

FIRST AMENDMENT
CREDIT AND REIMBURSEMENT AGREEMENT FOR THE CONSTRUCTION OF
SARATOGA WAY BETWEEN THE COUNTY AND SUNSET TARTESSO, LLC
AGMT #18-54896

THIS FIRST AMENDMENT to that certain Credit and Reimbursement Agreement for the Construction of Saratoga Way by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, (hereinafter referred to as “County”), and **SUNSET TARTESSO, LLC**, an Arizona limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 340 Palladio Parkway, Suite 521, Folsom, CA (hereinafter referred to as “Owner”);

RECITALS

WHEREAS, County and Owner entered into that certain Credit and Reimbursement Agreement on May 14, 2019, copies of which are attached herein;

WHEREAS, Subsequent to the execution of said Credit and Reimbursement Agreement, an error in the calculation of TIM Fee credits was discovered;

WHEREAS, Said error consisted of incorrectly incorporating a portion of US Highway 50 TIM Fee into the creditable amount of the Zone 8, Local Road TIM Fee;

WHEREAS, No portion of the US Highway 50 TIM Fee is eligible for credits or reimbursements to the Saratoga Way project either under the TIM Fee Program, or by the project Development Agreement entered into on September 13, 2016 and made effective November 18, 2016;

WHEREAS, Said error materially affects the projected value of Fee Credits and Cash Reimbursements included in Article II TERMS OF REIMBURSEMENT, Subsections A, B & C, necessitating this amendment;

WHEREAS, El Dorado County Traffic Impact Mitigation Fees were updated effective July 15, 2019, this amendment utilizes these updated TIM Fee to recalculate the current proposed Fee Credits and Reimbursements at the time of execution of this amendment;

NOW, THEREFORE, the parties hereto, in consideration of the recitals, terms and conditions herein, do hereby agree to amend the terms of the Agreement in this First Amendment as follows:

ARTICLE II: TERMS OF REIMBURSEMENT, subsections A, B and C are amended to read as follows:

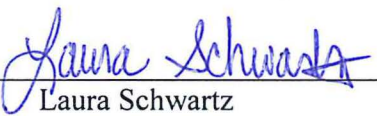
- A. Developer shall receive a credit against the TIM fee payable at the time of issuing each building permit within the Saratoga Estates Project in an amount equal to seventy percent (70%) of the Local Road portion of the Zone 8 TIM fee then due and payable. At the time of this Amendment to the Agreement this credit is projected to be **Fourteen**

Thousand Ninety-One Dollars (\$14,091) (Current Local Road fee \$20,130 x 0.70) per residential unit, or a total of **Four Million Four Hundred Sixty-Six Thousand Eight Hundred Forty-Seven Dollars (\$4,466,847)** (317 units x \$14,091) (the "Total Creditable Amount"). In the event that the TIM Fee is amended the amount of credit applied to each residential unit shall be adjusted accordingly and the balance of the Cash Reimbursement, as defined below, shall be adjusted to reflect such adjustment.

- B. The balance of the Eligible Reimbursement Costs, which exceeds the Total Creditable Amount (the "Cash Reimbursement") in the projected amount of **Six Million Eight Hundred Eighty-Five Thousand Four Hundred Ninety-Six Dollars (\$6,885,496)**, shall be paid to Developer in installments. Beginning on the first anniversary of the acceptance of the Project by the County Board of Supervisors five annual payments shall be made in an amount equal to fifteen percent (15%) of the total Cash Reimbursement, projected to be **One Million Thirty-Two Thousand Eight Hundred Twenty-Four Dollars (\$1,032,824)**, with the balance, projected to be **On Million Seven Hundred Twenty-One Thousand Three Hundred Seventy-Four Dollars (\$1,721,374)** paid on the sixth anniversary of Project acceptance.
- C. Eligible Reimbursement Costs shall be reimbursed only from the TIM Fee Zone Local Road 8 Account of the 2004 General Plan TIM Fee Program or its successor, excluding the 30% portion reserved for the Silva Valley Interchange set-aside ("EDH TIM"), where cash payments shall be made on a six-year basis without interest, as provided above. The ability of County to fully reimburse the Cash Reimbursement is dependent upon the amount of funds available in the EDH TIM account, or its successor, after sufficient funds for prior set-asides and priority reimbursement commitments documented in agreements approved by the County Board of Supervisors prior to this Agreement are reserved (hereinafter referred to as "Uncommitted EDH TIM").


Except as herein amended, all other parts and sections of that certain Credit and Reimbursement Agreement made effective May 14, 2019, as amended, shall remain unchanged and in full force and effect.

Requesting Contract Administrator and Division Concurrence:

By: 
 Laura Schwartz
 Deputy Chief Administrative Officer
 Community Development Services, Administration and Finance Division

Dated: 4-27-2020

Requesting Department Concurrence:

By: 
Rafael Martinez, Director
Department of Transportation

Dated: 4/20/2020

IN WITNESS WHEREOF, the parties have executed this First Amendment to that certain Credit and Reimbursement Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

-- COUNTY OF EL DORADO --

By: _____
Board of Supervisors
"County"

Dated: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

**-- SUNSET TARTESSO, LLC --
-- an Arizona Limited Liability Company --**

By: 
Stephen Hemington
Executive Vice President/CFO
Elliott Homes, Inc., Manager

Dated: 4/21/20

OWNER

ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

See Attached Acknowledgment

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Sacramento)

On April 21, 2020 before me, Sheri Hassell, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Stephen Hemington
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: 1st Amendment Credit & Reimbursement for Saratoga Way Document Date: Signed April 21, 2020
Number of Pages: 5 incl. ack. Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Stephen Hemington
[X] Corporate Officer - Title(s): Executive VP/CFO
[] Partner - [] Limited [] General
[] Individual [] Attorney in Fact
[] Trustee [] Guardian or Conservator
[] Other:
Signer Is Representing: Elliott Homes, Inc., Manager of Sunset Tartesso, LLC, an Arizona limited liability company

Signer's Name:
[] Corporate Officer - Title(s):
[] Partner - [] Limited [] General
[] Individual [] Attorney in Fact
[] Trustee [] Guardian or Conservator
[] Other:
Signer Is Representing: