

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:
City of Lompoc
City Clerk's Office
100 Civic Center Plaza
Lompoc, CA 93438

EXEMPT FROM RECORDING FEE (Government Code Section 6103)
SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

FINAL TRACT MAP NO. LOM 625

A. PARTIES

This Subdivision Improvement Agreement for the completion of public improvements ("**Agreement**") is entered into as of this 20th of February, 2024, by and between the City of Lompoc, a California municipal corporation ("**City**") and WH River Terrace 257 LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes hereinafter individually referred to as "**Party**," and collectively as the "**Parties**."

B. RECITALS

1. Developer is the owner of the property located at 1701 East Laurel Avenue in the City of Lompoc, County of Santa Barbara, APN 099-141-021, as legally described in Exhibit A ("**Property**"). Developer desires to subdivide the Property for the purpose of development ("**Subdivision**").
2. Tentative Tract Map No. LOM 625 ("**Tentative Map**") for the Property was conditionally approved on September 22, 2021.
3. Approval of a final map for the Property is conditioned on the completion of certain public improvements by Developer, as further described herein. Developer has not completed these improvements as of the date of this Agreement.
4. Developer has requested approval of a final map for the Property. Pursuant to Section 66462 of the Subdivision Map Act (Government Code Section 66410 *et seq.*) ("**Map Act**") and Section 16.20.030 of the City's Municipal Code, before the approval of a final map by the City where the required public improvements have not been completed and accepted, Developer and City shall enter into an agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor.
5. Developer's execution of this Agreement and the provision of the security required herein are made in consideration of City's approval of Final Map No. LOM 625.

C. AGREEMENT TERMS

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

1. Recitals: The foregoing Recitals are incorporated herein by reference as if set forth in full.
2. Effectiveness: This Agreement shall not be effective unless and until all of the following conditions are satisfied: (a) Developer provides City with performance, labor and materials, and monument security of the type and in the amounts required by this Agreement; (b) the Agreement is executed and recorded in the Recorder's Office of the County of Santa Barbara; (c) the City Council of the City of Lompoc ("**City Council**") approves the Final Map; and (d) the Final Map is recorded in the Recorder's Office of the County of Santa Barbara.
3. Public Improvements: Developer shall construct or cause to be constructed at its own cost, expense, and liability, all of the public improvements required for the Subdivision, as required in the conditions of approval for the Tentative Map, the City's municipal code, and the Map Act, including all matters required by the City's Planning Commission, City Council, and City Engineer for the Subdivision during the process leading up to approval of the Final Map, as more particularly described in Exhibit B (collectively, "**Improvements**"). Construction of the Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety and to provide complete, in place, fully functional Improvements satisfactory to the City.

Developer shall install survey monuments at all lot corners and street centerline monuments as required by the City's Subdivision Ordinance and the Map Act, and as shown on the Final Map.

Developer shall be responsible for the replacement, relocation, or removal of any component of any dry or wet utilities in conflict with the construction or installation of the Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utilities. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Improvements. Developer also agrees to proceed with construction of all Improvements in a continuous and good faith manner.

Developer agrees that all Improvements shall be constructed and completed in accordance with City standards as determined by the City Engineer, with any applicable conditions, and with the provisions of this Agreement. In the event of any dispute, the good faith judgement of the City Engineer shall be final and binding upon the parties.

- a) Prior Partial Construction of Improvements: Where construction of any Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Improvements or assure their completion in accordance with this Agreement.
- b) Existing Improvements: Developer shall protect in place existing Improvements and facilities peripheral to the Subdivision previously accepted by City notwithstanding the warranty and guarantee period, including but not limited to, structures, fences,

roads, sidewalks, paving, curbs, gutters, water facilities, sewer facilities, drainage facilities and utilities that do not require demolition, removal, relocation, or replacement in accordance with the approved plans and specifications. Developer shall repair, restore or replace, or cause to be repaired, restored or replaced damages to any Improvements or facilities resulting from Developer's operations at its own cost, expense, and liability. It shall be the sole responsibility of Developer to determine the exact location and depth or height of all existing facilities. Repair, restoration or replacement of Improvements shall be of equal or greater quality and appearance to that of the existing condition and to the satisfaction of the City Engineer. Methods to repair, restore, or replace the damages shall be approved by the City Engineer prior to commencement of work.

