

RESOLUTION NO. 19-078

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DIXON
APPROVING THE HOMESTEAD PHASE 1 BACKBONE IMPROVEMENT
AGREEMENT BETWEEN CITY OF DIXON AND JEN CALIFORNIA 6, LLC**

WHEREAS, on September 28, 2004, in accordance with the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) ("CEQA"), and CEQA Guidelines (14 Cal. Code Reg. § 15000 et seq.), the City Council of the City of Dixon ("City") adopted Resolution No. 04-195, to certify the Environmental Impact Report ("EIR") for the Southwest Dixon Specific Plan, and for the related entitlements and approvals needed to develop the Specific Plan; and

WHEREAS, on October 25, 2005, the City Council adopted Resolution No. 05-217, approving the Specific Plan, along with the Southwest Dixon Supplemental Design Guidelines incorporated by reference into the Specific Plan; and

WHEREAS, on November 8, 2005, the City Council adopted Ordinance No. 05-012, to approve a Master Development Agreement covering the Specific Plan area, which was recorded in the Official Records of Solano County as Document No. 200600028734 (the "2005 Development Agreement"); and

WHEREAS, on September 9, 2008, the City Council adopted Resolution No. 08-158, approving a Negative Declaration pursuant to CEQA and amending the Specific Plan to include an additional 40.9 acres of land designated as Low Density Residential; and

WHEREAS, Jen California 6, LLC, a California limited liability company ("Subdivider") owns or controls a tract of land consisting of approximately 324.14 gross acres, lying in the City of Dixon, within the Specific Plan area, known as the "Homestead" project, which is currently identified as Solano County Assessor's Parcel Numbers 0114-011-010, 0114-011-150, 0114-012-040, 0114-012-030, 0114-020-010, 0114-040-040, 0114-031-050, and 0114-154-060; and

WHEREAS, on May 14, 2019, the City Council approved Vesting Tentative Maps for Phase 1, Village 2 and Village 3 of the Homestead project, which, in addition to the previously approved Phase 1, Village 1 Vesting Tentative Map, together comprise the "Phase 1 Project"; and

WHEREAS, Subdivider and the City seek to enter into the Homestead Phase 1 Backbone Improvement Agreement to facilitate the completion of all Phase 1 Backbone improvements for the Phase 1 Project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DIXON HEREBY RESOLVES AS FOLLOWS: the City Council hereby approves the Homestead Phase 1 Backbone Improvement Agreement with Jen California 6, LLC, attached hereto as **Exhibit A** and incorporated herein by this reference, and directs the City Manager to execute the agreement subject to any final revisions approved by the City Attorney.

**PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF DIXON ON THE 14th DAY OF MAY 2019, BY THE FOLLOWING VOTE:**

AYES: Bird, Ernest, Minnema, Pederson, Bogue

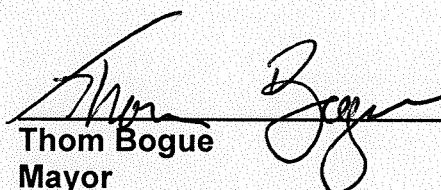
NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:


Jim Ernest
City Clerk Pro Tempore


Thom Bogue
Mayor

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Dixon
600 East A Street
Dixon, CA 95620
Attn: City Clerk

Exempt from recording fees
(Gov. Code §§ 6103 and 27383)

(Space above this line for Recorder's use)

**APNs: 0114-011-010
0114-011-150
0114-012-040
0114-012-030
0114-020-010
0114-040-040
0114-031-050
0114-154-060**

IMPROVEMENT AGREEMENT

This Improvement Agreement (“Agreement”) is entered into on _____, 2019, by and between the City of Dixon, a California municipal corporation (the “City”) and Jen California 6, LLC, a California limited liability company (“Subdivider”). The City and Subdivider may individually be referred to herein as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. Subdivider owns or controls a tract of land consisting of approximately 324.14 gross acres, lying in the City of Dixon, County of Solano, California, known as the “Homestead” project, which is currently identified as Solano County Assessor’s Parcel Numbers 0114-011-010, 0114-011-150, 0114-012-040, 0114-012-030, 0114-020-010, 0114-040-040, 0114-031-050, and 0114-154-060 (the “Property”). This Agreement pertains to Phase 1 Backbone of the Homestead project, as shown on the Phasing Plan which is attached hereto as **Exhibit A** (the “Project”).

