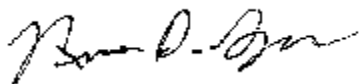


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Dan Takasugi, Public Works Director/City Engineer
DATE: March 20, 2012
SUBJECT: Consideration of a Resolution Approving an Amendment to the Diamond Hills Estates Subdivision Improvement Agreement Authorizing a Two-Year Extension

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1 **ISSUE:** Consideration of a Resolution approving an Amendment to the Diamond Hills
2 Estates Subdivision Improvement Agreement authorizing a Two-year extension.

3
4 **RECOMMENDATION:** Adopt the Resolution.

5
6 **BACKGROUND/DISCUSSION :** The Diamond Hills Estates subdivision is a residential
7 subdivision located on approximately 67 acres southeasterly of Foothill Boulevard and
8 includes 35 residential lots as well as 21 acres of open space/forest preserve on six
9 separate parcels. This subdivision is subject to the formation of a homeowners'
10 association which will have ownership and maintenance responsibility for all of the
11 private roadways, utilities and common areas within the subdivision. Staff and Council
12 are well aware of the pending application from Enchanted Resorts Inc. to modify this
13 project to a combined resort and residential development.

14
15 On January 19, 1993 the Council adopted Resolution No. 93-2 certifying the final
16 Environmental Impact Report (EIR) for the Diamond Hills Estates project. On March 2,
17 1993, the City Council adopted Resolution No. 93-18 approving Vesting Tentative Map
18 No. 92-5, the tentative map for the Diamond Hill Estates Subdivision, subject to certain
19 conditions of approval. On March 16, 1993, the City Council adopted Ordinance No.
20 492 adopting a Development Agreement for the Diamond Hills Estates project.

21

Date: March 20, 2012

Subject: Amendment to the Diamond Hills Estates Subdivision Improvement Agreement authorizing a 2-year Extension

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22 On March 1, 2005, the Council approved a Subdivision Improvement Agreement for the
23 Diamond Hills Estates Subdivision in conjunction with the approval of the Final Map for
24 that subdivision. The Agreement includes public improvements of public streets and
25 utilities, and private improvements of pre-construction tree thinning and private streets
26 and utilities.

27

28 Section 4 of the Agreement establishes that the Developer will complete all private and
29 public improvements within 3 years of the recordation of the Final Map. The Final Map
30 was recorded on April 21, 2005. Therefore Section 4 of the Agreement provides that
31 the Developer will complete the work by April 21, 2008. On March 18, 2008, Council
32 granted a two-year extension to the Subdivision Improvement Agreement to complete
33 the work by April 29, 2010. On April 6, 2010, the Council granted a two-year extension
34 to the Subdivision Improvement Agreement to complete the work by April 20, 2012.

35

36 The public streets and utility work has been completed and was accepted by Council on
37 December 7, 2010. In addition the pre-construction tree thinning has been completed.
38 In accordance with CMC Section 16.18.070, Improvement Agreements, and 16.18.090,
39 Improvements Security, the Certificates of Deposits (CD's) provided for labor/materials
40 and performance on public improvements and for site restoration on private
41 improvements were released and a one-year maintenance bond was provided by the
42 developer.

43

44 The private improvements of private streets and utilities remain to be completed.
45 Therefore, the Developer has requested a 2-year extension of the Agreement to
46 complete the improvements.

47

48 Staff recommends that the requested 2-year extension of the Agreement be granted.

49

50 The attached resolution would authorize the City Manger to execute Amendment No. 4
51 to the Subdivision Improvement Agreement for the Diamond Hills Estates Subdivision,
52 allowing a two-year extension to the agreement.

53

54 **FISCAL IMPACT:** None, if the extension request is approved. Should the request be
55 denied, then considerable staff time will be consumed to restore the site to pre-
56 construction conditions, and revenue projections of future development and utility
57 connection fees will need to be adjusted.

58

59 **ATTACHMENTS**

60

- 61 1. Resolution
- 62 2. Proposed Amendment No. 4

63

RESOLUTION 2012-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING THE FOURTH AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR THE DIAMOND HILLS ESTATES SUBDIVISION

WHEREAS, on March 1, 2005, the City Council approved a Subdivision Improvement Agreement for the Diamond Hills Estates Subdivision in conjunction with the approval of the Final Map for that subdivision; and

WHEREAS, on February 21, 2006, the City Council approved Amendment No. 1 to said agreement requiring a performance bond for private improvements; and

WHEREAS, on March 18, 2008, the City Council approved Amendment No. 2 to said agreement approving a two (2) year extension to the Subdivision Improvement Agreement, which was recorded on April 28, 2008, and is set to expire on April 29, 2010; and

WHEREAS, on March 5, 2010, the City Council approved Amendment No. 3 to said agreement approving a two (2) year extension to the Subdivision Improvement Agreement, which was recorded on April 20, 2010, and is set to expire on April 21, 2012; and

WHEREAS, the developer has completed the public streets and utilities portion of the improvements, the private improvements remain to be completed; and

WHEREAS, the developer requested a two (2) year extension to the Subdivision Improvement Agreement; and

WHEREAS, an amendment to the Subdivision Improvement Agreement for the Diamond Hills Estates Subdivision that would extend the Subdivision Improvement Agreement for two (2) years has been prepared and is attached and made a part of this Resolution.