- c) Permits; Compliance; Utility Statements: Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of Improvements and performance of Developer's obligations under this Agreement. Developer shall comply with all ordinances and regulations of City. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Engineer, signed by Developer and each utility which will provide utility service to the Subdivision, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the property. Developer shall perform all other acts required pursuant to this Agreement, any permits, and other entity having jurisdiction.
- d) Approved Plans and Specifications: Developer is prohibited from commencing work on any Improvement until all plans and specifications for such Improvement have been submitted to, and approved by the City Engineer. Approval by the City Engineer shall not relieve Developer from ensuring that all Improvements conform with all other requirements and standards set forth in this Agreement.
- e) Compliance with Laws and Codes: The construction plans and specifications for the Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced. Improvements shall be constructed to the satisfaction of the City.
- f) Standard of Performance: Developer and its contractors, if any, shall perform all work required to construct the Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses,

permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

- g) Alterations to Improvements: If during the course of construction and installation of the Improvements it is determined that the public interest requires alterations in the Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and Improvements may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.
 - h) Right to Inspect: The City Engineer shall at all times have access to the work during construction of the Improvements and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials used and employed in the work.
4. Maintenance of Improvements: City shall not be responsible or liable for the maintenance or care of any Improvements until they are approved and accepted by City. City shall exercise no control over the Improvements until accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work. If Developer fails to do so, Developer shall perform such maintenance work when notified to do so by City within fifteen (15) days of the date of the notice. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance by City.
5. Grading: Developer shall have an approved grading plan for the Subdivision and a grading permit issued by City prior to commencement of any land disturbance activities. Developer agrees that any and all grading done or to be done in conjunction with construction of the Improvements or development of the Subdivision shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations, any protected plant regulations, and the State Water Resources Control Board Construction General Permit regulations. In order to prevent damage to the Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the construction schedule for completion of the

Improvements established by this Agreement, and prior to City's approval and acceptance of the Improvements and release of the Security as set forth herein.

6. Construction Schedule: Unless extended pursuant to this section of this Agreement, Developer shall fully and adequately complete or have completed the Improvements within two (2) years following approval of the Final Map.
 - a) Extensions: City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Improvements. It is understood that by providing the security required under this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, the sufficiency of Improvement security provided by Developer, and to require adjustments thereto when warranted according to City's discretion.

7. Fees and Charges; Costs:
 - a) Fees and Charges: Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to the Subdivision.
 - b) Costs: Developer shall reimburse City for all costs incurred by City in preparing and implementing this Agreement, reviewing plans and documents related to the Improvements and development of the Subdivision, and processing and reviewing the application and related documentation for the Subdivision and development of the Property, including but not limited to attorney's fees, staff time, consultant's fees, filing fees, and costs of City inspections.
 - c) Payment: Developer shall pay all amounts owed under this Section within 30 days of receipt of an invoice from City. Failure to make timely payments shall constitute a breach of this Agreement. Invoiced amounts shall accrue interest at six percent (6%) per annum until paid in full.

8. Default; Notice; Remedies: No action by City pursuant to this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent

remedies. City may institute an action for damages, injunctive relief, or specific performance. No election of remedies shall be binding upon City.

