

RESOLUTION NO. 2000-23

BE IT RESOLVED AND ORDERED that the Mayor be and is hereby authorized and directed to execute an agreement on behalf of the City of Elk Grove in connection with **Western Pacific Housing – East Park LLC, a Delaware Limited Liability Company** and the subdivision designated as **East Park Unit No. 4B** in the form hereto attached, and for all matters incidental thereto, and to do and perform everything necessary to carry out the purpose of this resolution.

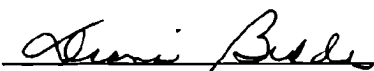
ON A MOTION by Council Member Scherman, seconded by Council Member Soares, the foregoing resolution was passed and adopted by the City Council of Elk Grove, State of California, this 19th day of July, 2000 by the following vote, to-wit:

AYES: Scherman, Briggs, Soares, Leary, Cooper

NOES: None

ABSENT: None


MAYOR

ATTEST: 
City Clerk

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2000, by and between the CITY OF ELK GROVE, a political subdivision of the State of California (hereinafter "City"), and **Western Pacific Housing - East Park, LLC**, a Delaware Limited Liability Company (hereinafter "Principal").

RECITALS

WHEREAS, Sections 66462 and 66496 of the Government Code provide that if the work of improvement required therein is not completed prior to the acceptance of a final subdivision map, the owner of the subdivision may enter into an agreement with the City to perform the work of improvement as required by said sections in consideration of the acceptance of said final subdivision map by the City; and

WHEREAS, Section 66499 of the Government Code requires that said Agreement be secured by a surety bond or by an instrument of credit issued by a financial institution subject to regulation by the State or federal governments or by a cash deposit; and

WHEREAS, Section 66499.3 establishes the types and amount of security to guarantee the performance of any such improvement agreement; and

WHEREAS, City and Principal desire to enter into an improvement agreement as authorized by the Subdivision Map Act under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, City and Principal agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Findings and Conditions of Subdivision Map.** Principal

recognizes that approval of his subdivision was subject to the findings and conditions attached to such approval and hereby acknowledges and agrees to be bound by such findings and conditions.

3. City Approval of Subdivision Map. City agrees to approve the final map of the subdivision presented to it by Principal and designated **East Park Unit No. 4B**, and to accept on behalf of the public all lands, rights of way and easements therein offered in dedication, in accordance with the conditions hereinafter set forth.

4. Completion of Improvements. In consideration of such approval, Principal agrees to complete the work of improvement required for said subdivision in accordance with the requirements of the Elk Grove City Code and such standard specifications created by applicable City ordinances or resolutions which are in effect at the time of the installation of said improvements. The work required may lie within or outside the subdivision and must be completed within 24 months of the date of this agreement.

5. Payment For Services. Principal further agrees to promptly pay, when due, all costs for plan checking, inspection services and material testing performed by City pursuant to the requirements of Sections 12.03.210 et. seq. of the Elk Grove City Code.

6. Acceptance of Improvements. Upon satisfactory completion of all public improvements in accordance with standard specifications created by City ordinances or resolutions which are in effect at the time of the installation of said improvements, City agrees to accept for maintenance the work of improvement within the dedicated parcels shown on said final subdivision map, and any off site easements granted, subject to the provisions of paragraph 8 hereof.

7. Notice of Commencement of Work. Principal shall notify the Administrator of Public Works in writing of the commencement of the work of improvements.

8. Correction of Defects. Principal agrees to remedy any defects in the improvement arising from faulty or defective construction of said improvements occurring within twelve months after acceptance thereof by City.

9. Indemnity. Principal shall indemnify and hold harmless City from any and all loss, damage or liability resulting from Principal's performance or non-performance of his duties and obligations under this Agreement, or from the negligent act or omission of himself, his agents, servants and employees. Principal shall, at his own cost and expense, defend any and all actions, suits, or legal proceedings that may be brought or instituted against the City, its officers and employees, on any such claim or demand, and pay or satisfy any judgment that may be rendered against the City in any such action, suit or legal proceedings, or result thereof.