B. On October 25, 2005, the City Council of the City of Dixon (“City Council”) adopted Resolution No. 05-217 approving the Southwest Dixon Specific Plan, along with the Southwest Dixon Supplemental Design Guidelines.

C. On _____, the City Council approved Vesting Tentative Subdivision Maps for Village 2 and Village 3 of Phase 1 of the Homestead project, with conditions of approval, along with an Amended and Restated Development Agreement and an addendum to the Environmental

Impact Report, which was certified in September 2004. The approved Phase 1 maps for Village 1, Village 2 and Village 3 are herein referred to as the “Phase 1 Project”.

D. The Phase 1 Project is subject to the Subdivision Map Act (Gov. Code, § 66410 et seq.) and the City’s ordinances and regulations related to the filing, approval, and recordation of subdivision maps (together, the “Subdivision Laws”) and the requirements and conditions contained in the Resolution of Approval.

E. Complete improvement plans for the construction, installation, and completion of the Phase 1 Project (“Improvement Plans”) have been prepared by Subdivider and approved by the City Manager of the City of Dixon, or his designee, including, but not limited to, the City Engineer (“Manager”).

F. The Phase 1 Project includes construction of major offsite improvements, including improvements to Pitt School Road, South Lincoln Street, new South Parkway and undergrounding of utilities through railroad right-of-way controlled by Union Pacific Railroad. In order for City to authorize such work to commence, adequate bonding and securities must be provided.

G. Subdivider desires to enter into this Agreement, in order to facilitate the completion of all Phase 1 Backbone improvements (“Improvements”)

H. Subdivider further desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider’s sole cost, expense and risk, all of the Phase 1 Backbone improvements required in connection with the Phase 1 Project including, but not limited to, grading work and site clearance, the Improvements, and all labor required to complete the Improvements to the satisfaction of City (“Improvement Work”).

I. Subdivider has secured this Agreement by depositing security with City consisting of a cash deposit, bond, or letter of credit in form acceptable to City to secure installation of the Improvements and a one-year warranty of workmanship in accordance with the terms provided herein (the “Securities”).

J. On _____, the City Council adopted Resolution _____, authorizing the City to enter into this Agreement with Subdivider.

NOW, THEREFORE, in consideration of the mutual covenants and benefits that accrue to each, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement. In the event of any inconsistency between the Recitals and Sections 1 through 23 of this Agreement, Sections 1 through 23 shall prevail.

2. **Effective Date and Term.** This Agreement shall be recorded within two (2) business days of the City Council’s approval of the Phase 1 Project. This Agreement shall become

effective on the date that both Subdivider and City have executed this Agreement (the “Effective Date”), and shall terminate only after the release of all Securities, unless this Agreement is terminated in writing, signed and notarized by both Parties and recorded. This Agreement, however, shall automatically terminate after any lot within the Phase 1 Project has been conveyed to an individual homebuyer and a certificate of occupancy has been issued by City in accordance with this Agreement.

3. Dedication. Except as otherwise provided in this Agreement or in the action of the City Council approving the Final Map, City hereby rejects all lands, rights-of-way and easements offered for dedication on the Subdivision Map or by separate instrument. Such offers, however, shall remain open and constitute irrevocable offers of dedication in accordance with Government Code section 66477.2. All such offers of dedication may be accepted by City in its sole discretion at any later date without any further notice to the Subdivider.

4. Installation of Improvements. Subdivider agrees to furnish, construct and install at Subdivider’s own expense the Improvements, as shown on the Improvement Plans, which are to be installed to the sole satisfaction of the City Engineer. The Improvement Plans may only be modified by the Subdivider subject to prior written approval by the City Engineer.

5. Subdivider’s Obligations. Subdivider shall perform each of the following throughout the term of this Agreement, as conditions precedent to City’s issuance of a building permit for any lot within the Phase 1 Project:

A. Complete, at Subdivider’s sole cost and expense in a good and workmanlike manner, all of the Improvements in conformance with the Subdivision Laws, all applicable City standards, and City’s general plan, related to the Improvements (collectively, the “Improvement Standards”).

B. Commence construction of the Improvements within three (3) months from the Effective Date of this Agreement. Subdivider shall notify the City Engineer in writing three (3) days before the commencement of construction of the Improvements.