- a) Notice: If Developer neglects, refuses, or fails to fulfill, timely complete, or improperly completes any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“**Notice**”). Developer shall substantially commence the work required to remedy the default or violation within fifteen (15) days of the date of Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City’s issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of Improvements and all other administrative costs expenses as provided for in Section 9 of this Agreement. Upon the occurrence of, but not limited to any of the following events, the Developer shall be deemed to be in default under this Agreement:
- i. Subject to any time extensions granted in accordance with Section 6, failure to complete construction and installation of the Improvements by the completion date of two (2) years after City Council approval of the Final Map;
 - ii. Failure to promptly correct or cure any defect in the Improvements, including those found during the one-year guarantee and warranty period as required by Section 11 or failure to commence correction or cure of any such defect or failure to diligently prosecute same to completion, in each instance following receipt by Developer of written notice that such defect exists;
 - iii. Subject to any time extensions granted in accordance with Section 6, failure to perform substantial construction work on the Improvements or, after commencement of work, for a period of thirty (30) days cessation of work;
 - iv. Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;
 - v. Commencement of a foreclosure action against the Property or any portion thereof, or any conveyance by the Developer in lieu or in avoidance of foreclosure;
 - vi. Failure to renew security instruments; or
 - vii. Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within thirty (30) days after receipt by Developer of written notice thereof from the City.

b) Failure to Remedy; City Action: If the work required to remedy the noticed default or violation is not commenced and diligently prosecuted to completion satisfactory to City within the time frame contained in the Notice, City may:

- i. Prohibit further development of the Subdivision or withhold approvals, the issuance of building or other permits, establishment of utility service, final inspection or occupancy of any buildings in the Subdivision;
- ii. Complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and Improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City;
- iii. Collect from Developer the reasonable value of the work and Improvements not performed and completed by Developer to be measured by the anticipated costs and expenses of completing the same; and/or
- iv. Proceed under remedy (a) for a portion of the work and Improvements and for the remainder, pursue remedy (b).

Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9. Administrative Costs: If Developer fails to construct and install all or any part of the Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement, or in processing any legal action, or for any other remedies permitted by law.

10. Acceptance of Improvements; Maintenance Agreement; As-Builts:

- a) Subject to subsection (b), if the Improvements are properly completed by Developer and approved by the City Engineer, and if the Improvements comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City shall be authorized to accept the Improvements. The City may, in its sole and absolute discretion, accept fully completed portions of the Improvements prior to such time as all of the Improvements are complete, which shall

not release or modify Developer's obligation to complete the remainder of the Improvements within the time required by this Agreement.

- b) Prior to and as a condition precedent of City accepting any Improvements located on City property, Developer shall enter into a covenant agreement with City, in form approved by the City, obligating Developer and any successor to maintain in perpetuity all Improvements, slopes, vegetation, and areas disturbed by project construction located on City property, except for the paved area of the public bike path; and also obligating Developer and any successor to maintain in perpetuity for the benefit of public use the public bike path and all related improvements, vegetation, and surrounding area within the LOM 625 boundary shown on the final map, as well as the landscaping and landscaping related improvements along the Laurel Avenue street frontage; and indemnifying City for all liability, damages, and costs related to such Improvements and maintenance areas.
- c) Upon the total or partial acceptance of the Improvements by City, a notice of completion for the accepted Improvements shall be filed with the Recorder's Office of the County of Santa Barbara in accordance with California Civil Code Section 9204, at which time the accepted Improvements shall become the sole and exclusive property of City without payment therefor. Completion of final inspection or issuance of occupancy permits by City for any buildings or structures located in the Subdivision shall not be construed in any manner to constitute City's acceptance or approval of any Improvements.
- d) Notwithstanding the foregoing, City may not accept any Improvements unless and until Developer provides "as-built" or record drawings or plans to the City Engineer for all such Improvements ("**Record Drawings**"). The drawings shall be certified and shall reflect the condition of the Improvements as constructed, with all changes incorporated therein. Record Drawings shall include the location and ties to all sewer wyes, sewer laterals, water services, and underground electrical services. The Record Drawings are required to reflect the same degree of detail as the original plans and shall contain a Record Drawing Certification on the cover sheet, signed by the professional engineer or professional land surveyor, certifying that the locations, elevations, depths, and record drawing comments reflecting materials actually used during construction, accurately reflect existing field conditions. The Record Drawings will be reviewed and approved by the City Engineer prior to acceptance of the improvements by City.

The Record Drawings shall be delivered in .pdf format as well as in a computer format readily compatible for transfer to the City Geographic Information System. The following computer formats are acceptable for delivery: DGN; DWG.

11. Warranty and Guarantee: Developer hereby warrants and guarantees all Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Subdivision in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City

("Warranty Period"). Acceptance of any Improvements by City shall not constitute an acknowledgment by City that the same are properly done or performed, except as to any items or matters readily apparent from an inspection thereof. Except as to such matters so readily apparent from an inspection, Developer shall repair any defects that occur in the Improvements with a one (1) year period thereof following acceptance by City. During the Warranty Period, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty Period shall be at the sole cost, expense, and liability of Developer and its surety. As to any Improvements which have been repaired, replaced, or reconstructed during the Warranty Period, Developer and its surety hereby agree to extend the Warranty Period for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Improvement following expiration of the Warranty Period or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

12. Security: Upon Developer's execution of this Agreement, Developer shall provide City with security to ensure faithful performance of all the provisions set forth in this Agreement, City ordinances, the Subdivision Map Act, and any and all other rules and regulations. Subject to the approval of the City, Developer shall have the option to provide security in the form of a surety bond; cash deposit with the City; an instrument of credit or letter of credit; or combination thereof in the amounts and under the terms set forth below ("**Security**"). The amount of Security shall be based on the City Engineer's or a designated licensed engineer's (upon review and approval by the City Engineer) approximation of the actual cost to construct the Improvements, including the replacement cost for all landscaping ("**Estimated Cost**"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision shall in no way limit or modify Developer's indemnification obligation provided in Section 17 of this Agreement. The Security shall be payable to the City upon default of this Agreement. Institutions providing Security on behalf of Developer shall hereinafter be referred to as "**Surety**." All Security shall be issued on the form provided by the City, or one similar in nature approved by the City. The Developer and its Surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, Improvements, or the plans and specifications for the Improvements shall in any way affect its obligation on the Security.
13. Security Instruments: Security instruments shall be valid for the life of this Agreement and any subsequent extensions, and shall not terminate or expire until all the obligations under this Agreement are fully satisfied. Developer and its Surety stipulate and agree that no extension of time, alteration, or addition to the terms of this Agreement, Improvements, or the plans and specifications for Improvements shall in any way affect its obligation on the Surety. Payments under any Security instruments shall be current at all times for the duration of this Agreement. Any litigation regarding the Security shall be

instituted and maintained in the County of Santa Barbara, State of California. Each Security instrument shall at minimum survive for one (1) year after the completion of the Improvements as evidenced by the acceptance of the Improvements by the City. Each Security instrument shall provide that changes may be made to the Improvements pursuant to the terms of this Agreement without notice to any Surety and without affecting the obligations under such Security instrument.

- a) Bonds: Bonds shall be issued by one or more duly authorized corporate sureties. The Surety for any surety bonds provided as Security shall have a current A.M. Best's rating or Key Rating of no less than A: VIII, shall be licensed to do business in the State of California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its Surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and Surety shall keep bonds active and Developer shall continue to pay bond premiums until such time that written notification from the City is received by Surety releasing the bonds. Developer shall be capable of providing evidence of active bond coverage at all times during the term of this Agreement.
- b) Instrument of Credit/Letter of Credit: All instruments of credit or letters of credit shall be irrevocable and issued by one or more Sureties which are financial institutions subject to regulation by the state or federal government acceptable to City. The Surety must be chartered in the United States, have a rating of B or above, or a number rating of 40 or above in the Bank Watch Thomas Ratings, maintain an office in the State of California, maintain an agent for service of process in the State of California, and otherwise do business in the State of California. The instrument of credit or letter of credit shall name the City as beneficiary, and shall be renewed automatically on an annual basis for the term of this Agreement, except upon written instructions executed by both Developer and City. The instrument of credit or letter of credit shall be payable to the City at any time upon presentation of (i) a sight draft drawn on the issuing Surety, (ii) an affidavit executed by an authorized City representative stating that the Developer is in default under this Agreement, or (iii) the original letter of credit. The instrument of credit or letter of credit shall provide that sixty (60) days' prior written notice shall be given by Surety to the City Clerk and City Engineer of the pending non-renewal, if any, of the instrument of credit or letter of credit.
- c) Cash Deposits: Cash deposits may be in the form of cash, cashier's check, or bank check issued by Developer. In the case of a bank check, the deposit shall not be deemed received until such time that the check clears Developer's bank. Cash deposits will be placed in a separate City account and designated for this Agreement and Subdivision. Subsequent to default by Developer, City shall be entitled to unilaterally draw from cash deposits for use in the construction of all or a portion of the Improvements.

