

**FIRST AMENDMENT TO
OFFSITE ROAD IMPROVEMENT AGREEMENT FOR MALCOLM DIXON
AREA OF BENEFIT, TM05-1401-E, TM06-1408, TM06-1421-E, AND TM08-1463
BETWEEN COUNTY AND THE DEVELOPER**

THIS FIRST AMENDMENT, to that certain Road Improvement Agreement (hereinafter referred to as the "Agreement"), made and entered by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, (hereinafter referred to as "County"), and **OMNI FINANCIAL, LLC**, a California limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 1260 41st avenue, Suite O, Capitola, California 95010; **ALTO, LLC**, a California limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 791 University Avenue, Sacramento, California 95825; **SALMON FALLS LAND AND CATTLE COMPANY, LLC**, a California limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 6029 Monet Way, El Dorado Hills, California 95762; **DIAMANTE DEVELOPMENT, LLC**, a California limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 2020 Via Veritas, El Dorado Hills, California 95762; and **CHRISTOPHER A. LABARBERA REVOCABLE TRUST, 2019**, whose principal place of business is 2020 Via Veritas, El Dorado Hills, California 95762 (hereinafter collectively referred to as "Developers") concerning the offsite road and drainage improvements for the **Malcolm Dixon Road Multi Project Area Of Benefit** (hereinafter referred to as "Project") in accordance with the improvement plans entitled **Improvement Plans for Malcolm Dixon Road Multi Project Area of Benefit** and cost estimates prepared by CTA Engineering & Surveying, David Robert Crosariol, P.E. Registered Civil Engineer, and approved by Adam Bane, Senior Civil Engineer, Transportation Planning and Land Development, Department of Transportation (hereinafter referred to as "Transportation").

RECITALS

WHEREAS, County and Developers entered into that certain Road Improvement Agreement on September 24, 2019, in connection with the Project, a copy of which Agreement is incorporated herein and made by reference a part hereof;

WHEREAS, Salmon Falls Land and Cattle Company, LLC lost the real property associated with the Malcolm Dixon Multi Project Area of Benefit in foreclosure;

WHEREAS, La Canada 143-25, LLC acquired the real property associated with the Malcolm Dixon Multi Project Area of Benefit and replaced Salmon Falls Land and Cattle Company, LLC as successor-in-interest within the Area of Benefit;

WHEREAS, by operation of this acquisition, La Canada 143-25, LLC shall assume all of the Salmon Falls Land and Cattle Company, LLC duties, responsibilities, and obligations, including insurance and indemnity obligations, performed under the terms and conditions of the

Agreement, including, but not limited to, any liabilities or obligations for work performed prior to the effective date of the acquisition;

WHEREAS, the parties hereto desire to amend the Agreement to change all references from Salmon Falls Land and Cattle Company, LLC to La Canada 143-25, LLC;

WHEREAS, Section 3, entitled TIME, of the Agreement, as amended, requires Developers to complete the offsite improvements thereunder on or before September 23, 2021, and Developers have not completed all of the improvements but has requested an extension of time to complete the improvements subject to the terms and conditions contained herein, to September 23, 2024;

WHEREAS, the Developers have completed a portion of the improvements required under this Agreement and have requested reductions in the Performance Bond and Laborers & Materialmens Bond, which require an amendment to **SECTION 5, PERFORMANCE AND LABORERS AND MATERIALMENS BONDS**;

WHEREAS, County's Contract Administrator has changed, amending **SECTION 17, CONTRACT ADMINISTRATOR**;

WHEREAS, County's notice recipient has changed, amending **SECTION 22, NOTICE TO PARTIES**;

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 to read as follows:

I. All references to Salmon Falls Land and Cattle Company, LLC are substituted with La Canada 143-25, LLC.

II. Section 3 is amended to read as follows:

SECTION 3. TIME

Developers shall cause the commencement of the items of work after County's approval of the plans for the Project (which plans were approved on April 12, 2019) and shall complete the Project on or before September 23, 2024, subject to extensions for delays not within the control of the Developers. Construction activities shall be between 7:00 a.m. and 7:00 p.m. Mondays through Fridays; and 8:00 a.m. and 5:00 p.m. on weekends and federally recognized holidays.