10. Extension of Completion Date. If the construction of the work or improvement should be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

11. Improvement Security. (a) Principal shall obtain and furnish to City an improvement security consisting of a surety bond in favor of City, issued by a corporate surety authorized to do business in the State of California, and in form approved by City, securing the faithful performance by Principal of the work of improvement required, and also securing the payment of the costs and interest, if any, due under Sections 12.030.210 et seq. of the Elk Grove City Code, as provided in Paragraph 5 herein and an additional bond issued by a corporate surety authorized to do business in the State of California, in the amount of not less than 50 percent of the total estimated cost of the improvement, securing payment to contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement.

(b) In lieu of said corporate surety bonds, Principal may

furnish an improvement security consisting of a letter of credit, certificate of deposit, or similar instrument of credit, in form satisfactory to City, issued by a financial institution subject to regulation by the State or Federal government, pledging that the funds necessary to meet the performance required herein are on deposit, and guaranteed for payment on demand. Said letter of credit, certificate of deposit, or similar instrument of credit shall provide that the funds designated therein shall become trust funds for the purposes set forth in said instrument.

(c) The failure of Principal to commence the required work of improvements, or to complete the same within the time required after commencement thereof, shall entitle City to the full payment of the security, or so much thereof as may be necessary to complete the required work of improvement. The amount of the surety bond for faithful performance shall be in the sum of \$738,500.00. The amount of the surety bond for the payment of the claims of the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement shall be at least 50 percent of the above amount. The letter of credit, certificate of deposit or similar instrument of credit, or cash deposit for faithful performance, shall be in the above amount plus an additional 50 percent for the purposes set forth herein.

12. Improvement Security As Condition Precedent. The furnishing of the improvement security by Principal as required by paragraph 11 hereof shall be a condition precedent to acceptance by City of the above described real property and the performance by the City of the covenants herein on its part to be performed.

13. Inspection of Work In Progress. (a) Principal may request City's Administrator of Public Works to inspect the work as it progresses. If the work performed is found to be in accordance with the requirements of City, it may be accepted as it progresses and a partial refund of the cash deposit, or a

release pro tanto of the faithful performance bond, letter of credit, certificate of deposit or similar instrument of credit shall be made in a sum in the same ratio to the total deposit as the work accepted bears to the total work to be done. No refund in excess of 85 percent of the total amount of the improvement security for faithful performance shall be made until all the work has been completed and accepted.

(b) The determination of the Administrator of Public Works of City as to the amount of work done, and the amount of refund or partial release pro tanto, shall be final and conclusive. When the work of improvement is accepted, 10 percent of the improvement security shall be retained to guarantee faithful performance of the provisions of paragraph 8 of this Agreement.

(c) Improvement security given to secure payment to contractor, his subcontractors and to persons renting equipment or furnishing labor or materials for the work of improvement may, six months after completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed, and notice thereof given in writing to City, and if there are no actions filed, such improvement security may be released in full.

14. Execution By Real Party In Interest. Where title to the subdivision property is held by the record owner thereof under a holding Agreement, this Agreement and the bond given pursuant thereto must be executed by the real party or parties in interest.

15. Waiver of Civil Code Section 2819. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

16. City Construction of Improvements. In the event that all or any portion of the works of improvement contemplated herein are proposed to be constructed by street improvement

proceedings under the control of City, the undertaking of such proceedings shall in no way relieve Principal of any duties under this Agreement, except where all of the works of improvement that are required under this Agreement have in fact been constructed and accepted by City.

17. Interest. Interest shall accrue at the highest rate permitted by law on all sums from the date payment is due under the terms of this agreement and the sum due is certain or reasonably capable of being made certain.

18. Attorneys' Fees. In the event that it is necessary for the City to enforce the obligations secured by the improvement security furnished pursuant to Paragraph 11 hereof, the City shall be entitled to recover its costs and reasonable expenses and fees, including reasonable attorneys' fees, as provided for in Government Code Section 66499.4.

19. Amendments. This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by the parties hereto.

20. Entire Agreement. This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

21. Construction and Interpretation. It is agreed and acknowledged by the Principal that the provisions of this Agreement have been arrived at through negotiation, and that the Principal has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

22. Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

23. Time. Time is of the essence in the performance of each and every term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

City of Elk Grove

By _____
Mayor

CITY (SEAL)

ATTEST: _____
City Clerk

PRINCIPAL
Western Pacific Housing -
East Park, LLC, a Delaware
Limited Liability Company

By: LAMCO Housing, Inc.
A California corporation,
Its Managing Member

By: Robert Sellers
Vice President