C. Complete all Improvements within twelve (12) months from the Effective Date of this Agreement, unless otherwise approved or extended in writing by the City Engineer, for good cause, after written application by Subdivider. Such application shall state fully the grounds and facts showing good cause for such extension to be granted. In granting any extension of time, the City Engineer may require a new or amended subdivision improvement agreement, or new security, to reflect increases in the costs of constructing the Improvements or other conditions related to the extension of time.

D. Furnish and pay for all necessary equipment, labor and materials to complete the Improvements in conformity with the Improvement Standards.

E. Replace or repair all public improvements, private property, public utility facilities, and surveying or subdivision monuments that are destroyed or damaged in the performance of any work related to this Agreement. Subdivider shall bear the entire cost of

replacement or repairs of any and all public or private property damaged or destroyed in the performance of any work related to this Agreement. Any repair or replacement work shall be to the satisfaction, and subject to the approval, of the City Engineer.

F. Provide safe access for inspection of the Improvements by City.

G. Give good and adequate warning to the public of each and every dangerous condition existing on or near the Improvements, and take reasonable action to protect the public from any such dangerous condition.

H. Perform all construction work related to installing the Improvements between 7:00 a.m. and 7:00 p.m. on any day, unless otherwise approved in writing by the City Engineer.

I. Require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing any work related to the Improvements. Subdivider shall maintain an office with a telephone and Subdivider or a person authorized to make decisions and act for Subdivider in Subdivider's absence shall be available at the site of any Improvements within three (3) hours of being called at such office by City at any time when construction work is being performed on the Improvements.

J. Assume all costs for utility and cable television undergrounding or relocation which is not the responsibility of the cable television, gas, electric, telephone or other utility company under the terms of any franchises with City or otherwise imposed upon the utility companies by law.

K. Obtain and comply with all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

6. Estimated Cost of Improvements. The total estimated cost of the Improvements, as provided by Subdivider and reviewed and confirmed by the City Engineer, is Sixteen Million Nine Hundred Thirty-Four Thousand Three Hundred Seventy-Three Dollars (\$16,934,373) comprised of the following breakdown:

\$15,665,987	Construction Contract
\$275,000	Backbone Street lights estimate
<u>(\$114,470)</u>	California Water Service Company improvements
\$15,826,517	Subtotal
\$1,107,856	7% soft costs, i.e. design, inspection, testing, etc.
\$16,934,373	Total Phase 1 Backbone Costs

7. Title to Improvements. City shall not accept any property to be dedicated, or the Improvements, unless they are constructed in conformity with the Improvement Plans and Improvement Standards to the satisfaction of the City Engineer. Subdivider shall retain title to, shall be responsible for, and shall bear the risk of loss to, any of the Improvements constructed or installed, until such time as the Improvements are accepted by City. Title to and ownership of the

Improvements and any real property to be dedicated shall vest absolutely in City upon completion and acceptance of such Improvements by the City Council. City shall not accept the Improvements unless title to the Improvements is entirely free from all liens. Prior to acceptance, at City's request, Subdivider shall supply City with appropriate lien releases, at no cost to and in a form acceptable to City.

8. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Improvements are to be constructed or installed on land not within the Phase 1 Project or an already existing public right-of-way, no construction or installation shall commence before:

A. The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Improvements; or

B. The issuance of an order of possession by a court of competent jurisdiction pursuant to the State Eminent Domain Law (Code Civ. Proc., § 1230.010 et seq.). Subdivider shall comply in all respects with any such order of possession.

9. Final Acceptance of Work. The Improvements shall be deemed accepted only as authorized by the City Council or the City Engineer in accordance with the Subdivision Laws, and City's inspection of all Improvements. Such acceptance shall not constitute a waiver by City of any defects or deficiencies in the Improvements.

10. Damage to Improvements. Subdivider is exclusively responsible for the care and maintenance of, and any damage to, the Improvements, prior to final acceptance as provided in Section 9 above. Subdivider shall replace or repair all Improvements, utility facilities and monuments that are damaged or destroyed for any reason, regardless of the cause of damage or the ownership of the underlying property. Any repair or replacement shall be to the satisfaction of the City Engineer.

