

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.

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

This Third Amendment to the Subdivision Improvement Agreement for the Diamond Hill Estates Subdivision (this "Third Amendment") is made and dated for convenience as of the 6<sup>th</sup> day of April, 2010, 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.

#### 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 Third 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 April, 2010, and by Subdivider this \_\_\_\_\_ day of April, 2010.

"CITY"

"DEVELOPER"

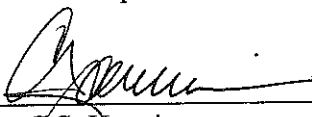
CITY OF CALISTOGA, a municipal corporation

ENCHANTED RESORTS, INC.,  
a Delaware corporation

By: \_\_\_\_\_

James C. McCann

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, \_\_\_\_\_, 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 of notary

\_\_\_\_\_  
Expiration date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Number

<sup>Illinois meK</sup>  
STATE OF ~~DELAWARE~~ )  
 ) ss.  
COUNTY OF Cook )

On March 30, 2010, before me, Mary E. Kennelly, personally appeared, C. S. Yannias, 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 <sup>Illinois meK</sup>~~Delaware~~ that the foregoing paragraph is true and correct.

Witness my hand and official seal

Mary E. Kennelly  
Signature of notary

January 22, 2012  
Expiration date

Mary E. Kennelly  
Print Name

690191  
Commission Number

