

DEFERRED IOD AGREEMENT

This Deferred IOD Agreement ("Agreement") is made and entered into this ____ day of _____, 2023 ("Effective Date"), by and between WH PLACERVILLE 39, LLC, a California limited liability company ("Developer") and the **City of Placerville**, a municipal corporation of the State of California ("City").

RECITALS

A. Developer is the owner of certain real property located at Cottonwood Park Subdivision - Phase 4 and Phase 6 which real property is situated in the City of Placerville, County of El Dorado, State of California, and is more particularly described as follows (the "Property"):

All that portion of that certain real property described in the following Deeds recorded in the Official Records on file in the Office of the County Recorder of said County, in (2020R0022590), more particularly described as follows; Parcel 1, 002-051-027-000: Tract 1, as shown on that certain Record of Survey filed January 21, 1992, in the office of the El Dorado County Recorder, in book 19 of Surveys, at page 16; Parcel 2, APN 002-071-033-000: Parcel 1, as shown on that certain Parcel Map filed March 12, 1998 in the office of the El Dorado County Recorder, in book 46 of Parcel Maps, at page 99 and amended by a Certificate of Correction recorded October 26, 1998, Instrument No. 98-62199 of Official Records; Parcel 3, 002-071-034-000: Parcel 2, as shown on that certain Parcel Map filed March 12, 1998 in the office of the El Dorado County Recorder, in book 46 of Parcel Maps, at page 99 and amended by a Certificate of Correction recorded October 26, 1998, Instrument No. 98-62199 of Official Records.

B. California Government Code Section 66499.20.2, The Subdivision Map Act, authorizes the local agencies to merge and re-subdivide land pursuant to said section and local ordinance; and

C. Developer has requested that the City approve the merger and re-subdivision of the Property.

D. Developer has agreed to the conditions of approval set forth on Tentative Subdivision Map (TSM 05-01-E4), approved by the City on October 26, 2010, and amended on November 2, 2020, and Developer agreed to the conditions of approval set forth on TSM 05-01-E4 for Cottonwood Park Planned Development Phase 4 & Tentative Subdivision Map approval for 39 single family lots (the "Project") and an amendment to the Original Planned Development Overlay for the entire Project approved by the City on November 2, 2020, all of which are hereinafter referred to as "Required Improvements".

E. TSM 05-01-E4 also requires as a condition of approval and at the time the Project Final Map is recorded, that all existing easements and rights of way such as those listed in the Title Report for the Project, and existing Irrevocable Offers of Dedication be revised as appropriate to conform to the new project. Developer shall be responsible for the acquisition of any necessary land rights from adjoining properties for the construction of Constellation Avenue.

F. TSM 05-01-E4 also requires as a condition of approval an Irrevocable Offer of Dedication be made for any required rights-of-way, in fee, of the ultimate road widths established by the Engineering Department for the proposed roads, with slope public utility easements where

necessary, and 50 feet in radius for the cul-de-sacs, with slope easements where necessary. Developer and the City have entered into an Improvement Agreement dated December 15, 2021, in connection with Developer's obligations for construction of the Required Improvements.

G. Developer has requested that the City allow for the recording of the Project Final Map to commence while the Developer finalizes the Irrevocable Offers of Dedication subject to recording, and the City has agreed subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Deferral of IOD Recordation.** Developer may defer recording of the Irrevocable Offers of Dedication for the Property for a period of 180 days from the Effective Date (the "**Recording Deadline**"), subject to the terms and conditions set forth herein. If Developer fails to record the Irrevocable Offers of Dedication to set apart required rights-of-way and easements by the Creation Deadline, then the City shall have the remedies set forth in Section 5 herein.

2. **Security.**

2.1 **Security Amount and Form.** In order to secure Developers obligation to record the IODs and pay the costs of ongoing maintenance of the Required Improvements until the Irrevocable Offer of Dedication is recorded. Developer shall furnish the City security concurrently with the execution of this Agreement in the amount of \$150,000. The security shall be in the form of one or both of the following: (i) a payment bond under the terms set forth in Section 2.2 below; (ii) a cash deposit, either with the City or responsible escrow agent or trust company, at the option of the City, or (iii) an irrevocable letter of credit from one or more financial institutions regulated by the state or federal government pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment and will only be released upon receipt of written instruction from the City, the form of which must be approved by the City.

2.2 **Bond Surety Requirements.**

2.2.1 And bonds submitted as security pursuant to this Section shall be executed by a surety company authorized to transact a surety business in the State of California. All required securities shall be in a form approved by the City.

2.2.2 No change, alteration, or addition to the terms of this Agreement or the Required Improvements described herein shall in any manner affect the obligation of the sureties.

2.2.3 The securities shall be irrevocable, shall not be limited as to time and shall provide that they may be released, in whole or part, only upon the written approval of the City Manager. All securities provided pursuant to this Agreement shall expressly obligate the surety for any extension of time authorized by the City for Developer's Irrevocable Offer of Dedication recording, whether or not the surety is given notice of such an extension by the City.

2.3 **Release of Security.** The payment security may be released sixty (60) days after Developer's recording of the Irrevocable Offer of Dedication, the sufficiency of which is to be determined by the City in its sole discretion. City may expressly require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees that may be due to the City.