11. Repair of Defective Work. If, within a period of one (1) year after final acceptance by the City Council of the Improvements, any portion of the Improvements or any work done under this Agreement fails to fulfill any of the requirements of this Agreement, the Improvement Plans or the Improvement Standards, Subdivider shall without delay and without any cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements or work. If the Subdivider fails to act promptly in accordance with this requirement, or if the exigencies of the situation require repairs or replacements to be made before Subdivider can be notified or correct the situation, then City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by City.

12. Securities.

A. *Types of Security.* Subdivider shall secure this Agreement before City accepts the Phase 1 Project for filing by providing the following (collectively, the “Securities”):

i. Performance Security. An amount determined by the City Engineer to be one hundred percent (100%) of the total estimated Cost of Improvements, securing the Subdivider’s faithful performance and completion of the Improvements, in the form attached hereto as **Exhibit B** (“Performance Security”).

ii. Payment Security. An additional amount determined by the City Engineer to be not less than one hundred percent (100%) of the total estimated Cost of Improvements, securing Subdivider’s payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials related to installing and completing the Improvements, in the form attached hereto as **Exhibit C** (“Payment Security”).

iii. Warranty. An additional amount of ten percent (10%) of the estimated Cost of Improvements, for the guarantee and warranty of the Improvements against any defective work or labor done, or defective materials, for a period of one (1) year following their completion and acceptance by City, in the form attached hereto as **Exhibit D** (“Warranty”).

B. *Conditions of Security.*

i. Bonds. Any bonds submitted as the Securities shall be executed by a surety company authorized to conduct a surety business in California and shall be in a form as specified by the Subdivision Laws and approved by the City Attorney.

ii. Irrevocable. All Securities deposited as bonds under this Agreement shall be irrevocable, shall not be limited as to time (except as to the guarantee and warranty period), and shall provide that they may be released, in whole or part, only upon the written approval of the City Engineer, as provided under the Subdivision Laws and subdivision C below. All Securities shall expressly obligate the surety for any extension of time authorized by City for Subdivider’s completion of the Improvements, whether or not the surety is given notice of such an extension by City. No change, alteration, or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as required by the Subdivision Laws.

iii. Replacement. If Subdivider seeks to replace any of the Securities, such replacement shall: (1) comply with all requirements of this Agreement; (2) be provided by Subdivider to the City Engineer; and (3) upon written acceptance by the City Engineer, be deemed to be a part of this Agreement. Upon the City Engineer’s acceptance of a replacement, the earlier provided Securities may be released by City.

C. *Release of Securities.* The Securities required by this Agreement shall be released in accordance with the Subdivision Laws and the following provisions:

i. Performance Security. City shall release the Performance Security upon issuance of a Certificate of Completion by the City Engineer for all of the Improvements, or as may otherwise be authorized in accordance with the Subdivision Map Act (Gov. Code § 66499.7).

ii. Payment Security. City shall release the Payment Security in accordance with the Subdivision Laws. The Payment Security may, six (6) months after the Certificate of Completion is issued by the City Engineer, be reduced to an amount equal to the amount of all claims filed and related to the Improvements of which notice has been given to City. The balance of the Payment Security shall be released upon the settlement of all claims and obligations for which the Payment Security was given.

iii. Warranty. The Securities provided for guarantee and warranty of workmanship shall be released after one (1) year following the completion and acceptance of the Improvements, and inspection thereof by the City's Construction Inspector, and approved by the City Engineer. If, however, the City Engineer determines there are defects in the Improvements that require correction pursuant to Section 10 above, and such defects are not corrected within a reasonable time, the City Engineer shall utilize the Securities to make all necessary corrections, including payment of reasonable expenses and fees and attorney's fees in connection with enforcement of any provision of this Agreement.

D. *Records.* Evidence of the Securities required by this Agreement shall be kept on file with the City Clerk. If the City Council gives specific, written approval to replace the Securities by another approved security, such replacement Securities shall be filed with the City Clerk and, upon filing, shall be deemed to be incorporated into this Agreement. Upon filing of replacement Securities with the City Clerk, the replaced Securities may be released.

