

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKLIN
APPROVING AND AUTHORIZING EXECUTION
OF A SUBDIVISION LANDSCAPING AGREEMENT

(Whitney Ranch Phase II-F Units 59 & 61C / SD-2006-07/SD-2006-07A)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby finds as follows:

A. That a final subdivision map for a subdivision known as **Whitney Ranch Phase II-F Units 59 & 61C** (SD-2006-07/SD-2006-07A) (the "Subdivision") has been submitted by **Sunset Ranchos Investors, LLC** (the "Subdivider") for approval;

B. That certain subdivision landscaping improvements which were made conditions of the tentative subdivision map have not been completed and accepted, and Subdivider has executed and provided security for a subdivision landscaping agreement obligating Subdivider to complete the landscaping improvements within a specified period of time. Subdivider requests the City Council to accept the subdivision landscaping agreement in satisfaction of the tentative map condition.

Section 2. The subdivision landscaping agreement attached hereto as Exhibit A and by this reference incorporated herein is hereby approved and accepted as satisfaction of the tentative map subdivision landscaping improvement conditions, and the City Manager is authorized and directed to execute the agreement on behalf of the City.

Section 3. The City Clerk is directed to record the subdivision landscaping agreement when fully executed and notarized in the office of the Placer County Recorder.

PASSED AND ADOPTED this 25th day of June, 2019, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Joe Patterson, Mayor

ATTEST:

Mona Forster, City Clerk

Recording Requested by
and Return to:

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

Subdivision Name: Whitney Ranch Phase II-F Units 59 & 61C

Subdivision No.: SD-2006-07/SD-2006-07A

Recorded at: Book _____ of Maps, at Page _____, Placer County Recorder

Principal: Sunset Ranchos Investors, LLC

Effective Date: _____

SUBDIVISION LANDSCAPING AGREEMENT

This Subdivision Landscaping Agreement is entered into by and between the City of Rocklin, hereinafter called "City," and Sunset Ranchos Investors, LLC, hereinafter called "Principal," on the 25th day of June, 2019.

RECITALS

A. Principal has received approval from City of a tentative subdivision map commonly known as Whitney Ranch Phase II-F Units 59 & 61C ("the subdivision").

B. Principal wishes to have filed for record a final subdivision map, ("the map"), in substantial conformity with the approved tentative map. A copy of this map is attached hereto as Exhibit A and by this reference incorporated herein.

C. City has approved the map, subject to the execution of this Agreement.

D. Principal is willing to execute this Agreement as a condition precedent to the recording of the map.

E. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.) and Title 16 of the Rocklin Municipal Code ("Title 16").

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AGREEMENT

1. **Improvements.** Principal agrees to complete all the works of landscaping improvement ("the improvements") required for the subdivision as shown on the final landscaping plans for the subdivision submitted to and approved by the City Engineer and on file in the office of the City Engineer, in accordance with the requirements of the Map Act, Title 16, and the Standard Specifications of City in effect at the time of the installation of the improvements. Such work will be completed within twelve (12) months of the date of this Agreement.

2. **Acceptance of Improvements upon Completion.** Upon satisfactory completion of the improvements in accordance with the approved landscaping plans, the Standard Specifications and the conditions of approval of the tentative subdivision map, City agrees to accept for maintenance the improvements and any off-site easements accepted by City, subject to the provisions of Paragraph 4 hereof.

3. **Notice Regarding Construction.** Principal shall notify the City Engineer 48 hours prior to commencement of construction of the improvements.

4. **Warranty.** Principal agrees to remedy any defects in the improvements arising from faulty or defective design or construction of said improvements occurring within twelve (12) months after acceptance thereof has been given in writing by the City Council.

5. **Indemnity and Hold Harmless.** Principal agrees to and shall defend, indemnify and hold harmless City, its officers, employees, agents and volunteers from and against all claims, damages, losses and expenses, including attorneys fees and litigation costs and expenses, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Principal, any subcontractor of Principal, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of City. Lack of insurance coverage does not negate Principal's obligation under this paragraph or this Agreement.

6. **Delay.** If the construction of the improvements shall be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

7. **Security.** Principal shall furnish to City security to ensure the faithful performance of all duties and obligations of Principal herein contained. Such improvement security shall be in a form acceptable to the City Attorney. Such security shall be either a corporate surety bond, a letter of credit or other instrument of credit
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issued by a banking institution subject to regulation by the State or Federal government and pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment, or a cash deposit made either directly with the City or deposited with a recognized escrow agent for the benefit of the City. Such security shall be in the following amounts for the following purposes:

(a) **Performance:** One hundred percent (100%) of the estimated cost of the improvements securing performance of this Agreement, which estimated cost is in the amount of: **seventy nine thousand one hundred and forty seven dollars (\$79,147.00).**

(b) **Payment of Labor and Materials:** One hundred percent (100%) of the estimated cost of the improvements, as set forth in Paragraph (a) immediately preceding, securing payment to the contractor of improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them.

(c) **Warranty:** The amount of **fifteen thousand eight hundred and twenty nine dollars (\$15,829.00)** to guarantee and warrant the improvements for a period of ONE (1) year following the completion and acceptance of the improvements against any defects in the improvement design, the work, or the labor done, or defects in materials furnished. This security need not be furnished prior to completion of the improvements, but must be provided prior to their acceptance.

8. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 7 shall be irrevocable, shall not be limited as to time (except as to the 1 year period specified in Paragraph 4), and shall provide that it shall be released, in whole or in part, only upon the written approval of the City Engineer or his delegate.

9. **Actions.** At City's option, any action by any party to this Agreement, or any action concerning the security furnished pursuant to Paragraph 7, shall be brought in the appropriate court of competent jurisdiction within the County of Placer, notwithstanding any other provision of law which may provide that such action may be brought in some other location.

10. **Inspection; Release of Security For Faithful Performance.** Principal may, from time to time, request the City Engineer to inspect the improvements as they progress. The City Engineer may, at his option, if he finds the work to be in accordance with the Standard Specifications, accept so much of that work as is completed, and authorize a release pro tanto of the security provided pursuant to Paragraph 7(a); provided, however, that in no event shall he authorize the release of more than eighty (80%) of the improvement security until all the work has been completed and accepted.

11. **Release of Remaining Security For Faithful Performance: Warranty.** At the conclusion of the construction of the improvements, and upon written acceptance of them by the City Council and approval of a Notice of Completion, the City Engineer shall authorize the release of the security provided pursuant to Paragraph 7(a) upon the furnishing of the warranty security as required by Paragraph 7(c).

12. **Release of Security Where Other Agency Approval Required.** Notwithstanding paragraphs 10 and 11, where any portion of the improvements is subject to approval by another agency, no release of security equal to the value of those improvements shall be made until the work is completed to the satisfaction of such other agency. Such other agency shall have two (2) months after completion of the performance of the obligation in which to register satisfaction or dissatisfaction. If at the end of that period it has not registered satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

18. **Release of Labor and Materials Security.** Ninety (90) days after a notice of completion is filed with respect to the improvements, the City Engineer may authorize the release of the security given to secure payment for labor and materials as provided in Paragraph 7(b) of this agreement, in the event that no claims have been filed against said security. In the event that claims or actions are filed against the security, the City Engineer may release so much of such security as is in excess of the total of the claims made against it.

19. **Insurance.**

A. Principal shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Agreement and the results of that work by Principal, its agents, representatives, employees, or subcontractors. All coverage available to the Principal as named insured shall be made available to the City, its officers, employees and volunteers as additional insured. Principal shall provide to City the full policy limits of Principal's insurance, with coverage at least as broad as, and limits no less than, the following:

1. **General Liability.** Principal shall maintain in full force and effect a policy of commercial general liability insurance (ISO occurrence form CG0001) with limits no less than the following: one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this agreement, or the general aggregate limit shall be twice the required occurrence limit. (The occurrence form of policy is required whenever it is available.)