3. Defense, Indemnification and Hold Harmless. Developer shall protect, indemnify, hold harmless and defend, in any actions of law or in equity, City, its officers, employees, agents, and elective and appointive boards, from any and all claims, losses, damage, including property damage, personal injury, including death, and liability of every kind, nature and description, including attorney's fees and costs, directly or indirectly arising out of or in any way connected with performance under this Agreement by Developer, Developer's agents, consultants, contractor, or of any person directly or indirectly employed by, or acting as agent for Developer, or Developer's contractor or subcontractor, except where caused by the active negligence, sole negligence, or willful misconduct of the City. This indemnification shall extend to claims, losses, damage, injury and liability for injuries occurring before or after recording of the Irrevocable Offers of Dedication, and shall apply regardless of whether or not the City has prepared, supplied or approved the Irrevocable Offers of Dedication and has inspected or accepted the Required Improvements. Acceptance of insurance certificates required under this Agreement does not relieve Developer from liability under this indemnity and hold harmless clause.

4. Developer Not Agent of City. Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of the City in connection with the performance of Developer's obligations under this Agreement.

5. Notice of Breach and Default.

5.1 Breach. If Developer fails to record the Irrevocable Offers of Dedication by the Recording Deadline, or Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer or any of Developer's contractors, agents or employees should violate any of the provisions of this Agreement, then Developer shall be deemed to be in breach of this Agreement.

5.2 Notice of Breach and Remedies. In the event Developer is in default, the City may thereafter deliver a notice of breach or failure of recordation of the Irrevocable Offers of Dedication to Developer and Developer's surety for payment of the bond or letter of credit amount to the City. If the form of security is other than a bond, then the City may proceed to collect against the security in the manner provided by law and the terms of this Agreement and/or the security instrument. The City reserves to itself all remedies available to it at law or in equity for a breach of Developer's obligations under this Agreement, including the City, at the subdivider's expense, acquiring the land by negotiation or commence proceedings to acquire an interest in the land. In addition to any other remedy the City may have, a breach of this Agreement by the Developer shall constitute consent to the filing by the City of a notice of violation against the Property. The City may then use any security proceeds to take over the work to complete recordation of the Irrevocable Offers of Dedication and/or Required Improvements and ongoing maintenance costs associated and that would have otherwise paid for. This would be at the expense of the Developer, and Developer shall be liable to the City for any excess cost or damages incurred by the City.

6. Successors and Assigns -- Covenant Running With the Land. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. A memorandum of this Agreement shall be recorded in the Office of the Recorder of El Dorado County, in the form attached as **Exhibit A**, attached hereto and incorporated herein (the "Memorandum"). This Agreement shall constitute a covenant running with the land and an equitable servitude upon the real property of the Project; provided, however, that the City agrees to release this Agreement and the Memorandum as to any individual lot sold by Developer to an

individual homeowner upon written request by Developer and provided that either the Irrevocable Offers of Dedication have been recorded or the security paid to the City.

7. Assignment of Developer Obligations. Developer shall not assign this Agreement or any of its obligations under this Agreement without the prior written consent of the City, which shall be approved in the City’s reasonable discretion upon the condition that the Developer and the assignee enter into an assignment and assumption agreement reasonable approved by the City. If Developer, as part of the assignment, requests that all or a portion of its security be released as part of the assignment, then the assignee shall replace the security in accordance with the terms of Section 2 above.

8. Notices. All notices required under this Agreement shall be in writing, and delivered in person or sent by overnight, registered or certified mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Placerville
3101 Center Street
Placerville, CA 95667
Attn: City Manager, Cleve Morris

Notices required to be given to Developer shall be addressed as follows:

WH PLACERVILLE 39, LLC

Attn: _____

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

9. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

10. Attorney Fees. In the event any legal action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, in addition to any other relief to which it may be entitled.

11. Approvals by City. Any approval or consent that is to be given by the City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the City.

12. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

13. Actions. Any action by any party to this Agreement, or any action concerning a security furnished pursuant thereto, shall be brought in the appropriate court of competent jurisdiction within the County of El Dorado, State of California, notwithstanding any other provision of law

which may provide that such action may be brought in some other location. The law governing this Agreement is the law of the State of California.

14. Integration. This Agreement is an integrated agreement. It supersedes all prior negotiations, representations, or agreements, either written or oral.

15. Modification. This Agreement may be amended only by a written instrument signed by the parties. Developer shall bear all costs of amendments to this Agreement that are requested by the Developer.

16. Counterparts. This Agreement may be signed in one (1) or more counterparts, and will be effective when the parties have affixed their signatures to counterparts, at which time the counterparts together shall be deemed one (1) original document; provided, however, that all executed counterparts are provided to the City Clerk.

IN WITNESS WHEREOF, the parties hereto are executing this Agreement on the dates set forth below.

“CITY”

“DEVELOPER”

City of Placerville,
a municipal corporation

WH PLACERVILLE 39, LLC
a California limited liability company

By: _____
Name: **M. Cleve Morris**
Title: City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney

EXHIBIT A

(See attached Form of Memorandum of Agreement)

No recording fee required pursuant to Government Code Section 27383

Recording Requested by and
When Recorded Return to:

City of Placerville
3101 Center Street
Placerville, CA 95667
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made this ___ day of _____, 2023, by and between the **City of Placerville**, a California municipal corporation ("City") and **WH PLACERVILLE 39, LLC.**, a California limited liability company ("Developer"), collectively referred to as the "Parties."

City and Developer are Parties to that certain "Deferred IOD Agreement" dated _____, 2023, the terms and conditions of which are made a part hereof as though fully set forth herein, and which Agreement controls the development of that certain real property, including any improvements and personal property, situated in the County of El Dorado, State of California, legally described as follows:

[See **Exhibit A**]

"CITY"

"DEVELOPER"

City of Placerville,
a municipal corporation,

WH PLACERVILLE 39, LLC.,
a California limited liability company

By: _____
Name: **M. Cleve Morris**
Title: City Manager

By: _____
Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who 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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who 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)