13. Inspections. All Improvements shall be constructed under the inspection of the City Engineer and his designees (collectively "City Inspectors"). Subdivider shall at all times maintain safe access for inspection of the Improvements. Upon completion of the Improvements the Subdivider may request a final inspection by City Inspectors. The City Engineer shall not issue the Certificate of Completion unless Subdivider has completed all work in accordance with the Improvement Plans and Subdivision Laws. If the City Engineer determines that the Improvements have been completed in accordance with all Improvement Standards and Subdivision Laws, the City Engineer shall certify the completion of the Improvements to the City Council, to accept or reject in their sole discretion. City bears no liability for any costs or expenses resulting from delays in inspections. The City Inspectors shall have the right to inspect the Improvements for a period of twelve (12) months after the Certificate of Completion has been issued. Subdivider shall bear all costs of inspection and certification, including but not limited to the direct costs of all third-party inspection agencies and City inspection consultants.

14. Fees. Subdivider shall maintain a deposit account with City in order to pay all costs incurred by City in processing this Agreement, and all fees imposed in connection with the construction and inspection of the Improvements, including but not limited to the costs of any third party City Inspectors. The fees referred to herein are not inclusive of all City fees, charges or other costs that may be imposed on the Phase 1 Project.

15. Default of Subdivider.

A. *Breach.* Subdivider shall be deemed to have materially breached this Agreement based on, but not limited to, any of the following occurrences: (i) failure to timely complete construction of the Improvements; (ii) failure to timely cure any defect in the Improvements to the satisfaction of the City Engineer; (iii) failure to timely deposit additional Securities as may be required by this Agreement; (iv) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days; (v) the commencement of a foreclosure action against the Phase 1 Project or a portion thereof, or any conveyance in-lieu or in avoidance of foreclosure; or (vi) failure to perform any material obligation under this Agreement.

B. *Notice of Breach; Default.* In the event of any material breach of this Agreement, City may serve written notice upon Subdivider and Subdivider's surety, if any, of the breach. Subdivider shall have twenty (20) days from receipt of written notice by City to cure any breach. If the breach is not cured, or significant progress towards curing the breach is not made, Subdivider shall be in default.

C. Remedies; Performance by City.

i. In the event of Subdivider's default under this Agreement, and the applicable cure period set forth in this Paragraph has expired without such default having been cured, City may thereafter deliver a notice of default to Subdivider and Subdivider's surety, if any. If the default remains uncured within twenty (20) calendar days from receipt of the written notice of breach, Subdivider authorizes City to complete all work on the Improvements at the sole expense of Subdivider, and Subdivider authorizes to utilize the Securities to complete all work on the Improvements and to pay all labor costs of contractors, subcontractors and workers related to the Improvements. In the event of default of this Agreement, or abandonment of the Phase 1 Project, City may take over the Improvements and prosecute them to completion, by contract or by any other method City may deem advisable, at the expense of Subdivider, and Subdivider shall be liable to City for any excess cost or damages incurred by City. In the event City takes over the Improvements or prosecutes the same to completion, City, without liability for so doing, may take possession of, and utilize such materials, appliances, equipment, plant and other property belonging to Subdivider as may be necessary for completion of the Improvements.

ii. City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The right of City to draw upon or utilize the Securities is additional to and not in-lieu of any other remedy available to City.

iii. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by City of a notice of violation against all the lots in the Phase 1 Project, or to rescind the approval or otherwise revert the Phase 1 Project to acreage. The remedy provided by this Subsection is in addition to and not in lieu of other remedies available to City, and is not required to implement other available remedies. Subdivider agrees that the choice of remedy or remedies for Subdivider's default shall be at the discretion of City.

iv. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including but not limited to costs of suit and attorney's fees, costs of Improvements in the event of failure of performance, and all administrative costs. Such costs and fees shall be a proper charge against the Securities of Subdivider.

v. The failure of City to take an enforcement action with respect to a default or breach, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

D. *Lien.* In accordance with the Subdivision Laws (Gov. Code, § 66499), the recordation of this Agreement creates a lien attached to the property underlying the Phase 1 Project and has the priority of a judgment lien in the amount necessary to complete the Improvements.

16. Environmental Warranty.

A. For purposes of this Agreement, the terms below have the following meanings:

i. "Environmental Laws" shall mean any federal, state, or local law, rule, regulation administrative or court order, ordinance, regulatory guidance document, standard, or requirements of any government authority regulating, relating to, or imposing liability standards of conduct concerning Hazardous Substances, or that pertains to the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Conservation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act (29 U.S.C. § 1801 et seq.); the Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Superfund Amendments and Reauthorization Act (42 U.S.C. § 6901 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Surface Mining Control and Reclamation Act (30 U.S.C. § 1201 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 655, 657); the California Underground Storage of Hazardous Substances Act (Health and Safety Code, § 25280 et seq.); the California Hazardous Waste Control Act (Health and Safety Code, § 25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (Health and Safety Code, § 24249.5 et seq.); and the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.); together with any amendments of or regulations promulgated under the statutes cited above.

ii. "Hazardous Substances" or "Hazardous Substance" shall include any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as so defined under any Environmental Laws or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), radon gas, urea formaldehyde, asbestos, lead, or electromagnetic waves.

Hazardous Substances include any hazardous or toxic substance, material or waste which is regulated by the State of California, the United States government, or any other governmental authority with jurisdiction over the Property. Hazardous Materials include asbestos and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property which substance causes the Property (or any part thereof) to be in material violation of Environmental Laws.

B. Prior to acceptance of any Improvements by City, Subdivider shall provide City with a written warranty, in the form attached and incorporated hereto as **Exhibit E** (“Environmental Warranty”):

i. Subdivider and the property being dedicated are in compliance with all Environmental Laws and are not subject to any existing, pending or threatened investigation by a federal, state, or local governmental authority regarding violations of Environmental Laws.

ii. Subdivider and its third party agents, contractors and subcontractors have not used, generated, manufactured, produced, discharged, or released on, under, or about the property to be dedicated, any Hazardous Substance except in accordance with all applicable Environmental Laws.

iii. Subdivider has not caused or permitted the release or discharge of, and has no knowledge of the release, discharge, or presence of Hazardous Substances on the property to be dedicated or the migration of any Hazardous Substances from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

C. Throughout the term of this Agreement, Subdivider shall give written notice within fifteen (15) days to City of:

i. Any proceeding or investigation by any federal, California, or local governmental authority regarding the presence of Hazardous Substances on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

ii. Any claims made or threatened by any third party against City or property to be dedicated regarding any loss or injury resulting from any Hazardous Substances; and

iii. Subdivider’s discovery of any occurrence or condition on any property to be dedicated or any property adjacent to, or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability, or suit under any Environmental Law.

17. No Agency Relationship. Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement. City elected and appointed councils, commissions, officers, agents, employees and representatives ("City's Agents") shall not, be liable or responsible for any accident, loss or damage, regardless of the cause, happening or occurring to the Improvement Work or Improvements specified in this Agreement prior to the completion and acceptance of the Improvement Work or Improvements. All such risks shall be the responsibility of and are hereby expressly assumed by Subdivider.

18. Other Agreements. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of City ordinances providing therefore, nor shall anything in this Agreement commit City to any such apportionment.

19. Indemnity.

A. Indemnity/Hold Harmless. City and City's Agents shall not be liable, and Subdivider agrees to indemnify, hold harmless, and defend City and City's Agents from any and all claims, costs, and liability for claims of damage, for any property damage or personal injury, including death, which may arise as a result of any negligent acts or omissions by Subdivider or Subdivider's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation, of the Improvements, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements, and Subdivider's compliance with Subdivision Laws and other rules, including labor laws. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of the Phase 1 Project and the Improvements as provided herein, and in addition, to injuries to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other Improvements. Acceptance by City of the Improvements shall not constitute an assumption by City of any responsibility for damage covered by this Section.

B. Indemnity of Project Approval. Subdivider shall defend, indemnify, and hold harmless City and City Agents from any claim, action, or proceeding against City or City Agents to attack, set aside, void, or annul, any approval of City concerning the Phase 1 Project. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by Subdivider.

C. Design Defects. After acceptance of the Improvements, the Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by a latent design or construction defect. Provisions of this paragraph shall remain in full force and effect for ten (10) years following acceptance by City of the Improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or Improvement Work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance, or malfeasance in approving, reviewing, checking,

or correcting any plans or specifications or in approving, reviewing or inspecting any Improvement Work. The Securities shall not be required to cover the provisions of this section.

D. *No City Liability.* City shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any Improvement Work. Nothing contained in this section is intended to, or shall be deemed to, limit or waive any protections or immunities afforded by law to City or City Agents for the approval of the plan or design of the Improvements, including but not limited to the protections and immunities afforded by Government Code section 830.6.

