

COUNTY OF PLACER
Community Development/Resource Agency

ENGINEERING &
SURVEYING

Michael J. Johnson, AICP
Agency Director

Wes Zicker, PE
Director

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Wes Zicker, Director of Engineering & Surveying *WZ*

DATE: November 8, 2011

SUBJECT: TIMILICK TAHOE (aka EAGLEWOOD) PHASE 2A, TRACT 963, PSUB20040186

ACTION REQUESTED:

Approve the attached Subdivision Improvement Replacement Agreement for Timilick Tahoe Phase 2A:

1. Authorize the Chairman to sign the Subdivision Improvement Replacement Agreement (SIRA).
2. Instruct the Clerk of the Board to prepare the SIRA for recording.

BACKGROUND:

Timilick Tahoe, originally called Eaglewood, was approved to create 462 residential units. The Final Map for Phase 2A was recorded in 2007 and created 44 residential lots ranging in size from 15,000 to 27,000 square feet as shown on the attached Exhibit "2". This subdivision is located in Martis Valley off Schaffer Mill Road approximately 1 mile from Highway 267.

In January 2011 the current owner acquired title to the property including Phase 2A and the obligations contained in the Subdivision Improvement Agreement running with that land. The new owner wishes to extend the period to complete the required subdivision improvements and have the opportunity to reduce the subdivision security based upon construction that has been completed.

Staff has prepared the attached SIRA to replace the existing Subdivision Improvement Agreement. If approved by your Board it will authorize the CDRA Director to allow a reduction to the amount of subdivision security, based upon the work that is completed. This action would occur prior to your Board's ultimate acceptance of the required subdivision improvements as complete. The proposed SIRA also extends the period of time to complete the required construction, recognizes the current State Law that limits the "lien period" for completed improvements and authorizes the Director of CDRA to reduce/release the Labor & Materials security accordingly. Additionally it proposes to reduce the security required by the County during the warranty period, one year after acceptance of the improvements, to cover only the publically maintained facilities. These proposed changes all maintain the minimum levels of security required by County Code and State Law.

ENVIRONMENTAL CLEARANCE:

A Final EIR for Eaglewood has been found adequate to satisfy the requirements of CEQA for this project. The Final EIR was certified by the Planning Commission on June 24, 2004. Mitigation measures have been addressed by the Conditions of Approval for this subdivision.

FISCAL IMPACT:

None

ATTACHMENTS:

- Exhibit 1: Second Amendment to Subdivision Agreements
- Exhibit 2: Location Map

EXHIBIT 1

Recording Requested by
and Return to:

Placer County
Community Development Resource Agency
Engineering and Surveying Department
3091 County Center Drive, Suite 120
Auburn, California 95603

Subdivision Name: Timilick Tahoe (aka Eaglewood)
Phase 2A, Tract #963
Subdivision No. PSUB 20040186
Recorded at: Book BB of Maps, at Page 82,
Placer County Official Records.

Previous Subdivider: Martis Valley Associates, LLC
Previous Subdivision Improvement Agreement
Recorded: Sept. 6, 2007 as Document No. 2007-0087503
Placer County Official Records

Subdivider: New Martis Partners, LLC
Effective Date: November 8, 2011

SUBDIVISION IMPROVEMENT REPLACEMENT AGREEMENT

This Subdivision Improvement Replacement Agreement is entered into by and between the County of Placer, hereinafter called "County," and New Martis Partners, LLC hereinafter called "Subdivider," on the 8th day of November, 2011.

RECITALS

1. The County has approved a tentative subdivision map commonly known as Timilick Tahoe (aka Eaglewood) (the "Subdivision").
2. Subdivider has obtained fee title to the property contained within the boundary of a final map entitled Timilick Tahoe Phase 2A prepared in substantial conformance to the Subdivision and recorded on September 6, 2007 in Book BB of Maps at Page 82 Placer County Official Records (the "Map"). A copy of this map is on file with the Placer County Community Development Resource Agency and by this reference incorporated herein.

3. County approved the Map subject to the execution of a Subdivision Improvement Agreement recorded on September 6, 2007 as Document No. 2007-0087503 Placer County Official Records (the "SIA").
4. Subdivider acquired fee title to property contained within the boundary of the Map and bound by the provisions of the SIA by virtue of a Grant Deed recorded on January 13, 2011 as Document No. 2011-0003484-00 in the Placer County Official Records.
5. Subdivider has provided County with adequate documentation to ensure that, all Security (as more specifically described in Section 13 below) posted by the previous owner (Martis Valley Associates, LLC) of the Subdivision under the SIA, including all Faithful Performance Bonds and Labor & Materials Bonds for Phase 2A of the Map, has been assigned in its entirety over to Subdivider, and remains in place and is fully valid and enforceable.
6. Subdivider has requested, and the County has agreed, to execute this Subdivision Improvement Replacement Agreement (the "Agreement") to extend the term of the SIA (Section 6 of the SIA) and allow for reduction to the amount of security (Section 13 of the SIA).
7. County and Subdivider wish to memorialize their voluntary agreement to record this Agreement, and upon doing so, the SIA will be superseded by this Agreement and the SIA will no longer be a covenant running with the land.
8. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.)

AGREEMENT

9. **Improvements.** Subdivider agrees to complete all the works of improvement ("the improvements") required for the subdivision as shown on the final improvement plans for Eaglewood Phase 2, PN 8398 the subdivision submitted to, approved by, and filed with the Community Development Resource Agency, in accordance with the requirements of the Map Act, Title 16, the Standard Specifications of County improvement plans, and such other requirements as are included herein. Such work will be completed within thirty-six (36) months of the date of this Agreement.
10. **Additional Requirements.** Subdivider further agrees to perform all additional work as specified in Exhibit 1 attached hereto and in the conditions of approval of the tentative subdivision map incorporated herein by reference.
11. **Acceptance of Improvements upon Completion.** Upon satisfactory completion of the improvements in accordance with the approved improvement plans, the Standard Specifications and the conditions of approval of the tentative subdivision map, County

agrees to accept the improvements as complete, subject to the provisions of Paragraph 13 hereof.

12. **Notice Regarding Construction.** Subdivider shall notify the Community Development Resource Agency 48 hours prior to commencement of construction of the improvements.

13. **Warranty.** Subdivider agrees to remedy any defects in the improvements arising from faulty or defective design or construction of said improvements occurring within twelve (12) months after acceptance thereof has been given in writing by the Board of Supervisors.

14. **Indemnity and Hold Harmless.**

A. The SUBDIVIDER hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. SUBDIVIDER agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the SUBDIVIDER. SUBDIVIDER also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against SUBDIVIDER or the COUNTY or to enlarge in any way the SUBDIVIDERS liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from SUBDIVIDERS performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

B. Subdivider agrees to identify all existing utilities on the Plans and Specifications, and pay all costs and expenses for relocation of utilities, whether shown on such Plans and Specifications or not, and to defend and hold harmless County from any claims arising out of failure to show or relocate such utilities.

C. It is mutually understood that Subdivider will bear the full responsibility for losses incurred by destruction or damage to all improvements, from any cause whatsoever, and shall bear full responsibility for costs incurred or reasonably necessary, until such improvements are accepted by the County or other appropriate public agency.

15. **Delay.** If the construction of the improvements is delayed without fault of Subdivider, the time for completion thereof may be extended by the Director of the Community Development Resource Agency for such period of time as County may deem reasonable.

16. **Security.** Subdivider shall continue to maintain security sufficient to ensure the faithful performance of all duties and obligations of Subdivider herein contained in accordance with Government Code Section 66499. The parties agree that, after recordation of this Agreement and upon County verification that at least fifty percent (50%) of the improvements have been satisfactorily completed, the Director of the Community Development Resource Agency shall authorize a reduction to the amount of security from an amount equivalent to one hundred percent (100%) of the estimated cost to complete the Improvements (\$2,516,345.00 for Faithful Performance Bond and Labor & Materials Bond) to an amount equivalent to fifty percent (50%) of the estimated cost to complete the Improvements being an amount of one million two hundred fifty eight thousand one hundred seventy two dollars and no cents (\$1,258,172.00).

The required security shall be in the following amounts for the following purposes:

A. **Faithful Performance:** One hundred percent (100%) of the estimated cost of the improvements securing performance of this Agreement, which estimated cost is in the amount of: Two million five hundred sixteen thousand three hundred forty five dollars and no cents dollars (\$2,516,345.00).

B. **Labor and Materials:** One hundred percent (100%) of the estimated cost of the improvements, as set forth in Paragraph A immediately preceding, securing payment to the contractor of improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them.

17. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 16 shall be irrevocable, shall not be limited as to time (except as to the 12 month period specified in Paragraph 13), and shall provide that it shall be released, in whole or in part, only upon the written approval of the Director of the Community Development Resource Agency.

18. **Legal Jurisdiction.** This contract is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Contract it shall be subject to the interpretation under the laws of the State of California and any legal proceedings shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives any federal court removal and/or original jurisdiction rights it may have.

19. **Release of Remaining Security.** In addition to the reductions described in paragraph 16 and at the conclusion of the construction of the improvements, and upon written acceptance of them by the Board of Supervisors and approval of a Notice of Completion, the Director of the Community Development Resource Agency shall authorize the reduction of the Faithful Performance security to an amount equivalent to

twenty five percent (25%) of the of the estimated cost to complete the publically maintained Improvements. This amount shall be retained for the warranty period described in paragraph 13. After the reduction of the Labor and Materials security described in paragraph 16, no reduction to this amount of security shall take place prior to satisfactory completion of the lien period. Upon satisfactory completion of the lien and warranty periods the Director of the Community Development Resource Agency shall authorize the release of the remaining security provided pursuant to Paragraph 16 as provided by Government Code Section 66499.7.

20. **Insurance.** SUBDIVIDER shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing.

A. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

SUBDIVIDER represents they have no employees and, therefore, not required to have Workers' Compensation coverage.

SUBDIVIDER agrees they have no rights, entitlements or claim against COUNTY for any type of employment benefits or workers' compensation or other programs afforded to COUNTY employees.

SUBDIVIDER shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

B. GENERAL LIABILITY INSURANCE:

a. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of SUBDIVIDER, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by SUBDIVIDER in this Agreement.

b. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

c. If SUBDIVIDER carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence

→Two million dollars (\$1,000,000) aggregate

d. If SUBDIVIDER carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) for Products-Completed Operations

→Two million dollars (\$1,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$1,000,000).

e. Special Claims Made Policy Form Provisions:

SUBDIVIDER shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) aggregate for Products Completed Operations

→Two million dollars (\$1,000,000) General Aggregate

(2) The insurance coverage provided by SUBDIVIDER shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

C. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

a. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

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- b. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- c. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

D. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

- 21. **Monuments.** Subdivider agrees to install such survey monuments as depicted on the Final Map filed as a condition of this approval.
- 22. **Failure of Performance.** In the event Subdivider fails to perform one or more of the conditions herein, County shall have recourse to the security given to guarantee the performance of such acts. County shall have recourse against so much of the security as is necessary to discharge the responsibility of Subdivider hereunder. County shall have recourse against Subdivider for any and all amounts necessary to complete the obligations of Subdivider in the event the security therefore is insufficient to pay such amounts. All administrative costs incurred by the County, in addition to the costs of the improvements, shall be a proper charge against the security and/or Subdivider.
- 23. **Attorney's Fees.** In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this Agreement, or the security therefor, the prevailing party in such action shall be awarded a reasonable attorney's fee, as may be determined by the court.
- 24. **Agreement Binding on Successors, Etc.** This Agreement shall be binding upon all the heirs, successors, and assigns of either party, and the same shall be recorded in the office of the Recorder of Placer County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the map.
- 25. **Subdivision Map Act Controlling.** To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map Act shall relieve the person taking such action from compliance with the provisions of the Map Act.

26. Other Provisions: NONE

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

Dated: _____

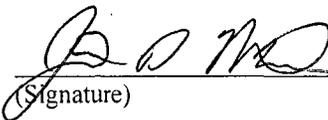
COUNTY OF PLACER

By: _____
CHAIR OF THE PLACER COUNTY
BOARD OF SUPERVISORS

Dated: 10/25/2011

SUBDIVIDER:
NEW MARTIS PARTNERS, LLC
A Delaware limited liability company,
Its Sole Manager

By Caprock Dev, LLC
A Delaware limited liability company
Its Sole Manager

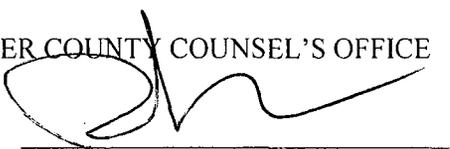
By: 
(Signature)

John D. Marlin
Title: Manager

APPROVED AS TO FORM

PLACER COUNTY COUNSEL'S OFFICE

Dated: 10/31/11

By: 
COUNTY COUNSEL

State of California)
County of Placer)

On this 25TH day of OCTOBER, 2011, before me
MELINDA SMITH NOTARY PUBLIC,

(Notary Name and Title)

personally appeared JOHN D. MARUN,
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.

My Commission Expires: 11/18/2011
WITNESS my hand and official seal

(SEAL)



Melinda Smith

Notary Public in and for said county and state

State of California)
County of Placer)

On this _____ day of _____, 20____, before me

NOTARY PUBLIC,

(Notary Name and Title)

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.

My Commission Expires: _____
WITNESS my hand and official seal

(SEAL)

Notary Public in and for said county and state

ADDITIONAL REQUIREMENTS - EXHIBIT 1

NONE

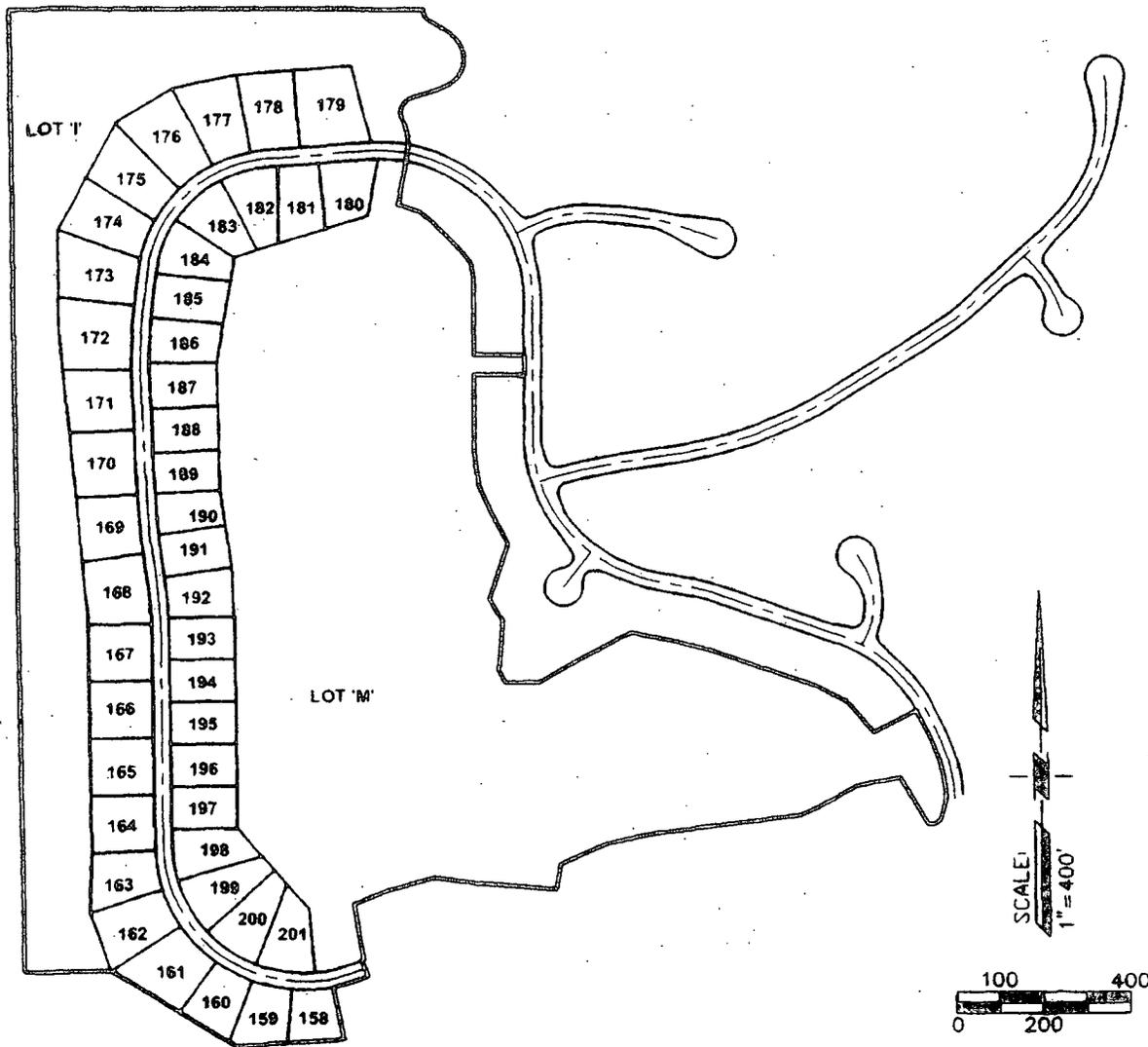


EXHIBIT 'A'
TIMILICK TAHOE PHASE 2A

A SUBDIVISION OF REMAINDER
BOOK 'BB' OF MAPS, PAGE 34, ORPC
A PORTION OF SEC. 23, T. 17 N., R. 16 E., M.D.M.
PLACER COUNTY, CALIFORNIA
SCALE: 1"=400' AUGUST 1, 2007

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