

Recording Requested By and
When Recorded Return to:

City Clerk
City of Visalia
425 E. Oak Avenue
Visalia, CA 93292

DRAFT DEVELOPMENT AGREEMENT

Carleton Acres Specific Plan and Phase 1 Tentative Subdivision Map No. 5590

This Development Agreement, hereinafter referred to as “Agreement”, is entered into as of this ___ day of _____, 2023, by and between the CITY OF VISALIA, a municipal corporation of the State of California, hereinafter referred to as the “City”, WEST STAR CONSTRUCTION, INC. hereinafter referred to as “Developer”, and HAYES RANCH LLC, hereinafter referred to as “Owner”, and wherein Developer and Owner have interest in real property, herein call the “Property”, which is more particularly described in Exhibit “A” and is situated in the City of Visalia, County of Tulare, State of California, and;

WHEREAS, applications have been filed by Owner to facilitate the creation, annexation, and development of the Carleton Acres Specific Plan (hereinafter referred to as the “Specific Plan”), which will result in the development of approximately 507 acres into 3,262 dwelling units, 35.1 acres of commercial, 17.3 acres of basin, and approximately 13 acres of institutional uses on land designated for Low, Medium, and High Density Residential, Mixed Use Commercial, Neighborhood Commercial, Parks/Recreation, and Public/Institutional, within the area generally bound by Shirk Street, Avenue 320, Akers Street, and Riggin Avenue, partially within and adjacent to the Visalia City limits and;

WHEREAS, on September 11, 2023, the Planning Commission of the City of Visalia passed Resolution No. 2023-___ approving Carleton Acres – Ph. 1 Tentative Subdivision Map No. 5590 for the Property, wholly located with Urban Growth Development Boundary Tier II (herein referred to as “Tier II”) and;

WHEREAS, on _____, the City Council of the City of Visalia passed and adopted Specific Plan No. 2021-13 and General Plan Amendment No. 2021-14, establishing the Carleton Acres Specific Plan and changing the General Plan land use designations within the Property to conform to the land use designations specified in the Specific Plan, and;

WHEREAS, the development project, consisting of the Property and the applicable terms, conditions, policies, and standards of the Specific Plan, and the approved resolutions for Carleton Acres – Ph. 1 Tentative Subdivision Map No. 5590, is hereinafter call the “Development” and;

WHEREAS, this Development Agreement is being carried out as part of the City of Visalia General Plan’s Land Use Policy No. LU-P-22, which allows for parcels under common ownership or unified control that are within multiple Urban Growth Boundary Tiers to be annexed and developed in accordance with a master plan and development agreement that details the overall site plan development while maintaining the City of Visalia’s interest in maintaining concentric growth through the Urban Growth Boundary Tiers, and;

WHEREAS, currently, the Development is situated in Growth Tiers II and III as defined in the City of Visalia General Plan. In accordance with Policy No. LU-P-22, the Development may be allowed to annex and develop in Tier III while the City is still limiting development approvals to land within the Tier II designation, subject to the terms and conditions stated in this Agreement, and;

WHEREAS, Owner has requested to allow the Specific Plan development to begin growth in the Tier II area and to have continuous growth into the Tier III portion of the plan. The proposal of “continuous growth” infers not being interrupted by the requirement of meeting citywide expansion criteria as stated in Land Use Policy LU-P-21. The reasoning for the request is that the proposed Project has been designed as one cohesive neighborhood with an elementary school, parks and open space, walking trails along Modoc Ditch and throughout the property, and other amenities that connect development situated in Tiers II and III, and;

WHEREAS, City will proceed with initiating annexation of the entire Property, including portions situated within Tier III in accordance with the terms and conditions of this Agreement, and;

WHEREAS, City will allow for development of the portions of the Property situated within Tier II at any time, provided that the property is annexed into the City of Visalia and has secured all proper entitlements, and;

WHEREAS, City will only allow for development of the portions of the Property situated within Tier III only at such time when the terms and conditions of this Agreement have been fulfilled by Developer to the satisfaction of the City. The development of the portions of the Property situated within Tier III will also require the installation of all public improvements within the respective areas as different phases of this development move forward, and;

WHEREAS, City shall periodically review this Agreement, and Developer and Owner agree the City may modify or terminate the Agreement, if the Developer has not complied with the terms and conditions, and;