E. *Union Pacific Railroad Company.* Subdivider shall release, indemnify, and hold harmless City from and against any claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses, even if groundless, fraudulent, or false, that directly or indirectly arise out of or is related to Subdivider's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, use or operation of underground utilities on Union Pacific Railroad-owned property or in connection with City's agreements with Union Pacific Railroad related to Subdivider's work.

20. Insurance. Without limiting Subdivider's duty to indemnify City, Subdivider shall maintain in effect throughout this Agreement a policy or policies of insurance with the specifications and limits of liability specified herein.

A. *Proof of Insurance.*

i. Subdivider shall provide to City a properly executed certificate of insurance, in a form satisfactory to the City Attorney for commercial general liability coverage; automobile liability, worker's compensation insurance and professional liability insurance from an insurance provider approved by City and licensed by the California Department of Insurance ("Certificates").

ii. The Certificates shall provide that such insurance will not be cancelled, reduced in coverage, or allowed to expire without thirty (30) days' prior written notice to City.

B. *Minimum insurance limits.* Contractor shall maintain limits no less than:

i. Commercial General Liability. Subdivider shall maintain commercial general liability insurance with insurance ratings acceptable to City of not less than A, as shall protect City, City's Agents, Subdivider, contractors, and subcontractors from claims for damages for personal injury, including death, as well as from claims of property damage which may arise from acts or omissions from Subdivider, contractors, or subcontractors for in relation to this Agreement. The amount of such insurance shall not be less than Two Million Dollars

(\$2,000,000.00) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000.00). Such insurance shall also:

1. Name City and City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured;

2. Be primary with respect to any insurance or self-insurance programs covering City and City Agents; and

3. Must contain the following endorsement, which must be stated on the Certificate of Insurance:

Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site for such work.

ii. Business Automotive Liability Insurance. Subdivider shall maintain automotive liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services or performing work under this Agreement for bodily injury and property damage with a limit of not less than Two Million Dollars (\$2,000,000.00) for each occurrence. Such insurance shall also:

1. Name City and City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured;

2. Be primary with respect to any insurance or self-insurance programs covering City and City Agents; and

3. Must contain the following endorsement, which must be stated on the Certificate of Insurance:

“Coverage for Certain Operations In Connection With Railroads” ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site for such work.

iii. Workers' Compensation and Employers' Liability Insurance.

1. Subdivider shall maintain workers' compensation insurance in accordance with California Labor Code section 3700, with a limit of not less than one million dollars (\$1,000,000.00) per occurrence for employer's liability.

2. In the event any work is sublet, Subdivider shall require any contractor or subcontractor to provide worker's compensation insurance for all contractor's employees or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider.

3. Pursuant to Labor Code section 1861, by executing this Agreement, Subdivider certifies they are aware of the provisions of Labor Code section 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Subdivider will comply with such provisions before commencing the performance of the work of this contract.

iv. Environmental Liability Insurance.

1. Subdivider shall maintain Environmental Liability Insurance applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least Two Million Dollars (\$2,000,000) per loss, with an annual aggregate of at least Four Million Dollars (\$4,000,000).

2. Subdivider warrants that any retroactive date applicable to Environmental Liability Insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

v. Railroad protective Liability Insurance. Subdivider must maintain for the duration of work "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Union Pacific Railroad Company only as named insured, with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate of Six Million Dollars (\$6,000,000). Notwithstanding the foregoing, complete and all excess materials have been removed from Union Pacific Railroad Company's property, provided, however, that Subdivider shall procure such coverage for any subsequent maintenance, repair, renewal, modification, reconstruction, or

removal work on City's or Subdivider's facilities installed on Union Pacific Railroad Company's property.

21. No Vesting of Rights. Performance of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

22. Notices. Any notice or communication required hereunder between City and Subdivider must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: **City of Dixon
600 East A Street
Dixon, CA 95620
Attn: City Manager**

With copies to: City of Dixon
600 East A Street
Dixon, CA 95620
Attn: City Clerk

and Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attn: Douglas L. White, Esq.

If to Subdivider: _____

23. General Provisions:

A. *Governing Law.* The validity, interpretation and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

B. *Compliance with Laws.* Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement, including but not limited to all Improvement Standards, and all federal, State and local labor laws. Subdivider shall, at its expense, be responsible for obtaining all applicable licenses and permits. In the event it is determined that Subdivider is required to pay prevailing wages for work performed under this Agreement, Subdivider shall pay all penalties and wages as required and shall indemnify City in accordance with Section 19 above.

