

RESOLUTION NO. 2020-

RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ROCKLIN AUTHORIZING EXECUTION
OF AN INFRASTRUCTURE WARRANTY AGREEMENT
For "Whitney Ranch Parkway (STA 106+50 to 129+00) (SD-2003-02)"
(Whitney Ranch Large Lot Subdivision, SD-2003-02)

WHEREAS, Sunset Ranchos Investors, LLC received approval from the City of Rocklin ("City") (Resolution No. 2004-294) and has recorded, the large lot subdivision map titled "Whitney Ranch Large Lot Subdivision", recorded in Placer County Book of Maps Book Z, Page 94, upon which Sunset Ranchos Investors, LLC offered for dedication to the City several rights-of-way; and

WHEREAS, Sunset Ranchos Investors, LLC completed construction of infrastructure improvements for the portion of Whitney Ranch Parkway known as "Whitney Ranch Parkway (STA: 106+50 to 129+00)" as required by Chapter 16.28 of the City of Rocklin Municipal Code; and

WHEREAS, Sunset Ranchos Investors, LLC is willing to execute an Infrastructure Warranty Agreement as a condition of the City issuing a Notice of Completion for improvements for the portion of Whitney Ranch Parkway known as "Whitney Ranch Parkway (STA 106+50 to 129+00) (SD-2003-02)."

NOW THEREFORE, BE IT RESOLVED BY the City Council of City of Rocklin as follows:

Section 1. The recitals set forth above are true and correct.

Section 2. The Infrastructure Warranty Agreement between the City of Rocklin and Sunset Ranchos Investors LLC is approved, and the City Manager is authorized to execute the Agreement in substantially the form attached hereto as Exhibit "A."

Section 3. The City Clerk is authorized to record the Infrastructure Warranty Agreement in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 28th day of July, 2020, by the following vote:

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

Greg Janda, Mayor

ATTEST:

Hope Ithurnburn, City Clerk

Recording Requested by
and Return to:

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

Subdivision Name: Whitney Ranch
Infrastructure Improvements: Whitney Ranch Parkway (STA: 106+50 to 129+00)
Project No.: SD-2003-02
Principal: Sunset Ranchos Investors, LLC
Effective Date: July 28, 2020

INFRASTRUCTURE WARRANTY AGREEMENT

This Infrastructure Warranty Agreement is entered into by and between the City of Rocklin, a general law city in the State of California, hereinafter called "City," and Sunset Ranchos Investors, LLC, a Delaware limited liability company, hereinafter called "Principal," on this 28th day of July, 2020.

RECITALS

1. On September 14, 2004, Principal received approval from City for the large lot subdivision map titled "Whitney Ranch Large Lot Subdivision," upon which Principal offered for dedication to the City several rights-of-way, including Whitney Ranch Parkway, and which was subsequently recorded in Placer County Book of Maps, Book Z, Page 94.
2. Principal completed construction of infrastructure improvements for the portion of Whitney Ranch Parkway known as Whitney Ranch Parkway (STA: 106+50 to 129+00) (SD-2003-02) as required by Chapter 16.28 of the City of Rocklin Municipal Code.
3. Principal is willing to execute this Agreement as a condition of the City issuing a Notice of Completion for improvements for the portion of Whitney Ranch Parkway known as Whitney Ranch Parkway (STA: 106+50 to 129+00) (SD-2003-02).
4. 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").

AGREEMENT

5. **Improvements.** Principal has completed construction of the infrastructure improvements for a portion of Whitney Ranch Parkway known as Whitney Ranch Parkway (STA: 106+50 to 129+00) (SD-2003-02) ("Improvements") in compliance with the final improvement plans 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. The limits of such Improvements are depicted on Exhibit "B" attached hereto.

6. **Acceptance of Improvements upon Completion.** The City has accepted or will accept the Improvements and found them to be constructed in accordance with the approved improvement plans and the Standard Specifications and agrees to accept for maintenance the Improvements and any off-site easements accepted by City, subject to the provisions of Paragraph 7 hereof.

7. **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.

8. **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 attorney's fees and litigation costs and expenses, arising out of the performance of Principal's work on the improvements 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; provided that, any claims relating to defects in the improvements shall be limited to the time periods for the warranties in Section 7 hereof. Lack of insurance coverage does not negate Principal's obligation under this paragraph or this Agreement.

9. **Security.**

- A. Principal shall furnish to City warranty security to ensure the faithful performance of all duties and obligations of Principal herein contained. Such 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 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. This security must be provided upon execution of this Agreement.
- B. The infrastructure warranty security shall be in the following amount: ONE MILLION SEVENTY THREE THOUSAND, NINE HUNDRED NINETY FIVE DOLLARS AND 50/100 (\$1,073,995.50).

The above amount represents 20% of the cost of the Improvements (other than landscaping) 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.

10. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 9 shall be irrevocable, shall not be limited as to time, 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.

11. **Actions.** At City's option, any action by any party to this Agreement, or any action concerning the security furnished pursuant to Paragraph 9, 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.

12. **Failure of Performance.** In the event Principal fails to perform one or more of the conditions herein within 30 days of written notice from the City of such failure, 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.

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

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

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

14. **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.

15. **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.

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

PRINCIPAL
SUNSET RANCHOS INVESTORS, LLC,
a Delaware limited liability company

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

By: Resmark Equity Partners VI, LLC,
a Delaware limited liability company,
Its: Authorized Agent

By: _____
Peter M. Bridges

Its: _____
Authorized Signatory

APPROVED AS TO FORM:

Sheri Chapman, City Attorney

ATTEST:

Hope Ithurnburn, City Clerk

NOTARY ACKNOWLEDGEMENT – INSERT HERE

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EXHIBIT "B"

INFRASTRUCTURE WARRANTY AGREEMENT
WHITNEY RANCH PARKWAY (STA 106+50 TO 129+00) (SD-2003-02)