WHEREAS, Developer agrees that when a building permit or any other type of entitlement or permit for the Development is sought, all applicable processing and impact fee amounts, conditions, and standards that the City has in effect at the time of entitlement is requested by the Developer shall be applied to the requested permits, and;

WHEREAS, nothing in this Agreement shall prohibit Owner or Developer from selling their portion of the Development provided any such sale is subject to and incorporates the terms and conditions of this Agreement, and;

WHEREFORE, the City, Owner, and Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, do agree as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Agreement is made pursuant to and in accordance with the provisions of California Government Code Section 65864 and Visalia Municipal Code, Chapter 17.60.

1.2 This Agreement shall remain in effect for a period of twenty (20) years from the date of execution subject to the terms and conditions set forth herein; however the parties may make amendments or modifications to this Agreement in accordance with Section 1.4 below.

1.3 Developer hereby acknowledges that it is in escrow to buy and develop residential portions of the Development from the Owner, including but not limited to areas designated by the City for Low Density Residential land use, and it is responsible for all rights and duties contained in the Specific Plan and the Development. No other party or individual has a development interest in the Development.

1.4 City may periodically review this Agreement pursuant to Visalia Municipal Code Section 17.60.070. In lieu of a period review held every 12 months as specified in Section 17.60.070, the City may initiate review at intervals of its choosing. The City may modify or terminate this Agreement if Developer has not in good faith complied with the terms and conditions of this Agreement. If City terminates this Agreement, then City may pass a moratorium of further development under Section 17.60.090 or seek other available relief and Owner and/or Developer agrees that all costs expended by the City, including attorney fees, may be charged by the City to Owner and/or Developer for violations of this Agreement.

1.5 Owner and Developer acknowledge that no vesting rights have been granted with the Development and this agreement will not vest any rights beyond those stated in the Specific Plan and the Development.

ARTICLE II BUILDING PROGRESS WITHIN TIER II

2.1 Before the City allows for the processing of a tentative subdivision map within the portion of the Property situated within Tier III, final maps that comprise all phases and lots specified in the Carleton Acres – Ph. 1 Tentative Subdivision Map No. 5590 shall be recorded with the Tulare County Recorder.

2.2 Before the City allows for the recording of a final subdivision map pertaining to any portion of a tentative subdivision map within the portion of the Property situated within Tier III, building permits for new dwelling units shall be issued for

- At least 80% of lots located within the Carleton Acres – Ph. 1 Tentative Subdivision Map (i.e., 300 lots),
- At least 80% of units associated with the 5.5-acre Tier II Medium Density Residential area as indicated by Table 2-1 in the Specific Plan (i.e., 44 units), and
- At least 80% of units associated with either the 3.6-acre Tier II Medium Density Residential area or the 9.7-acre Tier II High Density Residential areas as indicated by Table 2-1 in the Specific Plan (i.e., 29 units or 117 units respectively).

This cumulatively equates to construction in at least three of the four stand-alone land use districts in Tier II prior to approvals of any development in Tier III. There is no requirement for issuance of building permits in the 29.3-acre High Density Residential located inside the City limits (APN: 077-100-105) since this parcel is situated in Tier I.

2.3 A tentative subdivision map for the Tier III area can be filed and reviewed by the Site Plan Review Committee, and can subsequently be filed with the City of Visalia, but cannot be scheduled for hearing until Articles 2.1 and 2.2 are met.

ARTICLE III IMPROVEMENTS

3.1 Shirk Street frontage between Riggin Avenue and Shannon Parkway as depicted on the Conceptual Use Plan shall be dedicated and constructed. Shirk Street shall be constructed as a 110' arterial roadway, at 2/3 buildout, as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards. (The remaining 1/3 buildout on the west side of Shirk will be in the future by the adjacent property owner(s).)

3.2 Riggin Avenue between Shirk Street and Roeben Street shall be dedicated and constructed in accordance with Article V below.

3.3 Developer shall dedicate and construct Roeben Street between Riggin Avenue and Shannon Parkway as depicted on the Conceptual Use Plan. Roeben Street shall be constructed as an 84' collector roadway, at 2/3 buildout, as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards. (The remaining 1/3 buildout on the east side of Roeben will be in the future by Visalia Unified School District or the adjacent property owner(s).)