III. Section 5 is amended to read as follows:

SECTION 5. PERFORMANCE AND LABORERS AND MATERIALMENS BONDS

Developers shall deliver to Transportation a Performance Bond issued by a surety company acceptable to County, naming County as obligee, in the sum of **Two Hundred**

Thirty-One Thousand Nine Hundred Nine Dollars and Seventy-One Cents (\$231,909.71) conditioned upon the faithful performance of Developers' obligation for the full construction of the road improvements for the Project as required under this Agreement on or before the completion date specified above, and in the form approved by County.

Developers shall deliver to Transportation a Laborers and Materialmens Bond issued by a surety company acceptable to County, naming County as obligee, in the sum of **One Million One Hundred Fifty-Nine Thousand Five Hundred Forty-Eight Dollars and Fifty-Six Cents (\$1,159,548.56)** conditioned upon the faithful performance of Developers' obligation for the full construction of the road improvements for the Project as required under this Agreement on or before the completion date specified above, and in the form approved by County.

The Bonds required by this Section are a condition precedent to County entering into this Agreement. Additionally, Developers shall ensure that the contractor awarded the work shall provide Payment and Performance Bonds that name County as an additional obligee and that include a one (1) year warranty provision in the Performance Bond against defects in materials and workmanship. The forms shall be County's approved forms. After contract award, Developers shall submit for County's review and approval the executed bonds together with certificates of insurance from the contractor naming County as an additional named insured.

IV. Section 17 is amended to read as follows:

SECTION 17. CONTRACT ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Adam Bane, P.E., Supervising Civil Engineer, Transportation Planning and Land Development, Department of Transportation, or successor.

V. Section 22 is amended to read as follows:

SECTION 22. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

With a Copy to:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn: Adam Bane, P.E.
Supervising Civil Engineer
Transportation Planning and
Land Development

Attn: Lindsay Tallman
Administrative Analyst

or to such other location as County directs.

Notices to Developers shall be addressed as follows:

OMNI Financial, LLC
1260 41st Street, Suite O
Capitola, CA 95010

ALTO, LLC
791 University Avenue
Sacramento, CA 95825

Attn.: Martin Boone
Managing Member

Attn.: Gary Sparks
Authorized Managing Member

La Canada 143-25, LLC
1200 Melody Lane, Suite 110
Roseville, CA 95763

Attn.: Michael C. Stettner
Managing Member

Christopher A. LaBarbera
Revocable Trust, 2019
2020 Via Veritas
El Dorado Hills, CA 95762

Copy to:
Holderness Law Firm
P.O. Box 975
Folsom, CA 95763

Attn.: Chris LaBarbera
Trustee

Attn.: R. Holderness, Esq.

Diamante Development, LLC
2020 Via Veritas
El Dorado Hills, CA 95762

Copy to: Holderness Law Firm
P.O. Box 975
Folsom, CA 95763

Attn.: Chris LaBarbera
Managing Member

Attn.: R. Holderness, Esq.

or to such other location as Developer directs.

VI. Section 23 is added as follows:

SECTION 23. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

Except as herein amended, all other parts and sections of that certain Agreement dated September 24, 2019, as amended, shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: _____ Dated: _____
Adam Bane, P.E.
Supervising Civil Engineer
Transportation Planning and
Land Development
Department of Transportation

Requesting Department Concurrence:

By: _____ Dated: _____
Rafael Martinez, Director
Department of Transportation

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

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- ALTO, LLC --

ALTO, LLC,
a California Limited Liability Company

By: _____
Gary Sparks,
its Authorized Managing Member

Dated: _____

-- OMNI FINANCIAL, LLC --

OMNI FINANCIAL, LLC,
a California Limited Liability Company

By: _____
Martin Boone
its Managing Member

Dated: _____

-- LA CANADA 143-25, LLC --

LA CANADA 143-25, LLC,
a California Limited Liability Company

By: LA JOLLA PACIFIC INVESTMENTS, LLC
A California limited liability company
ITS: Managing Member

By: _____
Michael C. Stettner
its Managing Member

Dated: _____

-- DIAMANTE DEVELOPMENT, LLC --

DIAMANTE DEVELOPMENT, LLC,
a California Limited Liability Company

By: _____
Chris LaBarbera
its Managing Member

Dated: _____

-- CHRISTOPHER A. LABARBERA REVOCABLE TRUST, 2019 --

By: _____
Chris LaBarbera
Trustee

Dated: _____

Notary Acknowledgment Attached

DEVELOPER

ACKNOWLEDGMENT

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

State of California

County of _____

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)