

2024-000120

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Total Fee: \$0.00

Recorded in Official Records
County of Yuba State of CA
Donna Hillegass
County Clerk and Recorder

Recording requested by, and when
recorded return to:

City of Wheatland
111 C Street
Wheatland, CA 95692

Exempt from recording fees (Government Code §§ 6103, 27383)

**AMENDMENT NO. 3 TO THIRD AMENDED AND RESTATED
CITY OF WHEATLAND DEVELOPMENT AGREEMENT
CONCERNING JONES RANCH SUBDIVISION**

This Amendment No. 3 to the Third Amended and Restated Development Agreement (the "Amendment") is made and entered into this 12th day of December, 2023 by and between the City of Wheatland, a general law city ("City"), and Dale Investments, LLC, a California limited liability company ("Developer") ("collectively the "Parties"), who agree as follows:

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

- 1.1. On November 25, 2014, the parties entered into the *Third Amended and Restated City of Wheatland Development Agreement Concerning Jones Ranch Subdivision* (the "Agreement"), a copy of which is on file in the City Clerk's office. The Agreement was recorded in the Yuba County Recorder's Office on February 3, 2015 as Document No. 2015-001148.
- 1.2. On June 30, 2017, the parties entered into an Amendment No. 1 to the Agreement, a copy of which is on file in the City Clerk's office. That amendment was recorded in the Yuba County Recorder's Office on December 14, 2017 as Document No. 2017-016375.
- 1.3. On December 8, 2020, the parties entered into Amendment No. 2 to the Agreement, a copy of which is on file in the City Clerk's Office. That amendment was recorded in the Yuba County Recorder's Office on January 27, 2021 as Document No. 2021-001587.
- 1.4. At Developer's request, City and Developer have agreed to amend the Agreement's provisions related to park facilities, as set forth below.

2. Amendment to Agreement. The Parties amend the Agreement as follows:

2.1. Section 2.2.1. is amended to read as follows:

- 2.2.1.1. Section Commencement; Expiration. The term of this Agreement shall commence upon the date set forth above and shall expire on December 31, 2030, unless the term is terminated, modified or extended as provided by this Agreement or by mutual written consent of the

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Parties. Developer agrees that a final subdivision map for a first phase of a minimum of 50 parcels must be recorded prior to April 30, 2018 or this Agreement will be terminated on that date. 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.

2.2. Section 2.7.2. is amended to read as follows:

2.7.2 Development Fees. The parties acknowledge that at the time of the initial development agreement City had recently begun preparation of a thorough study, review and update of City development fees, impact fees, capital facilities fees and connection charges (collectively “**City Development Fees**”). At the time of the initial development agreement, the final amount of and details concerning the City Development Fees were uncertain because of the need to first complete development fee studies and adopt the fees. As a condition of this Agreement, it is important to City that Developer commit to pay the future City Development Fees or some other agreeable amount, and it is important to Developer that its obligation to pay City Development Fees be certain and finite through December 31, 2026. Consequently, the Parties have negotiated a flat rate amount to be paid by Developer as City Development Fees for all City Development Fees incurred on or before December 31, 2026, and Sections 2.7.2.1. through 2.7.4.4. shall apply to all City Development Fees incurred on or before December 31, 2026.

2.3. Existing Section 2.8 of the Agreement is renumbered Section 2.9, and Section 2.8 is added to the Agreement, as follows:

2.8 Sections 2.7.2.1. through 2.7.4.4. shall not apply to any City Development Fees incurred on or after January 1, 2027. Developer agrees to pay any City Development Fees incurred on or after January 1, 2027 at the then-applicable rates for such fees, less any park fee credits allowed for park construction completed under Section 3.2.1.1.

2.4. Existing Section 3.2.1.2. is deleted, and Section 3 of the Agreement is amended to read as follows:

3. DEVELOPER'S OBLIGATIONS. 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 under section 2.7 shall be made at the time and in the amount specified by section 2.7.2.1. Any and all required payments of City Development Fees by Developer under section 2.8 will be made as required by then-applicable City 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.

3.2 Parks and Open Space. In satisfaction of the City's General Plan parks and open space policies, Developer shall dedicate acreage to the City's parks program, and provide park facility improvements, all as set forth in this section 3.2.