3.4 Developer shall dedicate and construct Sedona Avenue between Shirk Street and where improvements already exist approximately ¼ mile west of Akers Street. West of Roeben Street, Sedona Avenue shall be constructed as a 60' local roadway, at full buildout, as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards. East of Roeben Street, Sedona Avenue shall be constructed as a 60' local roadway consisting of travel lanes, parking lanes, and at least one sidewalk. (The remaining street frontage improvements will be in the future by adjacent property owners.)

Alternately, in lieu of Sedona Avenue, Developer shall construct Shannon Parkway between Roeben Avenue and Akers Street. This will require the granting of roadway dedication from Visalia Unified School District. Shannon Parkway shall be constructed as an 84' collector roadway, at 2/3 buildout, as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards. (The remaining 1/3 buildout on the south side of Shannon Parkway east of Roeben will be in the future by Visalia Unified School District.)

3.5 Developer shall dedicate and construct Shannon Parkway between Shirk Street and Roeben Street. Shannon Parkway shall be constructed as an 84' collector roadway, at 2/3 buildout, as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards. (The remaining 1/3 buildout on the north side of Shannon Parkway will be in the future by the adjacent property owner(s).)

3.6 Denton Street between Riggin Avenue and Sedona Avenue shall be dedicated and constructed. Denton Street shall be constructed as a 60' local roadway, at full buildout, similar to the Sedona Avenue Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards.

3.7 Developer and/or others who may eventually build within the Specific Plan area shall construct a 12-foot-wide bike and pedestrian trail and landscaping within the Landscape & Lighting District lots and/or right-of-way along all portions of Roeben Street within Tier II.

3.8 All collector street roadway designs within Tier II shall incorporate Class II bike lanes.

3.9 Developer shall submit to the City landscape and irrigation plans associated with all Outlots identified within the Carleton Acres – Ph. 1 Tentative Subdivision Map No. 5590 that are to be maintained by and Landscape and Lighting District, including Outlot J that is shown on the

Tentative Subdivision Map as a Park, and shall improve and install all affiliated amenities on said Outlots in accordance with the approved plans.

3.10 Street lighting plans shall be submitted with the final plat application. All the outdoor lighting shall meet City standards or as defined in the Specific Plan.

3.11 Utility pole relocations along Riggin Avenue, between Shirk Street and where improvements already exist approximately ¼ mile west of Akers Street, shall be completed so that the poles are located outside of the curb of the final roadway.

3.12 All local streets within the Carleton Acres – Ph. 1 Tentative Subdivision Map No. 5590, shall be installed in accordance with City standards prior to the recording of any final map or issuance of building permits in Tier III.

3.13 The Developer shall prepare and submit improvement plans for street, drainage, water, sewer, and landscaping improvements to the City Engineer for approval for their respective portions of the Development. The improvement plans must be approved by the City for conformance with applicable City standards prior to Developer beginning work on these public improvements.

3.14 The Developer shall prepare and submit improvement plans for the required landscape and lighting district to the City Engineer for approval for their respective portions of the Development. The City must approve the improvement plans prior to the formation of the district. The landscape and lighting district applies to all outlots identified on the subdivision map.

3.15 Maintenance of landscaping (including temporary irrigation) and furnishings in all public rights-of-way, parks, and open spaces shall be the responsibility of the Developer until formal acceptance by the City Council. Upon acceptance by the City, such parks, open space and landscape easement areas shall become a part of the City's public system.

3.16 No change in the use or restrictions specified in this Agreement shall be allowed or changed without modification of this Agreement. In the event Developer changes or expands the use permitted by this Agreement or fail to comply with the restrictions in this Agreement, without formal modification of this Agreement, then Developer shall be in default.

ARTICLE IV

COMMERCIAL MIXED USE LAND USE DESIGNATION

4.1 In the event that, prior to commencing construction, there becomes no commercial tenant within contract, for a period of one (1) year, to occupy the anchor tenant space that exceeds 60,000 square feet located within the Commercial Mixed Use land use designation at the

northeast corner of Shirk Street and Riggins Avenue, the Developer shall process a Specific Plan Amendment and General Plan Amendment to reduce the gross area associated with the Commercial Mixed Use land use designation to approximately 10 or less acres. Such entitlements shall preserve the minimum area associated with the Medium Density Residential and High Density Residential land use designations located adjacent to the Commercial Mixed Use designation, and may enlarge the area associated with the Low Density Residential land use designation.

ARTICLE V RIGGIN AVENUE WIDENING

5.1 The Traffic Impact Study (TIS) prepared for the proposed project (ref.: Carleton Acres Specific Plan Traffic Study. Ruetters & Schuler, March 2023) has concluded that roadway improvements in the form of widening Riggins Avenue to four travel lanes between Shirk Street and Akers Street are necessary with the Project's Phase 1 improvements to maintain a City acceptable Level Of Service (LOS). The roadway improvements are necessary based upon the traffic volumes analyzed in association with one or more land uses incurred by the Phase 1 portion of the Carleton Acres Specific Plan project.

Notwithstanding the impacts incurred by the project, the City understands that furthering the overall widening of Riggins Avenue corridor helps to achieve multiple local and regional priorities, helping to improve traffic flow between the industrial and residential segments of Visalia as well as traffic flow for regional traffic coming to and from Visalia. The City of Visalia therefore agrees to partner with the Developer in providing a phased reimbursement of the widening of Riggins Avenue and the relocation of utility poles along the Riggins Avenue corridor.

5.2 The Developer and/or its designee(s) shall facilitate the widening of Riggins Avenue to a four lane divided road between Shirk Street and Denton Street, transitioning from four lanes to two lanes between Denton Street to approximately 600 feet west of Roeben Street. This widening shall include curb and gutter, median, median street lighting, median landscape and irrigation, storm drainage, and the relocation of five utility poles. Widening shall be completed prior to the final occupancy of the planned Costco Warehouse on the northeast corner of Shirk and Riggins.

Parties acknowledge that the Riggins Avenue widening by the Developer will be eligible for reimbursement pursuant to the requirements listed in the City of Visalia's Transportation Impact Fee Program. A separate improvement agreement and reimbursement agreement will be required prior to any reimbursement by the City.

5.3 Separate from the project, the City is seeking to enter into agreement with the Tulare County Transportation Authority to appropriate Measure R Regional Funds and City Transportation Impact Fees to fund Riggins Avenue widening from Roeben Street to Akers Street. If such an

agreement is entered into and a City project is established and constructed, the City shall facilitate the widening of Riggin Avenue to a four lane divided road between approximately 600 feet west of Roeben Street and Akers Street. If the City's project is delayed, then the Developer and City will discuss alternatives to complete widening this section of Riggin Avenue, which remains a requirement by the City. This widening shall include curb and gutter, median, median street lighting, median landscape and irrigation, storm drainage, signalization of the Riggin & Roeben intersection, and the relocation of no more than eight utility poles.

The developer, through a separate agreement with the City, will be responsible to reimburse the City for the Developer's proportional share of the project costs based on the types of costs from the City project that would be the responsibility of private development including sidewalk, curb, gutter, a portion of street paving, design, and relocation cost of the utility poles required to be moved with this widening project within their responsible development frontage.

The Developer will agree to reimburse the City upon the completion of certain amounts of development types within the Phase 1 portion of the project as follows:

- The Developer will reimburse the City 25% of their proportional share of all costs to design and construct upon final occupancy of the 2nd commercial parcel located along the Riggin Avenue frontage in front of the Costco Warehouse
- The Developer will reimburse the City 25% of their proportional share of all costs to design and construct upon final occupancy of the 4th commercial parcel located along the Riggin Avenue frontage in front of the Costco Warehouse.
- The Developer will reimburse the City 25% of their proportional share of all costs to design and construct upon final occupancy of a cumulative of 50 single-family residential lots located within the Carleton Acres Phase 1 Tentative Subdivision Map.
- The Developer will reimburse the City 25% of their proportional share of all costs to design and construct upon final occupancy of a cumulative of 100 single-family residential lots located within the Carleton Acres Phase 1 Tentative Subdivision Map.

To further facilitate the widening of Riggin Avenue to a four lane divided road between approximately 600 feet west of Roeben Street and Akers Street, an area of benefit may be established by the City for the area being widened in accordance with Visalia Municipal Code Chapter 16.52, to facilitate reimbursement of City costs.