C. *Nondiscrimination.* Subdivider, its agents, employees, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement. Subdivider shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

D. *Venue.* Venue for any legal proceedings initiated in connection with this Agreement shall be in the Superior Court for the County of Solano.

E. *Severability.* If any provision of this Agreement is held invalid by a court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

F. *Waiver.* The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

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

H. *Integration.* Notwithstanding the provisions and additional agreements required under Section 5 above, this Agreement, together with its specific references, attachments and Exhibits, constitute all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the Parties regarding the construction, installation and warranty of the Improvements and the Improvement Work. Neither Party shall be liable for any representations made, express or implied, not specifically set forth herein. It is the intention of the Parties that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written, electronic or oral, between the Parties with respect to the construction, installation and warranty of the Improvements and the Improvement Work.

I. *Captions.* The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

J. *Mandatory and Permissive.* “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

K. *Successors and Assigns – Covenant Running With the Land.* Subdivider shall not assign any of its obligations under this Agreement without the prior written consent of City. Notwithstanding the above, all representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of or for the benefit of any or all of the Parties, shall be binding upon and inure to the benefit of such Party, its successors and assigns. If assignment is permitted, City in its sole discretion may release Subdivider from its obligations so assigned hereunder, and may release any Securities posted by Subdivider to secure any Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any Improvements not assigned.

L. *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

M. *Other Documents.* Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

N. *Time is of the Essence.* Time is of the essence in this Agreement in each covenant and term and condition herein.

O. *Authority.* The Parties warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement have been fully complied with.

P. *Construction and Interpretation.* It is agreed and acknowledged by Subdivider that the provisions of this Agreement have been arrived at through negotiation, and that Subdivider 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.

Q. *Advice of Legal Counsel.* Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement.

R. *Attorney Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

S. *Modification; Approvals.* This Agreement may be amended only by a written instrument signed by the Parties. Subdivider shall bear all costs of amendments to this Agreement that are requested by Subdivider. Any approval or consent that is to be given by City pursuant to this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.

T. *Exhibits.* All exhibits attached hereto are incorporated into this Agreement:

Exhibit A: Legal Description
Exhibit B: Performance Bond
Exhibit C: Payment Bond
Exhibit D: Warranty Bond
Exhibit E: Form of Environmental Warranty

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

City of Dixon, a California municipal corporation

By: _____
Jim Lindley, City Manager

JEN California 6, LLC, a California limited liability company

By: _____
Clifton Taylor, Vice President

APPROVED AS TO FORM:

Douglas L. White, City Attorney

EXHIBIT A

Phasing Plan

EXHIBIT B

Performance Bond

EXHIBIT C

Payment Bond

EXHIBIT D

Warranty Bond

EXHIBIT E

Form of Environmental Warranty

ENVIRONMENTAL WARRANTY

Homestead project, Phase 1

As a condition precedent to acceptance of the dedications and Required Improvements to be conveyed by Jen California 6, LLC, a California limited liability company (“Subdivider”), to the City of Dixon, a California municipal corporation (“City”) for Phase 1 of the Homestead project, within the Southwest Dixon Specific Plan (“Phase 1 Project”), pursuant to and using those same defined terms in the Improvement Agreement dated _____, 2019, Subdivider hereby warrants to City that to the best of Subdivider’s knowledge:

1. Neither the Property nor Subdivider are in violation of any Environmental Law, and neither the Property nor Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with any Environmental Law relating to the Property.
2. Neither Subdivider nor any third person operating pursuant to a contract with Subdivider or any of its agents, contractors or subcontractors or otherwise under Subdivider’s control has or will use, generate, manufacture, produce, or release, on, under, or about the Property, any Hazardous Substance, except in compliance with all applicable environmental laws.
3. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the Property.
4. Subdivider’s prior and present use of the Property has not resulted in the release of any Hazardous Substance on the Property.

All persons executing this warranty hereby represent and warrant to City that the signatories hereto have the legal power, right and authority to execute this warranty on behalf of the Subdivider and that the signatories hereto have sufficient knowledge or expertise, either personally, through reasonable inspection or investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Subdivider’s environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the Subdivider to City.

The undersigned declares under penalty of perjury that the foregoing is true and correct.

JEN California 6, LLC, a California limited liability company

By:

Clifton Taylor, Vice President