

ORIGINAL

AGREEMENT TO MAKE SUBDIVISION IMPROVEMENTS FOR CLASS 1 SUBDIVISION BETWEEN COUNTY AND OWNER

THIS AGREEMENT, made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, (hereinafter referred to as "County"), and **AKT PROMONTORY, LLC**, a limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 7700 College Town Drive, Suite 101, Sacramento, California 95826 (hereinafter referred to as "Owner"); concerning **PROMONTORY VILLAGE 2C, TM 98-1356-R-3** (hereinafter referred to as "Subdivision"); the Final Map of which was filed with the El Dorado County Board of Supervisors on the 14th day of Nov, 2017.

RECITALS

Owner is vested with fee title to Subdivision; a tract of land located in the County of El Dorado, State of California, and described as **PROMONTORY VILLAGE 2C, TM 98-1356-R-3**. Owner desires to construct on said property certain public improvements as hereinafter described, in connection with the Subdivision.

In consideration for the complete construction and dedication of all the public improvements specified in this Agreement, the approval and acceptance by County's Board of Supervisors of the Conditions of Approval, and the Final Map to be filed and recorded, the parties agree as follows:

AGREEMENT

OWNER WILL:

1. Make or cause to be made all those public improvements in Subdivision required by Section 120.16.010 of the El Dorado County Ordinance Code (hereinafter referred to as "Code") and shown or described in the improvement plans, specifications and cost estimates entitled Improvement Plans for Promontory Village 2C, TM98-1356-R-3/TM98-1356/TM98-1356R, which were approved by the County Engineer, Community Development Services, Department of Transportation on June 6, 2017. Attached hereto is Exhibit A, marked "Improvement Plans for Promontory Village 2C (TM98-1356-R-3) Engineer's Opinion of Probable Construction Cost May 17, 2017," and Exhibit B, marked "Certificate of Partial Completion of Subdivision Improvements," all of which Exhibits are incorporated herein and made by reference a part hereof. The Exhibits describes quantities, units and costs associated with the improvements to be made.

2. Prior to commencing construction, obtain all necessary environmental clearances, acquire any necessary right-of-way and obtain any necessary permits from any outside agencies.

3. Complete the Subdivision improvements contemplated under this Agreement within two (2) years from the date that the Subdivision Final Map is filed with the El Dorado County Board of Supervisors.

4. Install or cause to be installed, modify or cause to be modified, any and all erosion and sediment control features, whether temporary or permanent, deemed necessary by the County Engineer to ensure compliance with the Clean Water Act, the Statewide General Permit, and County's Grading, Erosion, and Sediment Control Ordinances. Failure to comply with this provision shall constitute a material breach of this Agreement.

5. Post security acceptable to County as provided in Section 120.16.050 of the Code. In the event that the Sureties issuing the posted securities are subsequently downgraded to a rating unacceptable to County in its sole discretion, Owner shall, upon twenty (20) days written notice by County, post replacement securities that are acceptable to County.

6. Provide for and pay the costs of related civil engineering services, including the costs of inspection and utility relocation when required, and attorneys' fees, costs, and expenses of legal services.

7. Provide deposit for and pay to County all costs of construction oversight, inspection, administration, and acceptance of the work by County in accordance with the County Engineer Fee Schedule adopted by Resolution of the Board of Supervisors of El Dorado County.

8. Have as-built plans prepared by a civil engineer acceptable to County's Community Development Services, Department of Transportation and filed with the Department of Transportation Director as provided in Section 120.16.060 of the Code.

9. Repair at Owner's sole cost and expense, any defects, in workmanship or materials, which appear in the work within one (1) year following acceptance of the work by County.

10. To the fullest extent allowed by law, defend, indemnify, and hold County and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any other economic or consequential losses, which are claimed to or in any way arise out of or are connected with Owner's work, design, operation, construction of the improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Owner, any contractor(s), subcontractor(s), and employee(s) of any of these, except for the sole, or active negligence of County, its officers, agents, employees, and representatives, or as expressly

provided by statute. This duty of Owner to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

This duty to indemnify is separate and apart from any insurance requirements and shall not be limited thereto.