5.4 Notwithstanding Article 5.2, in the event that the Developer anticipates that any land use is planned to be constructed and occupied prior to Costco's occupancy, the Developer may continue to consult with the City regarding a phased widening of Riggin between Shirk Street and Akers Street, and the City may consider granting such widening upon submittal to and approval by the City of supporting analysis to demonstrate that such land uses will not require the full widening of Riggin Avenue.

ARTICLE VI
AFFIDAVIT OF PROPERTY OWNERS

6.1 The signatures of all owners of the Development agreeing to submit the Development to this Agreement and to the provisions set forth in California Government Code Section 65864 et seq. and Visalia Municipal Code, Chapter 17.60 shall be provided and are incorporated into this Agreement.

ARTICLE VII
DEFAULT

7.1 In the event Developer, its successors, assigns or subsequent owners of the Development or any other person acquiring an interest in the Development, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, such failure to comply will be deemed a default hereunder. In that event, City shall have the following options:

(a) This Agreement and the commitments contained herein may be terminated, and the zoning designation reversed, if City provides written notice of Developer default, and provides the hearing required by California Government Code Section 65868. Provided, however, no such termination or reversal shall occur unless City provides written notice of the default and Developer fails to cure such default within ninety (90) days after mailing or delivery of said notice.

(b) Enforcement of this Agreement may be sought in an action at law or in equity in a court of competent jurisdiction located in Tulare County, California.

(c) A waiver by City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any covenants or conditions.

(d) Notwithstanding anything to the contrary herein, in the event of a material default of the Agreement, the parties agree that City and/or Developer shall have thirty (90) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (90) day period, if the defaulting party shall commence curing the same within the thirty (90) day period and prosecute the curing of same with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same, but in any event not to exceed (6) months; and provided further, however, no default by a subsequent owner of a portion of the

Development shall constitute a default by Developer for the portion of the Development still owned by Developer.

(e) In the event the performance of any obligation to be performed hereunder by any party hereto is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, with limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

(f) In addition to the remedies set forth above, in the event of a default by Developer, or any other party claiming an interest herein, City may withhold building permits for any lots within the Development until such time as the default is cured.

ARTICLE VIII UNENFORCEABLE PROVISIONS

8.1 If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

ARTICLE IX ASSIGNMENT AND TRANSFER

9.1 After its execution, this Agreement shall be recorded in the office of the County Recorder. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Development, shall be appurtenant to and for the benefit of the Development, and shall run with the land. This Agreement shall be binding on the City, the Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels or lots within the Development. The new owner of the Development or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

ARTICLE X GENERAL MATTERS

10.1 Amendments. Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of California Government Code Section 65868 and Visalia Municipal Code, Chapter 17.60.

10.2 Paragraph Headings. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

10.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Tulare County, California.

10.4 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below

City:
City Clerk
City of Visalia
425 E. Oak Avenue
Visalia, CA 93292

Developer:
West Star Construction, Inc.

Owner:
Hayes Ranch LLC

or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

ARTICLE XI MISCELLANEOUS

11.1 This Agreement may be modified only by means of a subsequently executed and acknowledged written agreement.

11.2 In the event Developer fails to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement, and to collect the direct costs associated with such action from Developer.

11.3 In the event that a judicial dispute arises regarding the enforcement or breach of this Agreement, then the prevailing party in such dispute shall be entitled to recover its attorney's fees and costs reasonably incurred, including fees and costs incurred on appeal.

11.4 The applicable building codes for structures shall be the codes in effect when a complete application for a building permit is filed. Development impact fees, if imposed by ordinance, or amended shall be payable as specified in said ordinance or amendment even if the effective date is after the date of this Agreement or the annexation and/or rezone thereto.

11.5 Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, effective on the day and year first above written.

West Star Construction Inc.

Signature Date

Print Name

West Star Construction, Inc. _____

Company Name

Title

Hayes Ranch LLC

Signature Date

Print Name

Hayes Ranch LLC

Company Name

Title

CITY OF VISALIA

Leslie Caviglia

City Manager/City Clerk

Date

ATTEST:

Deputy City Clerk

Date

APPROVAL AS TO FORM:

City Attorney

Date