NOW, THEREFORE BE IT RESOLVED that the attached Fourth Amendment to the Subdivision Improvement Agreement for the Diamond Hill Estates Subdivision is hereby approved and the City Manager is authorized to execute said amendment subject to review and approval by the City Attorney.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **20th day of March, 2012**, by the following vote:

AYES:
NOES:
ABSTAIN/ABSENT:

JACK GINGLES, Mayor

ATTEST:

AMANDA DAVIS, Deputy City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attn: Su Sneddon, City Clerk

(Space Above This Line for Recorder's Use Only)
Exempt from recording fee per Government Code Section 27383.

**FOURTH AMENDMENT
TO THE
SUBDIVISION IMPROVEMENT AGREEMENT
FOR
DIAMOND HILL ESTATES SUBDIVISION**

This Fourth Amendment to the Subdivision Improvement Agreement for the Diamond Hill Estates Subdivision (this "Fourth Amendment") is made and dated for convenience as of the 20th day of March, 2012, by and between the CITY OF CALISTOGA, a municipal corporation in the County of Napa, State of California (the "City"), and ENCHANTED RESORTS, INC., a Delaware corporation ("Developer" or "Subdivider").

RECITALS

A. On or about March 1, 2005, the City and Developer entered into that certain Subdivision Improvement Agreement for Diamond Hill Estates Subdivision, Napa County Recorder's Document Number 2005-0015393 (the "Agreement").

B. Section 4 of the Agreement, entitled "Completion Date", establishes that Developer will complete all Private and Public Improvement Work as defined therein and as described in the Improvement Plans, *Diamond Hill Estates, Brian Kangas Foulk, November 2004* (collectively, the "Work") within three (3) years of the recordation of the Final Map. The Final Map was recorded on April 21, 2005. Therefore, Section 4 of the Agreement provides that Developer will complete the Work by April 21, 2008.

C. The City of Calistoga Municipal Code section 16.18.080, subdivision (C)(1), provides that an extension of time in which to complete the improvements for a subdivision may be granted by the City Council upon submittal of a written request not less than thirty (30) days prior to the expiration of the subdivision improvement agreement and the submittal of adequate evidence to justify the extension. Developer timely submitted a written request for such an extension on February 15, 2008, and has demonstrated adequate progress to justify the extension.

D. Section 15 of the Agreement, entitled "Security", establishes that Developer will provide surety bonds for the Public Improvement Work and the Private Improvement Work. Developer provided such security in the form of those three (3) certificates of deposit with the Bank of America with account numbers ending in 63691, 63714, and 21293, respectively (collectively, the "Security CDs").

E. On or about February 16, 2006, the City and Developer entered into the First Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision, Napa County Recorder's Number 2006-006725 (the "First Amendment"). The First Amendment revised the scope of work for the private improvements necessary for the Work and amended the requisite bond amount to Four Hundred Eighty-Two Thousand Three Hundred and Seventy-Three and No/100 Dollars (\$482,373.00), down from the original amount of Eleven Million Five Hundred Four Thousand Eight Hundred Forty-Three and No/100 Dollars (\$11,504,843.00). No revision to the First Amendment is intended or made under this Second Amendment.

F. On or about March 18, 2008, the City and Developer entered into the Second Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision, Napa County Recorder's Number 2008-0010736 (the "Second Amendment"). The Second Amendment revised the Completion date to within two (2) years of the date of recordation of the Second Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision which is April 29, 2010.

G. On or about April 6, 2010, the City and Developer entered into the Third Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision, Napa County Recorder's Number 2010-0008760 (the "Third Amendment"). The Third Amendment revised the Completion Date to within two (2) years of the date of recordation of the Third Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision which is April 20, 2012.

AMENDMENT TO AGREEMENT

Now therefore, in consideration of faithful performance of the terms and conditions set forth herein, the City and Developer agree to replace the first sentence of Section 4 of the Agreement with the following:

4. Completion Date. Developer will complete the Work within two (2) years of the date of recordation of the Fourth Amendment to the Subdivision Improvement Agreement for Diamond Hill Estates Subdivision.

IN WITNESS WHEREOF, the City and Developer have hereunto set their hands to subscribe through their duly authorized officers:

By the City this _____ day of March, 2012, and by Subdivider this _____ day of March, 2012.

(SIGNATURES ON NEXT PAGE)

“CITY”

“DEVELOPER”

CITY OF CALISTOGA, a municipal corporation

ENCHANTED RESORTS, INC., a Delaware corporation

By: _____
Richard D. Spitler
Its: City Manager

By: _____
C.S. Yannias
Its: President

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

On _____, before me, AMANDA T. DAVIS, personally appeared, RICHARD D. SPITLER, 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 of notary

July 25, 2013
Expiration date

Amanda T. Davis
Print Name

1859045
Commission Number

Notary Public Phone Number: 707-942-2805

STATE OF DELAWARE)
) ss.
COUNTY OF _____)

On _____, before me, _____, 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 Delaware that the foregoing paragraph is true and correct.

Witness my hand and official seal

Signature of notary

Expiration date

Print Name

Commission Number