14. Required Security; Evidence of Security: The following Security shall be provided in consideration of City's approval of the Final Map. Evidence of Security shall be provided on the forms set forth by City unless other forms are deemed acceptable by the City

Engineer and City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be incorporated herein by this reference.

- a) Performance Security: To guarantee the faithful performance of the Improvements and provisions of this Agreement and to protect City if Developer is in default of this Agreement, Developer shall provide City a Faithful Performance Security in the amounts set forth in Exhibit C which sum shall be not less than one hundred percent (100%) of the Estimated Cost. The City Manager may, in his/her sole and absolute discretion and upon recommendation of the City Engineer, authorize partial release of a portion, or portions of the Security provided under this section as Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Subdivision, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Cost.
- b) Labor & Material Security: To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Improvements and provisions of this Agreement, Developer shall provide City a Labor and Materials Security in the amount set forth in Exhibit C, which sum shall not be less than fifty percent (50%) of the Estimated Cost. Security provided under this section may be released by written authorization of the City Manager after six (6) months from the date City accepts the final Improvements. The amount of such released Security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty-five percent (25%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.
- c) Monument Security: To secure the setting of monuments and guarantee payment to the licensed engineer or surveyor for the setting of all monuments, including without limitation, subdivision boundaries, lot corners, and street centerline monuments for the Subdivision in compliance with the applicable provisions of the California Business and Professions Code Division 3, Chapter 15 and the City's Municipal Code (collectively the "**Monuments**"), Developer shall provide City a Monument Security in the amount set forth in Exhibit C, which sum shall not be less than one hundred percent (100%) of the Estimated Cost for setting Monuments. Said Security may be released by written authorization from the City Manager, provided that City has received written acknowledgment of payment in full from the engineer or surveyor who set the Monuments, and City accepts the final Improvements to ensure Monuments have not been damaged during construction or other activities by Developer.
- d) Warranty Security: To secure Warranty of completed Improvements for a period of one (1) year following completion and acceptance by City thereof against any defective work, labor, or defective materials furnished, Developer shall provide City Warranty Security in the amount set forth in Exhibit C, which sum shall not be less than ten percent (10%) of the Estimated Cost. Security provided under this section may be released at the end of the Warranty period, or extension thereof as provided in

Section 11 of this Agreement, by written authorization of the City Manager, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Subdivision. The Warranty Security shall be provided to City prior to the acceptance of the Improvements by City and shall be a condition precedent to the acceptance of Improvements hereunder as being complete and the subsequent release of any other Security.

15. Release of Security Instruments: City shall release the Faithful Performance Security and Labor and Materials Security when all of the following have occurred.
- a) Upon written request thereof by Developer and provision of evidence of satisfaction of all other requirements in this Section;
 - b) Developer is current on all fees due to City for plan check services, permits, inspections, etc.;
 - c) All Improvements have been accepted by City;
 - d) Developer has delivered the Warranty Security; and
 - e) If lien claims have been timely filed, City shall hold the Labor and Materials Security until such claims have been resolved or Developer has provided a statutory security, or otherwise as required by applicable law.

City shall release the Warranty Security upon Developer's written request upon the expiration of the Warranty Period provided no claims are outstanding regarding defective work. All other Securities shall be released upon Developer's written request and confirmation that associated work has been completed to the satisfaction of the City.

16. Developer's Liability: While no action of Developer shall be required for City to realize on its Security under any Security instrument, Developer agrees to cooperate with City to facilitate City's realization under any Security instrument, and to take no action to prevent City from such realization of any Security instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Developer shall be personally liable for performance under this Agreement and for payment of the reasonable cost of the labor and materials for Improvements required to be constructed or installed hereby and shall, within ten (10) days after receipt of a written demand, deliver to City such substitute Security as City shall require satisfying the requirements in this Agreement.
17. Indemnification: Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or

maintenance of Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

18. Insurance: Developer shall procure and maintain, and shall require its contractors to maintain at all times during construction of any Improvement during this Agreement, insurance of the types and in the amounts described below ("**Required Insurance**"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit. All Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A-:VII.
- a) General Liability: General Liability insurance, or equivalent form, with a combined single limit of not less than \$3,000,000 per occurrence for bodily injury, personal injury, death and property damage.
 - b) Business Automobile Liability: Business Automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.
 - c) Workers' Compensation: Workers' Compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.
 - d) Professional Liability: For any consultant or other professional who will engineer or design Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of Improvements. Such insurance shall be endorsed to include contractual liability.
 - e) Additional Insured; Separation of Insureds: The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall

contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

- f) Certificates of Insurance: Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. City reserves the right to require complete, certified copies of all required insurance policies, at any time. Developer shall replace any certificate, policy, or endorsement which will expire prior to the term of this Agreement. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days prior written notice to City.
 - g) Deductibles: Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
 - h) Primary Insurance; Waiver of Subrogation: The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.
19. Agreement Term: This Agreement shall survive any time allotted for completion of Improvements and shall not expire until such time that all Improvements have been accepted by City and all Securities related thereto have been released by written notification from City to the respective Surety that issued said Security.
20. Relationship Between the Parties: The Parties hereby mutually agree that neither this Agreement, any map related to the Subdivision, nor any other related entitlement, permit, or approval issued by City for the Subdivision shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.
21. General Provisions:
- a) Authority to Enter Agreement: Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.
 - b) References: Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. References to Developer shall include all


personnel, employees, agents, contractors and subcontractors of Developer, except as otherwise specified in this Agreement. References to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. References to City Manager shall include the City Manager or his/her designee. City Engineer shall include the City Engineer, his/her designee, and other authorized City representatives.

- c) Notices: Depending upon the method of transmittal, notice shall be deemed received as follows: by email, as of the date and time sent; by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail, as of 72 hours after date of notice. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

City of Lompoc
City Engineer
100 Civic Center Plaza
Lompoc, CA 93438
Phone: (805) 875-8272

DEVELOPER:



WH River Terrace 257 LLC
Alicia Watts
51 Zaca Lane, Suite 110
San Luis Obispo, CA 93401
Phone: (805) 922-5554

- d) Amendment: No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- e) Waiver: City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein; or City's failure to take an enforcement action with respect to a default, to declare a default or breach, or City's waiver of any breach of this Agreement shall not be construed as a waiver of prior default or breach, or any subsequent default or breach of the Developer and, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional.
- f) Binding on Successors. All obligations, terms, conditions, and restrictions imposed by this Agreement shall be deemed covenants, restrictions, and equitable servitudes running with the land burdening the Property for the benefit of the City and all City-owned property. This Agreement is binding on the Property and its successors and assigns, including subsequent owners. Prior to transfer of ownership of the Property, the proposed new owner shall provide new Security in the types and amounts required by this Agreement for review and approval by the City ("**Replacement Security**"). Developer's Security shall remain valid and in place until such Replacement Security has been received and approved by the City.
- g) Assignment of Agreement: Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without

prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecate, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. As a condition to City's consent, any assignee shall be required to provide Security as required by this Agreement.