3.2.1. Park Improvement. Developer agrees to dedicate park land and design, install and construct the park and recreation improvements to Project parks as follows:

3.2.1.1. No later than December 31, 2025, Developer shall prepare a park site improvement plan and submit it for review and approval by the City Manager or his or her designee for the 2.6-acre portion of the 5.0-acre park (as shown on the Preliminary Bubble Concept Plan #3 dated August 7, 2013 (the "**Concept Plan**"), which is on file with the City Clerk of City, and to be shown on the updated Tentative Map (see section 3.14) and Design Guidelines). No later than December 31, 2026, Developer shall grade the park site and improve it with drainage, irrigation, turf, trees, and walkways in accordance with the approved park site improvement plan and Design Guidelines, and to the satisfaction of the City Manager or his or her designee. No later than June 30, 2028, Developer shall complete construction of all remaining park amenities, including, but not limited to, playground equipment, in accordance with the approved park site improvement plan and Design Guidelines, and to the satisfaction of the City Manager or his or her designee.

3.2.1.1.1. Provided that Developer satisfies the conditions set forth in section 3.2.1.1. or the City agrees to waive any conditions of 3.2.1.1. that the Developer has not satisfied, Developer shall be entitled

to a reduction of City Development Fees related to the park facilities. The amount of the reduction shall be calculated by determining the proportion of the City Development Fees that are attributable to park purposes and applying that percentage of reduction to the City Development Fees that Developer owes. Such determination shall be made in the City's sole discretion based upon its most recent development impact fee studies or reports. For example, given the City Development Fees for 2023 under section 2.7.2.1 would be \$45,761.84 (as adjusted) per lot, if park purposes comprise 10% of the City's total current per lot City Development Fees, then under this section Developer would be entitled to a reduction of 10% (\$45,761.84 less \$4,576.18), such that the total amount of the reduced fee would be \$41,185.66 per lot. This reduction, and method of calculating the reduction, shall apply to City Development Fees incurred from the Effective Date of this Amendment Number 3 through December 31, 2026 under sections 2.7.2.1. through 2.7.4.4., and, beginning on January 1, 2027, to City Development Fees incurred under section 2.8.

3.2.1.1.2. City may, in its sole discretion, waive any of the conditions in section 3.2.1.1.

3.2.1.1.3. Should any of the conditions set forth in section 3.2.1.1. not be satisfied by Developer or waived by City prior to the time that any City Development Fee is due, then Developer shall not be entitled to pay the reduced City Development Fee calculated under section 3.2.1.1.1. Nothing in this section shall be construed to limit City's default rights and remedies in the event of a default by Developer.

3.2.1.2. The paseos, basin areas and landscape corridors/open space (as shown on the Concept Plan and to be shown on the updated Tentative Map, and collectively referred to as "landscape corridor improvements") shall be graded and improved with drainage, irrigation, turf, walkways and other improvements in accordance with the approved Design Guidelines and to the satisfaction of the City Manager or his or her designee. For each site, prior to construction, Developer shall prepare a site improvement plan for review and approval by the City Manager or his or her designee. The landscape corridor improvements shall be installed pursuant to the approved site plan at the same time as the subdivision

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improvements for the final subdivision map phase containing or adjacent to the landscape corridor and shall be completed within 45 days after the issuance of the first certificate of occupancy for that phase.

2.5 Wherever the Agreement refers to "\$39,690 (as adjusted by the ENR index)" or "\$39,690 (as adjusted)," the phrase is amended to read "\$45,761.84 (as adjusted by the ENR index under section 2.7.2.1)."

3 **No Effect on Other Provisions.** Except for the amendment in Section 2, the remaining provisions of the Agreement shall be unaffected and remain in full force and effect.

CITY OF WHEATLAND

By:

Bill Zenoni
Bill Zenoni

DEVELOPER

By:

Sundee S. Dale 01-03-24
Sundee S. Dale
Owner, Dale Investments, LLC

See Attached Notary

1/3/2024.

Amendment NO. 3 TO third Amended & restated.

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 SUTTER

On January 03, 2024 before me, JESSICA LOPEZ PINEDA (NOTARY PUBLIC)
(insert name and title of the officer)

personally appeared Sundeep Singh Dole
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 [Signature]



(Seal)

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 Yuba

On January 3, 2024, before me, Lisa J. Thomason, City Clerk personally appeared Bill Zenoni, Wheatland City Manager, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.



Lisa J. Thomason, MMC
City Clerk

