

AMENDMENT NO. 5 TO TOLLING AGREEMENT

This Amendment No. 5 to Tolling Agreement is entered into by and between Oakridge Estates Grand Finale, LLC, a California Limited Liability Company ("Principal"), Travelers Casualty and Surety Company, successor in interest to Gulf Insurance Co. ("Surety") and the County of San Bernardino ("County") (collectively referred to as "the Parties").

Recitals

WHEREAS, on July 2, 2002, Principal and County entered into the following agreements to guarantee construction of certain required road and drainage, water and sewer improvements associated with a particular subdivision of land, Tract Map 10608-2 (hereafter collectively referred to as "Improvements"): "Agreement for Construction of Improvements – Project: Road & Drainage Improvements – Tract 10608-2", "Agreement for Construction of Improvements – Project: Water Improvements – Tract 10608-2", and "Agreement for Construction of Improvements – Project: Sewer Improvements – Tract 10608-2" (hereafter collectively referred to as "Agreements"); and

WHEREAS, Surety issued and Principal provided County the following performance and labor and material securities (hereafter collectively referred to as "Securities") to guarantee Principal's compliance with said Agreements and to secure payment to the contractor, the subcontractors, and persons furnishing labor, materials, or equipment for the Improvements associated with Tract No. 10608-2:

Performance Security (Road and Drainage) (Bond No. BE2638198)	\$1,275,000
Labor & Materials Security (Road and Drainage) (Bond No. BE2638198)	\$637,500
Performance Security (Sewer) (Bond. No. BE2638199)	\$2,354,000
Labor & Materials Security (Sewer) (Bond No. BE2638199)	\$1,177,000
Performance Security (Water) (Bond No. BE2638200)	\$2,265,000
Labor & Materials Security (Water) (Bond No. BE2638200)	\$1,132,500; and

WHEREAS, the Improvements were originally required to be completed by July 2, 2004 (original completion due date); and

WHEREAS, Principal applied for, and the County granted time extensions on the original completion due date, such that the last completion due date was July 2, 2012; and

WHEREAS, Principal has not satisfied the terms of the Agreements, as the required Improvements were not completed by July 2, 2012; and

WHEREAS, Principal also submitted a cash staking deposit in the amount of \$4,500 to guarantee the installation of final monuments and payment to the engineer of record; and

WHEREAS, Principal applied to revert the lots identified in Tract Map 10608-2 to acreage; and

WHEREAS, such application was reviewed and approved by the County of San Bernardino Planning Commission and the Board of Supervisors on February 6, 2014, and November 4, 2014, respectively; and

WHEREAS, Principal never finalized the reversion by recording the reversion map (identified as Reversion Tentative Tract Map 19457); and

WHEREAS, Principal transferred its interest in Tract Map 10608-2 to Rancho Mirage Tourism, LP ("New Owner"); and

WHEREAS, New Owner abandoned the reversion and moved forward in developing Tract Map 10608-2; and

WHEREAS, New Owner intended to enter into new improvement agreements with County and post replacement securities; and

WHEREAS, New Owner was working with Lake Arrowhead Community Services District ("LACSD") in updating the water and sewer improvement plans; and

WHEREAS, once the above-described plans were updated, it was County's understanding that New Owner would then enter into the new improvement agreements and post the replacement securities; and

WHEREAS, on June 14, 2016, the Parties entered into the Tolling Agreement to toll the statute of limitations period associated with the Agreements and Securities to July 2, 2017, in order to provide additional time for New Owner to finalize its improvement plans and post the new improvement agreements and replacement securities acceptable to County; and

WHEREAS, on June 13, 2017, the Parties approved Amendment No. 1 to the Tolling Agreement to extend the terms of the Tolling Agreement by one year, from July 2, 2017, to July 2, 2018; and

WHEREAS, on June 12, 2018, the Parties approved Amendment No. 2 to the Tolling Agreement to extend the terms of the Tolling Agreement by one year, from July 2, 2018, to July 2, 2019; and

WHEREAS, on June 11, 2019, the Parties approved Amendment No. 3 to the Tolling Agreement to extend the terms of the Tolling Agreement by one year, from July 2, 2019, to July 2, 2020; and

WHEREAS, on June 23, 2020, the Parties approved Amendment No. 4 to the Tolling Agreement to extend the terms of the Tolling Agreement by one year, from July 2, 2020, to July 2, 2021; and

WHEREAS, County was informed that New Owner may be transferring some or all of the property identified in Tract Map 10608-2 to another party and needs additional time to finalize the transfer; and

WHEREAS, if the above-described property is transferred, the party that acquires it will need more time to either finalize the improvement plans for water and sewer infrastructure and post the new improvement agreements and replacement securities acceptable to County or, alternatively, process a reversion to revert the lots identified in Tract Map 10608-2 to acreage; and

WHEREAS, the Parties desire to extend the tolling period identified in the Tolling Agreement by one year, from July 2, 2021, to July 2, 2022, with no other changes to the Tolling Agreement.

NOW, THEREFORE, the Parties agree as follows:

The above recitals are incorporated into this Amendment No. 5 and the Tolling Agreement by this reference.

The second paragraph in the Tolling Agreement is deleted and replaced with a revised second paragraph, which shall read as follows:

2. Any and all statutes of limitation, doctrine of laches, or any other applicable time limitation, however defined or denominated, whether statutory, contractual, equitable or otherwise, related to any rights, claims, remedies and/or defenses, including, but not limited to, Code of Civil Procedure section 337, that might be asserted by the parties as to the Agreements and Securities, as well as the staking deposit shall be tolled and suspended from the Effective Date, defined later herein, of this Agreement until July 2, 2022.

The third paragraph in the Tolling Agreement is deleted and replaced with a revised third paragraph, which shall read as follows:

3. This Agreement shall expire on July 2, 2022.

All other terms and conditions of the Tolling Agreement shall remain the same.

Each of the individuals executing this Amendment No. 5 on behalf of the Parties warrants and represents that he or she has been duly authorized by each such party to execute this Amendment No. 5.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

This Amendment No. 5 shall take effect on the date it is approved and signed by all Parties.

COUNTY OF SAN BERNARDINO

Oakridge Estates Grand Finale, LLC

(Print or type name of corporation, company, contractor, etc.)

►

Curt Hagman, Chairman, Board of Supervisors

By ►

(Authorized signature - sign in blue ink)

Dated:

Name:

(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

Title:

(Print or Type)

Lynna Monell

Clerk of the Board of Supervisors
of the County of San Bernardino

Dated:

By

Deputy

Address:

APPROVED AS TO FORM FOR
COUNTY:

By: _____

Jason Searles, Deputy County Counsel

Travelers Casualty and Surety Company

(Print or type name of corporation, company, contractor, etc.)

By:

(Authorized signature - sign in blue ink)

Name:

(Print or type name of person signing contract)

Title:

(Print or Type)

Dated:

Address:
