.1. Public Utility Easements. If any water, sewer, storm drainage or other utility improvements to be constructed by Developer and later owned and maintained by City are not located within existing street rights-of-way or public utility easement, then as and when Developer installs such improvements, Developer shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such improvement, together with access, in a form acceptable to the City Attorney. Easement widths shall be granted in accordance with the City Engineer's requirements.

3.12.2. To the extent that the acquisition of off-site property or right(s)-of-way are necessary for Developer to construct off-site improvements including, but not limited to, streets, water, sewer, storm drainage or other utility improvements, or trails, Developer shall be responsible for acquiring the necessary property or right(s)-of-way through good faith negotiations with the property owner. In the event Developer is unable to obtain the property or right(s)-of-way through good faith negotiations, Developer may request that City acquire the property or right(s)-of-way. City shall, consistent with the Subdivision Map Act, review promptly any such request and notify Developer as to whether or not City is prepared to acquire the property or right(s)-of-way in question through the exercise of its power of eminent domain. In the event City determines to exercise its power of eminent domain, it shall promptly proceed in accordance with the Eminent Domain Law (Code of Civil Procedure section 1230.010 et seq.) and use its best efforts to expedite acquisition. Prior to City initiating any condemnation action, Developer shall provide funding for all costs of such property or right(s)-of-way acquisition, including attorney's fees, appraisal and court costs as the City may deem necessary and appropriate. If City's final costs exceed the amount deposited by Developer, Developer shall pay the balance to City promptly upon request by City. If City's final costs are less than the amount deposited by Developer, City shall promptly pay the difference to Developer. If the City determines not to exercise its power of eminent domain, Developer's obligation to construct the off-site improvement in question shall be terminated.

3.12.3. Liens, Encumbrances, Covenants, Conditions and Restrictions. Except as otherwise approved by City or provided for by this Agreement, all property to be dedicated or conveyed in fee to

## Exhibit F

City pursuant to this Agreement or the Tentative Map shall be free of any liens, encumbrances, special taxes, special assessments, deed covenants, conditions and restrictions, or hazardous materials. For each such conveyance, Developer shall provide to City, at Developer's expense, a current preliminary title report and preliminary site assessment for hazardous materials in a form approved by the City Attorney. Any policy of title insurance required by City shall be at City's expense.

### **3.13. Flood Control.**

3.13.1. The Parties are advised that: (a) the Bear River and Dry Creek levees that protect the Property against flooding are inadequate and do not meet the current federal or state flood protection criteria, (b) the Property is subject to flooding from three different sources as described in the final EIR for the Project – Bear River, Dry Creek, and backwater ponding from downstream, and (c) future development of the Project will require, and cannot proceed without, the completion of flood control improvements to mitigate flooding from each of these three sources and to provide the Property with an “urban level of flood protection” (defined as the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the State Department of Water Resources (Government Code section 65007(k))).

3.13.2. Bear River Levee Improvements. The mitigation of flooding from the Bear River shall be implemented as follows:

3.13.2.1. The Parties are advised that: (a) the City, Reclamation District No. 2103, State Department of Water Resources, and the developers of the Heritage Oaks East and Jones Ranch subdivisions have approved a plan that should provide funding to complete Bear River levee improvements that would protect the Property from flooding from the Bear River, (b) Reclamation District No. 2103 has prepared an engineering report to determine a cost estimate for the Bear River levee improvements and a geographical zone of benefit of properties provided with flood protection by the Bear River levee improvements (Levee Zone of Benefit), (c) the Property will be included within the Levee Zone of Benefit, (d) City will be preparing a Bear River levee development fee study that will allocate the cost of the Bear River levee improvements on a pro-rata fair share basis among benefiting properties within the Levee Zone of Benefit, and (e) City intends to adopt an ordinance requiring properties within the Levee Zone of Benefit to pay a Bear River levee improvement development impact fee, to ensure that all properties within the Levee Zone of Benefit pay their fair share of the Bear River levee improvements as a condition of development.

3.13.2.2. Developer agrees to pay the Bear River levee improvement development impact fee in accordance with the requirements of the fee ordinance and/or resolution to be adopted by the City upon completion of the fee study and in the amount in effect at time of issuance of a building permit.

3.13.2.3. If the Bear River levee improvements are not completed by Reclamation District No. 2103 by the time Dry Creek levee improvements have been investigated and designed, then Developer implementation of a plan to mitigate flooding from the Bear River shall be added to the requirements of Section 3.13.3.

3.13.3. Dry Creek and Backwater Ponding. For the mitigation of flooding from Dry Creek and backwater ponding, Developer shall commit to a program or solution (for each source of flooding) which will fully fund the cost of the flood control improvements necessary to provide an urban level of flood protection to the Property by either: (a) directly constructing the necessary flood control improvements, (b) entering into and participating in an advance funding agreement with other participating developers, (c) including the Property in a CFD or assessment district and approving payment of a CFD special tax or

## Exhibit F

assessment, (d) participating in a development impact fee program, (e) participating in some other funding program acceptable to the City, or (f) implement onsite project improvements that mitigates the flooding impact, or (g) some combination of the foregoing. The final terms of the proposed program shall be subject to the review and approval by the City to ensure that the selected program will satisfactorily fully fund the cost of the flood control improvements necessary to provide an urban level of flood protection to the Property. Developer must demonstrate its satisfactory compliance with one of these options as a condition of developing the Property.

### 3.13.4. Development Pending Completion of Flood Control Improvements.

3.13.4.1. Land Preparation. If the Federal Emergency Management Agency (FEMA) issues a Conditional Letter of Map Revision (CLOMR) for the Property indicating that the Property would no longer be in a special flood hazard area (as defined by the City Floodplain Management Ordinance (Wheatland Municipal Code chapter 15.12)) upon completion of a specified flood control improvement project, then the Developer may proceed with the following development-related activities: land preparation, such as clearing, grading, and filling; construction of streets, curbs and sidewalks; construction and installation of water, sewer, other utility and storm drainage improvements; and, preparation and submittal of a large lot final subdivision map application (which shall be approved by the City if it otherwise complies with the requirements of the approved tentative map, Subdivision Map Act, City subdivision ordinance and this Agreement). Performance of any grading or construction related work shall be subject to and in compliance with the terms of a floodplain development permit, with permit conditions, to be issued by the City pursuant to its Floodplain Management Ordinance. If Developer chooses to proceed with grading or construction related work activities prior to completion of the flood control improvements, then it agrees to assume the risk of loss or damage to the Property and improvements on the Property from flooding and to indemnify the City for any such loss or damage pursuant to Section 6.

3.13.4.2. Occupancy Permits. Occupancy permits for construction of buildings or structures on the Property shall not be issued or approved by the City until: (a) FEMA has issued a Letter of Map Revision (LOMR) for the Property showing that the Property is no longer in a special flood hazard area, and (b) the City Engineer has determined in writing that the Property has an urban level of flood protection. Issuance of building permits shall be subject to the City's Floodplain Management Ordinance.

**3.14. Reimbursement Obligations.** Developer agrees to pay to City and otherwise comply with the reimbursement obligations described in this section. Upon payment by Developer, City shall forward the reimbursement to the appropriate payee in accordance with the terms of the applicable financing plan or agreement(s) described below.

3.14.1. Payment of the 1991 storm drainage fee (City Resolution No. 68-90; Ordinance No. 400, section 6) in the amount of \$1,000/residential dwelling unit as appropriate to fund reimbursement to Pacific Ridge Development Co. (John Boswell) under the 1990 Wheatland Specific Plan Financing Plan, to be paid as each building permit is issued by the City. The City, at Developer request, may assist in negotiating a lump sum settlement with Pacific Ridge Development Co.

3.14.2. Payment of reimbursement in the amounts and to the payees listed in the table below in accordance with the *City of Wheatland Reimbursement Agreement No. 1/Agreement to Reimburse Developer for Certain Public Improvement Installations* dated May 20, 1992, as amended by *Amendment No. 1 to City of Wheatland Reimbursement Agreement No. 1 with Sac Pacific Development, Inc.* dated June 3, 1994, and the assignment from Sac Pacific Development, Inc. to Philip Clevenger dated April 15,

## Exhibit F

1996, to be paid as each permit is issued by the City. City, at Developer request, may assist in negotiating a lump sum settlement.

Improvement	Total Reimbursement Amount	Developer's Share	Payee
Lofton Road Improvements	\$202,491	\$182,242	Sac Pacific Development, Inc
Sanitary Sewer Force Main	\$104,541	\$61,679	Philip Clevenger
Sewer Lift Station	\$124,968	\$73,731	\$50,000 to P. Clevenger; balance to Sac Pacific Development, Inc.

The Secretary of State files show that payee Sac Pacific Development, Inc. has been suspended, which indicates that the corporation is no longer authorized to conduct business in the state. Accordingly, at Developer's request, City will waive the condition obligating Developer to reimburse Sac Pacific Development, Inc. in exchange for Developer's agreement to indemnify the City against any liability to Sac Pacific Development, Inc. as a result of the City's waiver, provided, however, Developer's obligation to indemnify the City shall be limited to the amount of the payment owed Sac Pacific Development, Inc.

3.14.3. Payment of the 2002 water fee and wastewater transport fee (City Resolution No. 34-02; Ordinance No. 400, section 6.) in the amount of \$1,158/residential dwelling unit (water) and \$1,869/residential dwelling unit (wastewater transport) as appropriate to fund reimbursement to Developer and Wheatland School District under the *City of Wheatland Westside Infrastructure Funding Agreement* dated October 29, 2002. To the extent reimbursement proceeds are payable to Developer, Developer shall be entitled to take a credit against the fee up to the amount of the reimbursement.

### **3.15. Project Timing, Implementation and Reimbursement.**

3.15.1. Conditions of approval (#4, 12, 75, 106, 107) of the Tentative Map, and provisions of the Development Agreement (3.11 (CFD formation), 3.13.3 (Dry Creek and Backwater Ponding)) (collectively the "Community Benefit Conditions") require Developer participation in financing improvements of community wide benefit or undertaking studies which benefit properties in addition to the Property. Due to current uncertain economic conditions, neither the City nor the Developer can predict the point in time in which Developer will be reimbursed for that portion of expenses of the Community Benefit Conditions which are not fair-share expenses as it pertains to the Developer. The timing of the performance of the Community Benefit Conditions remains the sole discretion of the Developer, except that the condition must be satisfied no later than the point in time specified within the particular condition. The purpose of this provision is to permit Developer to schedule expenses in conjunction with appropriate market cycles along with the option to coordinate the work and related expenses with other developers.

3.15.2. To the extent permitted by law, the City will impose similar Community Benefit Conditions on other tentative maps and large development project applications approved after the Effective Date, including the obligation to reimburse Developer for expenses in excess of Developer's fair share of the Community Benefit Conditions. Fair share calculations will be based upon EDU's or similar basis, as appropriate to the particular expense. City shall cooperate with Developer to obtain reimbursement for excess expenses incurred by the Developer either through direct reimbursements by later developers at the earliest opportunity or through the issuance of bond proceeds, in the event that

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bonds are sold to finance improvements constructed or to be constructed as a result of the Community Benefit Conditions.

3.15.3. To the extent permitted by law, actual, reasonable and direct expenses incurred by Developer in complying with the Community Benefit Conditions which are not directly reimbursed by others or reimbursed through bond proceeds shall be incorporated into any impact fee program adopted by City to implement the Community Benefit Condition, and, if the fee applies to Developer, Developer shall be entitled to a direct credit against that fee for approved expenses incurred in complying with the Community Benefit Condition.

### **4. CITY OBLIGATIONS.**

**4.1. City Cooperation.** City agrees to cooperate with Developer in implementing this Agreement and in developing the Project, and in securing all permits and entitlements that may be required by City. In the event state or federal laws or regulations enacted after the Effective Date, or other actions of any other governmental agency with jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the Parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental agencies. Each party agrees to reasonably cooperate in so modifying this Agreement or approved plans.

#### **4.2. Applications for Permits and Entitlements.**

4.2.1. Action by City. City agrees that it will accept for processing, review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Entitlements and this Agreement, and shall act upon the review of and approval of such applications in a timely manner. City staff review and comments on applications for development permits and entitlement applications shall be provided to Developer at the earliest feasible date.

4.2.2. Maps and Permits. Provided that Developer is in compliance with, and not in default under, this Agreement, and subject to Section 3.13, City shall not refrain from approving any final subdivision map nor shall it cease to issue building permits, certificates of occupancy or final inspections for development of the Property that is consistent with the Entitlements. The approval of any application for a final subdivision map or other permit or entitlement may be conditioned upon compliance with this Agreement or any provision of it or with conditions of the Entitlements, as applicable. If Developer requests City to approve and record a final map before the construction of the subdivision improvements, then nothing in this Agreement shall restrict City from requiring Developer (or the successor-in-interest) to enter into and comply with a subdivision improvement agreement and post subdivision bonds in accordance with City's ordinary subdivision approval practices.

4.2.3. Personnel. If requested by Developer, City shall use its best efforts to retain the services of additional personnel by special contract for the purposes of evaluating, processing or reviewing applications for permits, maps or other entitlements or for the design, engineering, construction or inspection of public facilities associated with the Project, subject to the written agreement of Developer to provide payment to City for the full cost of such personnel. Notwithstanding the above, nothing in this Agreement shall be construed to require the City to hire or retain City employees in excess of those provided in the normal and customary budgeting process and fee schedules of City.

4.2.4. Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City and Developer relating to this Agreement or to other development issues affecting the Property shall

## Exhibit F

not delay or stop the development, processing or construction of the Project or issuance of additional permits or approvals for Project development, unless the third party obtains a court order preventing the activity. City shall not stipulate to or (subject to Developer's obligation to pay the defense costs under Section 6) fail to oppose the issuance of any such order.

**4.3. Credits for Master Planned Facilities.** To the extent that Developer constructs improvements for which the City collects development impact fees, Developer is entitled to a credit against the fees otherwise owed by Developer. Excess credits shall be subject to reimbursement. Credits and reimbursement shall be provided in accordance with Wheatland Municipal Code sections 2.27.050 and 2.27.060.

**4.4. Exercise of Discretion Based upon Objective Standards.** Whenever the City makes a decision under this Agreement that involves the exercise of discretion, the exercise of discretion by the City shall be based upon objective standards.

### **5. DEFAULT, REMEDIES, TERMINATION.**

#### **5.1. Default.**

5.1.1. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any material term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. During any such thirty (30)-day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

5.1.2. After notice and expiration of the thirty (30)-day period, if the default has not been satisfactorily cured or remedied, the non-defaulting party at its option may institute legal proceedings pursuant to Section 5.2 or give notice of intent to terminate this Agreement pursuant to the Development Agreement Law and implementing City ordinance. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) days as provided by the Development Agreement Law and implementing City ordinance.

5.1.3. Following consideration of the evidence presented in the review before the City Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

**5.2. Legal Action.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall City or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Developer for a breach of this Agreement by City shall be a legal action in mandamus, specific performance, injunction or declaratory relief to enforce this Agreement.

**5.3. Effect of Termination.** If this Agreement is terminated following any event of default by Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property that is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a valid building permit issued by the City.

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Furthermore, no termination of this Agreement shall prevent Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with the building permit in effect at the time of such termination.

**5.4. Force Majeure.** In addition to specific provisions of this Agreement, performance by either party under this Agreement shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation (including litigation and appeals brought by any third party challenging City approval of any or all of the Entitlements), or similar bases for excused performance. If written notice of such delay is given to City within ninety (90) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

**5.5. Annual Review.** At least every twelve (12) months during the term of this Agreement, the Planning Director shall review the extent of good faith substantial compliance by Developer with the terms of this Agreement. Failure of the Planning Director to complete the annual review shall be deemed to be a finding of substantial compliance. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code section 65865.1 and the monitoring of EIR mitigation measures. Developer shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review, the payment of which shall be due within thirty (30) days after conclusion of the review and receipt from City of the bill for such costs. Upon written request by the City Planning Director, Developer shall provide such information as may be necessary or appropriate in order to ascertain compliance with this Agreement.

## **6. INDEMNIFICATION AND HOLD HARMLESS.**

**6.1. Indemnity.** Developer and its successors-in-interest and assigns shall indemnify, defend, protect and hold harmless City, and its officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with performance and actions under this Agreement by Developer and/or its contractors, subcontractors, consultants, agents or employees, or failure to perform or act under this Agreement, except such loss or damage that was caused by the sole negligence or willful misconduct of City or except as otherwise limited by law. Developer also shall defend, indemnify and hold harmless City, and its officers, employees, agents and volunteers from any lawsuit, claim or liability arising out of the execution, adoption or implementation of this Agreement and/or the Entitlements. The indemnification obligations under this section 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.

