

Attachment A

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Monterey
Housing and Community Development
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Att: Armando Fernandez, Senior Civil Engineer

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APNs: [015-171-010, 015-171-012, 015-361-013 and 015-361-014]

Amending Document at: Document #2020076784 and Releasing Document at Document #2020076783

**AMENDMENT TO
SUBDIVISION IMPROVEMENT AGREEMENT
AND RELEASE OF DEED RESTRICTION**

This Amendment to Subdivision Improvement Agreement and Release of Deed Restriction (the "Amendment") is effective this ____ day of _____, and is entered into by and between Carmel Reserve LLC (the "Owner") and the County of Monterey ("County"). This document amends the original Subdivision Improvement Agreement (the "Agreement") entered into by and between Owner and County and recorded December 22, 2020, in the Office of the Monterey County Recorder as Document Number 2020076784, and terminates that certain Deed Restriction recorded December 22, 2020, in the Office of the Monterey County Recorder as Document Number 2020076783.

RECITALS

WHEREAS, that certain real property held by Owner and located in the County of Monterey, State of California, as more fully described and depicted in Exhibit A (the "Property") was the subject of certain conditions of approval following the filing of a final map for its subdivision in 2020 (the "One Carmel Subdivision");

WHEREAS, a number of conditions of approval of the One Carmel Subdivision required the mandatory recording of a subdivision improvement agreement providing adequate surety for the construction of on-site and off-site improvements related to the One Carmel Subdivision. That document took the form of the Agreement;

WHEREAS, the surety required of Owner in Section 8 of the Agreement was as follows:

- a. A cash deposit in the amount of \$6,500,000.00 has been deposited with a bank doing business in California. The County of Monterey is identified as the beneficiary of such cash deposit to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this Agreement. Any withdrawal or payment from this cash deposit shall be in

accordance with the bank account instructions, which are incorporated into this Agreement by reference; and

- b. A promissory note in favor of the County of Monterey in the amount of \$6,000,000.00 secured by a second deed of trust on the Property, naming the County of Monterey as beneficiary thereunder; and
- c. A deed restriction recorded against the Property prohibiting the sale of the entire property, any individual lot or lot(s) created by the recordation of the final map for the Subdivision so long as the second deed of trust so described in Section 8(b) above is in place; and
- d. A Warranty Bond or security acceptable to County in the amount of 20% of the estimated cost of the Improvements to guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year following the completion and acceptance or approval thereof by COUNTY against any defective work or labor done or defective materials furnished. This bond or Security shall be provided to COUNTY upon acceptance of the dedicated Improvements by COUNTY; and

SUBDIVIDER shall also furnish to COUNTY good and sufficient security acceptable to County in the amount of 100% of the estimated cost of setting subdivision monuments;

WHEREAS, Section 8(f) of the Agreement allows for other security to replace the security required by Sections 8(a)-(e) and provides as follows:

- e. The securities required by this Agreement shall be kept on file with the COUNTY Resource Management Agency. The amount of the security shall be as described herein above and in the recitals to this Agreement. The cash deposit and bond described above shall be deposited with a bank duly authorized to do business in the State of California. SUBDIVIDER agrees to notify all contractors, subcontractors, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this Agreement of the source of the security as described in this Section 8. If any security is replaced by another approved security, the replacement shall be filed with the Resource Management Agency and, upon filing, shall be deemed to be part of and incorporated into this Agreement. Upon filing of a replacement security with the Resource Management Agency, the former security may be released. Any such replacement of security and release of former security must

be acceptable to the COUNTY and approved by the COUNTY in advance of any such replacement.

WHEREAS, Owner now wishes to provide replacement security pursuant to Section 8(f), as further described and detailed in this Amendment, and such replacement security requires this amendment to the Agreement;

NOW THEREFORE, County and Owner agree as follows:

A. Amendment.

A. Section 8 of the Agreement is hereby amended in its entirety to read as follows:

8. **Security.** SUBDIVIDER shall at all times guarantee SUBDIVIDER'S performance of this Agreement by furnishing to COUNTY good and sufficient security acceptable to the County and in conformity with the Subdivision Laws on forms approved by COUNTY and by maintaining said security for the purposes and in the amounts as follows:

- a. SUBDIVIDER shall provide a Performance Bond to secure 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements.
- b. A Labor & Materials Bond acceptable to the County in the amount of 50% of the estimated cost to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this Agreement, and such bonds shall be acceptable to the County.
- c. A Warranty Bond or security acceptable to County in the amount of 20% of the estimated cost of the Improvements to guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year following the completion and acceptance or approval thereof by COUNTY against any defective work or labor done or defective materials furnished. This bond or Security shall be provided to COUNTY upon acceptance of the dedicated Improvements by COUNTY; and
- d. SUBDIVIDER shall also furnish to COUNTY good and sufficient security acceptable to County in the amount of 100% of the estimated cost of setting subdivision monuments; and
- e. The securities required by this Agreement shall be kept on file with the COUNTY Housing and Community Development. The amount of the security

shall be as described herein above and in the recitals to this Agreement. The bond described above shall be provided by a surety bond company duly authorized to do business in the State of California. SUBDIVIDER agrees to notify all contractors, subcontractors, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this Agreement of the source of the security as described in this Section 8. If any security is replaced by another approved security, the replacement shall be filed with the department of Housing and Community Development (HCD) and, upon filing, shall be deemed to be part of and incorporated into this Agreement. Upon filing of a replacement security with the department of Housing and Community Development, the former security may be released. Any such replacement of security and release of former security must be acceptable to the COUNTY and approved by the COUNTY in advance of any such replacement.

- f. The surety information on Page 3 of the Agreement, including the engineering estimate table is hereby amended in its entirety to read:

Name of Surety or Financial or Other Institution Providing Security Instrument

A performance bond, a labor and materials bond and a maintenance bond, as well as a warranty and monumentation bond shall all be provided by the following institution (hereafter referred to as “Surety”).

Company Name _____

Street Address _____

City, California ZIP CODE

Contact Person: _____

Estimated Cost of Improvements:

Grading:	\$547,706
Streets – Public:	1,062,040
Storm Drain – Public	125,320
Streets – Private:	2,279,381
Storm Drain – Private:	792,721

Sewer – Off-site:	1,020,169
Sewer – On-site:	1,418,806
Water:	3,789,645
Park and Recreation ¹ :	160,692
Other Infrastructure:	
Estimated Total Cost of Improvements:	\$11,196,480
10% Contingency	1,119,648
Estimated Total Cost of Improvements including Contingency:	\$12,316,128
Warranty Security (20% of Est. Total Cost)²	
Estimated Total Cost of Monumentation:	\$13,730
² This Bond or Surety shall be provided to COUNTY upon acceptance of the completed subdivision improvements by COUNTY	

NOTE: The footnote in this section relating to the landscaping improvements shall remain unchanged by this Amendment.

- B. **Indemnification.** In addition to, and without alteration to the indemnification provided by this Section 20 of this Agreement, SUBDIVIDER, hereby agrees to immediately indemnify, defend, and hold COUNTY harmless from and against any and all loss, damage or liability, costs or expenses whatsoever, in connection with any third party claim whatsoever (including reasonable attorneys’ fees and court costs) arising from or in connection with this Subdivision Improvement Agreement Amendment.

- C. **Reconveyance of Second Deed of Trust.** By this Amendment, the County does hereby authorize the reconveyance of that certain Second Deed of Trust required as security for the One Carmel Subdivision in Section 8(b) of the Agreement. Said second deed of trust being recorded December 22, 2022, in the Office of the Recorder of Monterey County as Document Number 2020076782. Said reconveyance shall be effectuated by the recording of a separate instrument.

- D. **Release of Restriction.** By this Amendment, County does hereby release Owner from all obligations and duties of Owner set forth in that certain Deed Restriction required by Section 8(c) of the Agreement; said deed restriction being recorded December 22, 2022, in the Office of the Recorder of Monterey County as Document Number 2020076783.

Signatures appear on next page

E. **Effect of Amendment.** This Amendment shall serve to amend the Subdivision Improvement Agreement recorded December 22, 2020 in the Office of the Recorder of Monterey County as Document Number 2020076784, and terminate that certain Deed Restriction required by Section 8(c) of the Agreement; said deed restriction being recorded December 22, 2022, in the Office of the Recorder of Monterey County as Document Number 2020076783.

IN WITNESS WHEREOF the parties hereby execute this Amendment to Subdivision Improvement Agreement and Release of Deed Restriction effective as of the latest date set forth next to a signature block herein below.

OWNER:

CARMEL RESERVE LLC,
a Delaware limited liability company

Date: _____

By: _____
Wei Huang, Authorized Representative

COUNTY OF MONTEREY,

Date: _____

By: _____
Mary Adams
Chair of the Board of Supervisors

APPROVED AS TO FORM:
ROBERT I. BRAYER, DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Date: _____

By: _____
Deputy County Counsel

Notary Acknowledgements Follow

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 _____)

On _____ before me, _____, a Notary Public, 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)

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.

On _____ before me, _____, a Notary Public, 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)

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