- h) Binding Effect: Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.
- i) No Third Party Beneficiaries: There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- j) Severability: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- k) Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Santa Barbara, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.
- l) Attorneys' Fees and Costs: If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Subdivision, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("**Costs**"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

- m) Counterparts: This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same Agreement.
- n) Incorporation of Exhibits: Exhibits A, B, and C are incorporated herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties hereto have affixed their signatures as of the date first written above.

CITY OF LOMPOC

By: _____
Dean Albro, City Manager

ATTEST:

By: _____
Stacey Haddon, City Clerk

DEVELOPER

By:  _____

President Regional Operations

Patrick Henneberry

By: _____

Title

Print Name

NOTE: DEVELOPER'S SIGNATURES SHALL BE NOTARIZED AND AN APPROPRIATE NOTARY ACKNOWLEDGEMENT FORM MUST ACCOMPANY THIS SIGNATURE PAGE. CORPORATIONS REQUIRE TWO SIGNATURES, BOTH MUST BE OFFICERS OF THE COMPANY.

**See Attached Form for
Notary Certificate**

CALIFORNIA ALL-PURPOSE 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

San Luis Obispo

}

On

2/16/2024

Date

before me,

Aaron S. Luevano

Here Insert Name of Officer

, Notary Public,

Personally appeared

Patrick Henneberry

Name(s) of Signer(s)



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 of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Subdivision Improvement Agreement Final Tract Map No. Lom 625

Document Date:

2/16/2024

Number of Pages:

22 + Attached

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT TO IMPRINT



Signer's name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT TO IMPRINT



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property situated in the County of Santa Barbara, State of California, described as follows:

THAT PORTION OF FARM LOT 100 OF THE SUBDIVISION OF RANCHOS LOMPOC AND MISSION VIEJA, IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON MAP THEREOF RECORDED IN BOOK 1, AT PAGE 45 OF MAPS AND SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS FOLLOWS:

BEGINNING AT A 2 INCH BRASS CAP MONUMENT MARKED "SANTA BARBARA COUNTY ROAD COMM." SET AT THE INTERSECTION OF THE CENTER LINE OF LAUREL AVENUE AND NORTH 7TH STREET, AS SAID INTERSECTION IS SHOWN ON MAP OF SURVEY FILED IN BOOK 20 AT PAGE 126 OF RECORD OF SURVEYS, SAID 2 INCH BRASS CAP MONUMENT BEING SHOWN ON A MAP OF SURVEY FILED IN BOOK 42 AT PAGE 100 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 89° 59' 09" EAST ALONG THE CENTERLINE OF LAUREL AVENUE 751.08 FEET TO THE CENTERLINE OF A 40 FEET ROAD AND THE TRUE POINT OF BEGINNING; THENCE, NORTH ALONG SAID LAST MENTIONED LINE 1160.62 FEET TO INTERSECT THE EASTERLY PROLONGATION OF THE CENTERLINE OF COLLEGE AVENUE, AS SAID CENTERLINE IS SHOWN ON MAP OF SURVEY FILED IN BOOK 42, PAGE 100 OF RECORD OF SURVEYS, HEREINBEFORE REFERRED TO; THENCE, ALONG SAID PROLONGED LINE, NORTH 89° 58' 06" EAST 1260.58 FEET TO A POINT IN THE EASTERLY LINE OF THE TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE ORDER APPROVING FINAL ACCOUNT AND DISTRIBUTION UNDER WILL IN THE MATTER OF THE ESTATE OF MILTON SCHUYLER DECEASED, A CERTIFIED COPY OF SAID ORDER BEING RECORDED OCTOBER 10, 1957, AS INSTRUMENT NO. 20818, IN BOOK 1478 AT PAGE 149 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY; THENCE, ALONG SAID EASTERLY LINE OF THE FOLLOWING COURSES AND DISTANCES: SOUTH 23° 30' 00" EAST 225.59 FEET SOUTH 25° 00' 00" EAST 330 FEET; AND SOUTH 6° 00' 00" EAST 659.34 FEET TO THE SOUTHEASTERLY CORNER OF SAID LAST MENTIONED TRACT OF LAND THENCE, ALONG THE SOUTHERLY LINE OF SAID LAST MENTIONED TRACT OF LAND BEING ALSO THE NORTHERLY LINE OF THE TRACT OF LAND DESCRIBED IN DEED TO GREAT LAKES CARBON CORPORATION, A DELAWARE CORPORATION, RECORDED FEBRUARY 3, 1950, IN BOOK 898 AT PAGE 108 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY; THENCE NORTH 89° 59' 09" WEST (AT 968.60 FEET, INTERSECT THE EASTERLY RIGHT OF WAY LINE OF AN 80 FEET ROAD KNOWN AS ROAD NO. 5) 1558.92 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED DECEMBER 28, 1972 AS INSTRUMENT NO. 50622 IN BOOK 2439, PAGE 480 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE CITY OF LOMPOC IN A DEED RECORDED NOVEMBER 7, 1973 AS INSTRUMENT NO. 43026, IN BOOK 2488, PAGE 534 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM FIFTY PERCENT (50% OF ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES AND OTHER MINERALS IN AND TO SAID PROPERTY LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE THEREOF, WITHOUT, HOWEVER, ANY RIGHT OF ENTRY UNDER SUCH RESERVATION AND EXCEPTION UPON OR THROUGH OR WHICH DISTURBS THE SURFACE OF SAID PROPERTY OR THAT PORTION OF THE SUBSURFACE LYING 500 FEET IN DEPTH IMMEDIATELY BELOW SUCH SURFACE, AS RESERVED IN THE DEED FROM LUCILE HARMAN, ET AL., TO GREAT LAKES CARBON CORPORATION, RECORDED OCTOBER 13, 1965 AS INSTRUMENT NO. 36008, IN BOOK 2124, AT PAGE 342 OF OFFICIAL RECORDS.

EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

Developer shall complete all Improvements shown in the following improvement plans, which are on file in the office of the City Engineer:

1. Public Improvement Plans for College Avenue Sewer and Water Extension, dated 11-28-23 and signed by City on 11-30-2023, consisting of eight (8) sheets. These plans contain details and design for the construction of public sewer and water mains connecting the development of LOM 625 to the existing public sewer and water system. Work includes extension of sewer and water mains, including trenching and trench repairs within City streets and private property.
2. Grading and Improvement Plans for River Terrace, dated 12-21-23 and signed by City on 2-__-2024, consisting of 109 sheets. These plans contain details and designs for the construction of public and private streets, storm drain, sewer, water, and electric infrastructure. Work includes grading, drainage infrastructure, utilities, streetlights, walls, erosion control, street signage, striping, and a public bike path.

EXHIBIT C

SECURITY CATALOGUE

In compliance with the terms of this Agreement, Developer shall provide the below described Security in the amounts state below. All security instruments are incorporated herein by reference and shall be made a part hereof.

Performance Bond (Total): **\$10,948,985.00**

a. Site Grading/Retaining Walls	\$2,713,800.00
b. Drainage and Retention	\$2,230,600.00
c. Sewer System (Onsite)	\$909,000.00
d. Water System (Onsite)	\$1,385,700.00
e. Electric	\$680,000.00
f. Surface Improvements	\$2,489,500.00
g. College Avenue Sewer and Water	\$540,385.00

Labor and Materials Bond (Total): **\$5,474,493.00**

a. Site Grading/Retaining Walls	\$1,356,900.00
b. Drainage and Retention	\$1,115,300.00
c. Sewer System (Onsite)	\$454,500.00
d. Water System (Onsite)	\$692,850.00
e. Electric	\$340,000.00
f. Surface Improvements	\$1,244,750.00
g. College Avenue Sewer and Water	\$270,193.00

Monuments Bond: **\$3,500**

Warranty Bond: **\$1,094,899**