**6.2. Waiver.** In consideration of the benefits received pursuant to this Agreement, Developer, on behalf of itself and its successors-in-interests and assigns, waives and covenants not to sue City or any of its officers, employees, agents or volunteers for any and all causes of action or claims that it might have under City ordinances or the laws of the State of California or the United States with regard to any conveyance or dedication of real property or easements over the Property required by this Agreement, improvements that are provided for by this Agreement, fees and payments provided by this Agreement, or other conditions imposed by this Agreement.

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**6.3. Defense of Agreement.** City and Developer agrees to cooperate, and to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement and the Entitlements, subject to the indemnification provisions of Section 6.1. The City and Developer shall promptly notify one another of any claim, action, or proceeding brought forth within this time period. Developer and City shall select joint legal counsel to conduct such defense and which legal counsel shall represent both the City and Developer in defense of such action (unless, under the circumstances, single legal counsel could not represent both Parties because of a conflict of interest).

### 7. DEEDS OF TRUST AND MORTGAGES.

**7.1. Mortgage Protection.** This Agreement shall be superior and senior to all liens placed upon the Property or any portion of it after the date on which this Agreement is recorded, including the lien of any deed of trust or mortgage (“Mortgage”). Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees (“Mortgagees”) who acquire title to the Property or any portion thereof by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

**7.2. Mortgagee Obligations.** Upon receipt of a written request from a foreclosing Mortgagee, City shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement.

**7.3. Notice of Default to Mortgagee.** If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for sending notice, City shall endeavor to deliver to the Mortgagee, concurrently with notice to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted under this Agreement. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in City’s notice.

### 8. MISCELLANEOUS PROVISIONS.

**8.1. Estoppel Certificate.** Either party may from time to time deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party that: (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request under this Agreement shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that transferees and mortgagees of Developer may rely upon a certificate under this Agreement.

**8.2. Assignment and Successors.** From and after recordation of this Agreement against the Property, Developer may assign this Agreement as to the Property, or any portion of it, in connection with any sale, transfer or conveyance of the Property, subject to the express written assignment by Developer and assumption by the assignee of such assignment pursuant to an assignment and assumption agreement in a form approved by the City Attorney. Upon the conveyance of Developer’s interest in the Property and

## Exhibit F

execution of the assignment and assumption agreement, Developer shall be released from any further liability or obligation under this Agreement related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Developer," with all rights and obligations under this Agreement with respect to such conveyed property.

**8.3. Counterparts.** This Agreement may be executed in two duplicate originals, each of which is deemed to be an original.

**8.4. Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

**8.5. 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 shall not apply in construing or interpreting this Agreement.

**8.6. 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 shall not be deemed a waiver with respect to any subsequent default or matter. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

**8.7. Severability.** If any term, covenant or condition of this Agreement or the application of this Agreement to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall remain valid and enforceable to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party of an essential benefit of its bargain under this Agreement, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

**8.8. Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties.

**8.9. No Third Party Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties, their respective successors-in-interest and permitted transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

**8.10. Governing Law.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

**8.11. Notices.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement, the Development Agreement Law or implementing ordinance shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

# Exhibit F

City:

City Clerk  
City of Wheatland  
P.O. Box 395  
313 Main Street  
Wheatland, CA 95692

Developer:

Richard J. Balestreri  
K. Hovnanian Communities, Inc.  
1375 Exposition Blvd., Ste. 300  
Sacramento, CA 95815

Any party may change its address by notifying the other party in writing of the change of address.

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CITY OF WHEATLAND

DEVELOPER

By: \_\_\_\_\_  
Stephen L. Wright  
City Manager

By: \_\_\_\_\_  
Richard J. Balestreri  
Sr. Vice President

# Exhibit F

## ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, ' 1189]

State of California     )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2008, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

Signature: \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, ' 1189]

State of California     )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2008, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

Signature: \_\_\_\_\_ (Seal)

# Exhibit F

## Exhibit A

### Description of Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YUBA, CITY OF WHEATLAND, AND IS DESCRIBED AS FOLLOWS:

PORTION OF SECTION 13 OF JOHNSON RANCHO, AS SHOWN UPON THE MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF YUBA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID SECTION 13; THENCE NORTH 64 DEGREES EAST 40.0 CHAINS; THENCE NORTH 26 DEGREES WEST 40.0 CHAINS; THENCE SOUTH 64 DEGREES WEST 40.0 CHAINS AND THENCE SOUTH 26 DEGREES EAST 40.0 CHAINS TO THE POINT OF BEGINNING, BEING COMMONLY KNOWN AS THE SOUTHWEST QUARTER OF SAID SECTION 13.

EXCEPTING THEREFROM ALL THAT PORTION LYING NORTHERLY AND EASTERLY OF THE SOUTHWESTERLY LINE OF THE RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID SECTION 13 WITH THE SOUTHWESTERLY LINE OF THE CALIFORNIA STATE HIGHWAY RIGHT OF WAY; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHERLY LINE OF SAID SECTION 13, SOUTH 64 DEGREES 02' WEST 1765.27 FEET TO THE WEST LINE OF SAID SECTION 13; THENCE ALONG SAID WEST LINE NORTH 26 DEGREES 05' WEST 170.00 FEET; THENCE LEAVING SAID LINE NORTH 64 DEGREES 02' EAST 268.95 FEET; THENCE NORTH 25 DEGREES 58' WEST 195.00 FEET; THENCE NORTH 64 DEGREES 02' EAST 332.90 FEET; THENCE SOUTH 25 DEGREES 58' EAST 225.00 FEET; THENCE NORTH 64 DEGREES 02' EAST 677.10 FEET; THENCE NORTH 38 DEGREES 17' WEST 236.75 FEET; THENCE NORTH 36 DEGREES 02' 05" EAST 300.00 FEET TO THE SOUTHWESTERLY LINE OF SAID HIGHWAY RIGHT OF WAY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 53 DEGREES 57' 55" EAST 580.00 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID SECTION 13; THENCE FROM SAID POINT OF BEGINNING ALONG THE WESTERLY LINE OF SAID SECTION, NORTH 26 DEGREES 05' WEST, 170.00 FEET; THENCE LEAVING SAID WESTERLY LINE NORTH 64 DEGREES 02' EAST 373.95 FEET; THENCE SOUTH 85 DEGREES 00' EAST 58.31 FEET; THENCE NORTH 64 DEGREES 02' EAST 893.56 FEET; THENCE NORTH 53 DEGREES 57' 55" WEST 957.90 FEET; THENCE NORTH 36 DEGREES 02' 05" EAST 330.00 FEET TO THE SOUTHWESTERLY LINE OF THE CALIFORNIA STATE HIGHWAY RIGHT OF WAY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 53 DEGREES 57' 55" EAST 1291.90 FEET TO THE SOUTHERLY LINE OF SAID SECTION 13; THENCE ALONG SAID SOUTHERLY LINE SOUTH 64 DEGREES 02' WEST 1765.33 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST WESTERLY CORNER OF LOT 19, AS SAID LOT IS SHOWN ON THE "PLAT OF TOWN AND COUNTRY GARDENS UNIT NO. 1", RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF YUBA COUNTY IN BOOK 7 OF MAPS, PAGE 5; THENCE FROM SAID POINT OF BEGINNING NORTH 25 DEGREES 58' WEST 582.22 FEET; THENCE NORTH 64

## Exhibit F

**DEGREES 02' EAST 540.00 FEET; THENCE SOUTH 25 DEGREES 58' EAST 612.22 FEET TO THE NORTHWESTERLY BOUNDARY OF SAID TOWN AND COUNTRY GARDENS UNIT NO. 1; THENCE ALONG SAID NORTHWESTERLY BOUNDARY SOUTH 64 DEGREES 02' WEST 385.00 FEET, NORTH 85 DEGREES 00' WEST 58.31 FEET AND SOUTH 64 DEGREES 02' WEST 105.00 FEET TO THE POINT OF BEGINNING.**

(Yuba County APN 015-140-046)