2. Worker's Compensation and Employer's Liability Insurance. Principal shall fully comply with the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Principal may have for worker's compensation. Principal shall also maintain in full force and effect a policy of employer's liability insurance with limits no less than the following: one million dollars (\$1,000,000) each accident; one million dollars (\$1,000,000) policy limit bodily injury by disease; one million dollars (\$1,000,000) each employee bodily injury by disease.

3. Automobile. Principal shall maintain in full force and effect a policy of commercial automobile liability insurance (ISO Form CA0001 Code 1 (any auto) or Code 8, 9 if no automobiles owned), with limits no less than the following: one million dollars (\$1,000,000) per accident for bodily injury and property damage.

B. The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, employees and volunteers shall be added as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Principal, and with respect to liability arising out of work or operations performed by or on behalf of the Principal including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to work or operations performed by or on behalf of Principal, the Principal's insurance coverage shall be primary insurance as respects the City, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees, or volunteers shall be excess of the Principal's insurance and shall not contribute with it.

3. The insurance coverage shall not be assigned, reduced, amended, cancelled, terminated, or not renewed by either party except after thirty (30) days written notice by certified mail, return receipt requested, to City.

C. The insurance company or companies providing Principal the coverages required by this Agreement shall be admitted in the State of California and have a current A.M. Best's rating of no less than A:VIII or equivalent acceptable to City.

D. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: the insurer shall reduce or
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eliminate such deductibles or self-insured retentions as respects the City, its officers, employees and volunteers; or the Principal shall procure a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. The insurance shall be maintained from the time the work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a claims made policy form is used, the following requirements apply:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Principal must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

F. If Principal, for any reason, fails to maintain insurance coverage which is required under this Agreement, the failure shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from Principal resulting from the breach. Alternatively, City may purchase the required insurance coverage, and without further notice to Principal, City may deduct from the sums due to Principal any premium costs advanced by City for the insurance.

G. Principal shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Principal shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Agreement. The certificates and endorsements should be on forms provided by the City, or on other than the City's forms, provided those endorsements or certifications conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by this Agreement at any time.

Principal shall replace certificates of insurance for policies expiring prior to completion of the work under the Agreement, and shall continue to furnish certificates for five years beyond the Agreement terminate date, when the Principal has a claims made form of insurance.

I. The worker's compensation and employee's liability insurance are to contain, or be endorsed to contain, the following provisions:

1. The insurance company waives any right of subrogation against the City, its officers, employees, and volunteers, which might arise by reason of any payment by the insurance company in connection with work performed by Principal under this Agreement.

2. The insurance coverage shall not be assigned, reduced, amended, cancelled, terminated, or not renewed by either party except after thirty (30) days written notice by certified mail, return receipt requested, to City.

20. **Failure of Performance.** In the event Principal fails to perform one or more of the conditions herein, City shall have recourse to the security given to guarantee the performance of such acts. City shall have recourse against so much of the security as is necessary to discharge the responsibility of Principal hereunder. City shall have recourse against Principal for any and all amounts necessary to complete the obligations of Principal in the event the security therefore is insufficient to pay such amounts. All administrative costs incurred by the City, in addition to the costs of the improvements, shall be a proper charge against the security and/or Principal.

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

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

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

22. **Agreement Binding on Successors, Etc.** This Agreement shall be binding upon all the heirs, successors, and assigns of either party, and the same shall be recorded in the office of the Recorder of Placer County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the map.

23. **Subdivision Map Act Controlling.** To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map Act shall relieve the person taking such action from compliance with the provisions of the Map Act.

24. **Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

25. **Other Provisions:** N/A

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

CITY OF ROCKLIN

By: _____
Steven Rudolph, City Manager

SUNSET RANCHOS INVESTORS, LLC,
a Delaware limited liability company

By: Whitney Ranch Venture, LLC,
a Delaware limited liability company
Its sole Member

By: Institutional Housing Partners III L.P.,
a California limited partnership
Its Manager

By: IHP Capital Partners,
a California corporation
Its General Partner

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Sheri Chapman, City Attorney

ATTEST:

Mona Forster, City Clerk

[SIGNED ACKNOWLEDGEMENT FORM]

[SIGNED ACKNOWLEDGEMENT FORM]

EXHIBIT A

FINAL MAP