11. Enter into another agreement with County for all road improvements to be performed on County property. Such agreement shall also include a requirement that Owner furnish insurance and bonds that comply with the standard County insurance and bonding requirements in the amounts stated, to be approved by the County's Risk Management Division.

12. Provide continuous, sufficient access to County, Owner's successors and assigns, including but not limited to its Surety and Surety's agents, to the Subdivision to enable the public improvements to be constructed and completed. Access shall be continuous until completion of said public improvements, and release by County of the security underlying this Agreement.

13. Agree that said agreement to provide continuous, sufficient access is irrevocable and shall run with the land and shall be binding upon and inure to the benefit of the heirs, successors, assigns, and personal representatives of Owner.

COUNTY WILL:

14. Upon execution of this Agreement and receipt of good and sufficient security as required by Section 120.16.050 of the Code, and upon compliance with all requirements of law, including all County ordinances, approve the Final Map of the Subdivision.

15. Upon receipt of a Certificate from County Engineer stating that a portion of the public improvements agreed to be performed herein has been completed, describing generally the work so completed and the estimated total cost of completing the remainder of the public improvements agreed upon to be performed herein, accept new security as provided in Section 120.16.040 of the Code.

16. Release the security posted in accordance with Sections 120.16.040 and 120.16.052 of the Code.

17. Require Owner to make such alterations, deviations, additions to, or deletions from, the improvements shown and described on the plans, specifications, and cost estimates as may be deemed by County Engineer to be necessary or advisable for the proper completion or construction of the whole work contemplated.

18. Require Owner to maintain, and to make such alterations, deviations, additions to, or deletions from, the project erosion control features shown and described on the plans, specifications, and cost estimates and the Storm Water Pollution Prevention Plan (SWPPP) as may be deemed necessary by County Engineer or advisable for compliance with the Clean Water Act, Statewide General Permit requirements, and County's Grading, Erosion, and Sediment Control Ordinances.

19. Upon completion of the public improvements agreed to be performed herein, adopt a resolution accepting or rejecting the streets of said Subdivision into County's road system for maintenance.

20. Retain a portion of the security posted in the amount of ten percent (10%) of the estimated cost of all of the improvements for one (1) year following acceptance of the work by County to secure the repair of any hidden defects in workmanship or materials which may appear.

21. Require Owner to pay County for costs, expenses, and reasonable attorneys' fees to be paid by Owner should County be required to commence an action to enforce the provisions of this Agreement, to enforce the security obligations provided herein, and all attorneys' fees, costs, and expenses of litigation incurred by County even if Owner subsequently proceeds to complete the work.

ADDITIONAL PROVISIONS:

22. The estimated cost of installing all of the improvements is **Four Hundred Thirty-Seven Thousand Four Hundred Forty-Seven Dollars and Sixty-Three Cents (\$437,447.63)**.

23. Owner shall conform to and abide by all Federal, State, and local building, labor, and safety laws, ordinances, rules, and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to the improvement plans and specifications and cost estimates, is to be construed to permit work not conforming to these codes.

24. Inspection of the work and/or materials or statements by any officer, agent, or employee of County indicating that the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefore, or any combination or all of these acts, shall not relieve Owner of its obligation to fulfill this Agreement as prescribed; nor shall County be stopped from bringing any action for damages arising from the failure to comply with any terms and conditions hereof.

25. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

26. Neither this Agreement, nor any part thereof may be assigned by Owner without the express written approval of County.

27. 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:

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn.: Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn.: Adam Bane, P.E.
Senior Civil Engineer

or to such other location as County directs.

Notices to Owner shall be addressed as follows:

AKT Promontory, LLC
7700 College Town Drive, Suite 101
Sacramento, California 95826

Attn.: Larry Ito,
Project Manager

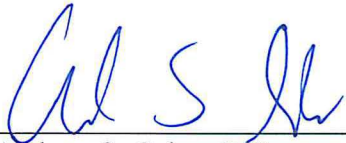
or to such other location as Owner directs.

28. The County officer or employee with responsibility for administering this Agreement is Andrew S. Gaber, P.E., Deputy Director, Development/ROW/ Environmental, Community Development Services, Department of Transportation, or successor.

29. Any action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.


30. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

Requesting Division and Contract Administrator Concurrence:

By: 
Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental
Community Development Services
Department of Transportation

Dated: 10/20/2017

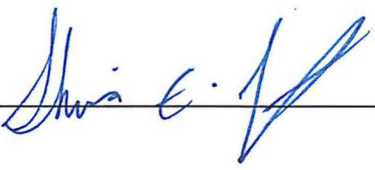
Requesting Department Concurrence:

By: 
Rafael Martinez, Director
Community Development Services
Department of Transportation

Dated: 10/20/17

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

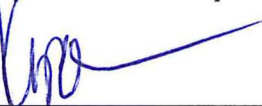
--COUNTY OF EL DORADO--

By: 

Dated: 11/14/2017

Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors


By: 
Deputy Clerk

Dated: 11/14/2017

--AKT PROMONTORY, LLC--
a California Limited Liability Company

By: Russell-Promontory, LLC
an Illinois Limited Liability Company
its Member

By: AKT Development Corporation
a California Corporation
its Manager

By: 
Ron Bertolina
Vice President
"Owner"

Dated: 10/9/17

Notary Acknowledgment Attached

OWNER

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 Sacramento

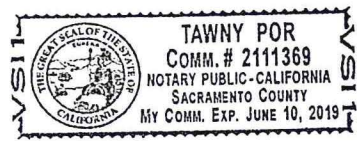
On October 9, 2017 before me, Tawny Por, Notary Public,
(here insert name and title of the officer)

personally appeared Ron Bertolina,

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)

Improvement Plans for Promontory Village 2C (TM98-1356-R-3)
Engineer's Opinion of Probable Construction Cost
May 17, 2017

Item No.	Item Description	Unit of Measure	Estimated Quantity	Estimated Unit Cost	Engineer's Estimated Cost
GRADING					
1	Clear and Grub	AC	2.4	\$ 1,600.00	\$ 3,840.00
2	Excavation	CY	9,100	\$ 10.00	\$ 91,000.00
3	Retaining Walls - Rockery Wall	SF	727	\$ 13.00	\$ 6,451.00
4	Retaining Walls - Keystone Wall	SF	57	\$ 25.00	\$ 1,425.00
5	Finish Pads	LOT	2	\$ 350.00	\$ 700.00
6	4' Orange Safety Fence	LF	2,500	\$ 3.60	\$ 9,000.00
				Subtotal	\$ 115,416.00
EROSION CONTROL					
7	SWPPP Compliance & Erosion Control Measures	LOT	2	\$ 2,000.00	\$ 4,000.00
8	Dust Control	LOT	2	\$ 625.00	\$ 1,250.00
				Subtotal	\$ 5,250.00
STREETS & MISCELLANEOUS					
9	Remove Existing Barricade	EA	1	\$ 550.00	\$ 550.00
10	Driveway Tie-In (Sawcut, Grind, & Remove Ex Imps)	LS	1	\$ 500.00	\$ 500.00
11	2.5" A.C.	SF	12,640	\$ 1.50	\$ 18,960.00
12	4" A.B.	SF	12,640	\$ 1.50	\$ 18,960.00
13	Barrier Curb	LF	65	\$ 16.00	\$ 1,040.00
14	Caltrans Type A AC Dike	LF	716	\$ 6.00	\$ 4,296.00
15	"No Parking" Signs	EA	11	\$ 350.00	\$ 3,850.00
16	"No Parking" Striping	LF	360	\$ 3.00	\$ 1,080.00
				Subtotal	\$ 49,236.00
STORM DRAIN					
17	18" Storm Drain	LF	122	\$ 45.00	\$ 5,490.00
18	24" Storm Drain	LF	83	\$ 61.00	\$ 5,063.00
19	24" F.E.S.	EA	2	\$ 1,018.00	\$ 2,032.00
20	Modified Drain Inlet w/ PCC Apron	EA	1	\$ 4,000.00	\$ 4,000.00
21	48" Storm Drain Manhole	EA	1	\$ 4,700.00	\$ 4,700.00
22	Rock Slope Protection #1	CY	15	\$ 100.00	\$ 1,500.00
23	Fabric Lined Ditch - Detail I	LF	285	\$ 15.00	\$ 4,275.00
24	Rock Lined Ditch - Detail II	LF	175	\$ 21.00	\$ 3,675.00
25	Rock Lined Ditch - Detail III	LF	285	\$ 42.00	\$ 11,970.00
26	T.V. Storm Drain	LF	205	\$ 2.05	\$ 420.25
				Subtotal	\$ 43,125.25
SANITARY SEWER					
27	4" Force Main	LF	682	\$ 61.00	\$ 41,602.00
28	Pumped Sewer Service	EA	2	\$ 2,519.00	\$ 5,038.00
29	4" Blow off Valve	EA	1	\$ 2,880.00	\$ 2,880.00
30	1" Air Release Valve	EA	1	\$ 3,086.00	\$ 3,086.00
31	Connect to Existing Sewer	EA	1	\$ 2,500.00	\$ 2,500.00
				Subtotal	\$ 55,086.00

Certificate of Partial Completion of Subdivision Improvements

I hereby certify that the following improvements for Promontory Village 2C, TM 98-1356-R-3 have been completed, to wit:

	Total Amount	Percent Completed	Remaining Amount
Grading	\$ 115,416.00	0%	\$ 115,416.00
Erosion Control	\$ 5,250.00	0%	\$ 5,250.00
Streets & Miscellaneous	\$ 49,236.00	0%	\$ 49,236.00
Storm Drain	\$ 43,125.25	0%	\$ 43,125.25
Sanitary Sewer	\$ 55,086.00	0%	\$ 55,086.00
Domestic Water	\$ 48,535.00	0%	\$ 48,535.00
Dry Utilities	\$ 14,000.00	0%	\$ 14,000.00
Mobilization (5%)	\$ 16,532.40		\$ 16,532.40
Bond Enforcement (2%)	\$ 6,943.61		\$ 6,943.61
Construction Staking (4%)	\$ 13,887.23		\$ 13,887.23
Construction Management & Inspection (10%)	\$ 34,718.07		\$ 34,718.07
Contingency (10%)	\$ 34,718.07		\$ 34,718.07
Total	\$ 437,447.63		\$ 437,447.63

I estimate the total cost of completing the improvements agreed to be performed by the Owner to be Four Hundred Thirty-Seven Thousand Four Hundred Forty-Seven Dollars and Sixty-Three Cents (\$437,447.63).

The amount of the Performance Bond is Four Hundred Thirty-Seven Thousand Four Hundred Forty-Seven Dollars and Sixty-Three Cents (\$437,447.63), representing 100% of the Total Remaining Amount.

The amount of the Laborers and Materialmens Bond is Two Hundred Eighteen Thousand Seven Hundred Twenty-Three Dollars and Eighty-Two Cents (\$218,723.82), which is 50% of the Total Cost of the Improvements.

DATED: 9-5-17

 Brian M. Allen, PE 60764
 CTA Engineering & Surveying
 3233 Monier Circle
 Rancho Cordova, CA 95742



ACCEPTED BY THE COUNTY OF EL DORADO

DATED: 9/13/2017

 Andrew S. Gaber, P.E.
 Deputy Director
 Development/ROW/Environmental