

Attachment C

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FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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DOliver@fentonkeller.com
ext. 207

November 29, 2022

VIA EMAIL ONLY (DONLONKL@CO.MONTEREY.CA.US)

Kelly L. Donlon, Esq.
Assistant County Counsel
Monterey County, Office of the County Counsel
168 W. Alisal Street, Third Floor
Salinas, CA 93901

Re: Request for Extension of Subdivision Improvement Agreement (York Highlands)
Our File: 31026.29713

Dear Kelly:

Thank you for your time with Alan Williams and me via Zoom on November 22, 2022 to discuss the above referenced matter, on behalf of Carmel Development Company. As you are aware, per Amendment No. 4 to the County of Monterey Subdivision Improvement Agreement (“Agreement”) for York Highlands Resubdivision (“Resubdivision”), the deadline to complete the construction of improvements for the Resubdivision is December 31, 2022. For your review and reference, a copy of Amendment No. 4 to the Agreement is enclosed as **Attachment 1**.

Although certain delay-causing regulatory issues and litigation relating to the Resubdivision have now been resolved, additional time is still needed to complete the improvements, as certain roads within the Resubdivision require reengineering, which is currently in progress. Therefore, Carmel Development Company is requesting a 48-month extension of time—from December 31, 2022, to December 31, 2026—to complete the construction of Resubdivision improvements.

Toward that end, the proposed Amendment No. 5 to the Agreement is enclosed as **Attachment 2**. Also, a letter from Mr. Williams on behalf of Carmel Development Company detailing the status and estimated costs of the remaining Resubdivision improvements to be constructed under the Agreement is enclosed as **Attachment 3**.

Kelly L. Donlon, Esq.
Assistant County Counsel
November 29, 2022
Page 2

We request that you place this extension request on a Board of Supervisors agenda before year-end. Thank you in advance for your prompt attention to this very important matter. Of course, please do not hesitate to call me if you have any questions.

Very truly yours,

FENTON & KELLER
A Professional Corporation



Derric G. Oliver

Enclosures

cc: Erik V. Lundquist, Director of Housing and Community Development
R. Alan Williams, Carmel Development Company

ATTACHMENT

1

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Monterey
Department of Public Works
1441 Schilling Place, 2nd Floor
Salinas, CA 93901

2021034249

Stephen L. Vagnini
Monterey County Clerk-Recorder

05/12/2021 03:48 PM

Recorded at the request of:
PUBLIC WORKS

Titles: 1 Pages: 7

Fees: \$31.00
Taxes: \$0.00
AMT PAID: \$31.00



SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AMENDMENT NO. 4 TO THE COUNTY OF MONTEREY SUBDIVISION
IMPROVEMENT AGREEMENT
FOR YORK HIGHLAND RESUBDIVISION**

This Amendment No. 4 to the County of Monterey Subdivision Improvement Agreement For York Highlands Resubdivision ("Amendment No. 4") is entered into by and between the County of Monterey, a political subdivision of the State of California, (hereinafter "COUNTY"), and Monterey County Bank and United Security Bank (hereinafter "SUBDIVIDERS" or "OWNERS"). Collectively, COUNTY and SUBDIVIDERS or OWNERS are referred to as the "parties".

WHEREAS, a Subdivision Improvement Agreement was executed by the parties and recorded on May 31, 2012 as Official Records Document Number 2012031807 for the York Highlands Resubdivision (hereinafter "Resubdivision", an Amendment No. 1 to said Subdivision Improvement Agreement was executed by the parties and recorded on May 29, 2014 as Official Records Document Number 2014024695, an Amendment No. 2 to said Subdivision Improvement Agreement was executed by the parties and recorded on March 31, 2016 as Official Records Document Number 2016016626, and an Amendment No. 3 to said Subdivision Improvement Agreement was executed by the parties and recorded on September 20, 2018 as Official Records Document Number 2018041573. (The Subdivision Improvement Agreement, as amended pursuant to Amendment Nos. 1, 2 and 3 is hereinafter referred to as "Agreement")

WHEREAS, OWNERS are banks subject to the regulatory authority of the FDIC, and are not proper entities to complete the subdivision improvements;

WHEREAS, OWNER, Monterey County Bank, has transferred certain real property which is the subject of this Agreement to MCBL-1, Inc., a California corp., and the parties have agreed that MCBL-1, Inc., a California corp. shall be added as an OWNER and party to this Agreement;

WHEREAS, OWNER, United Security Bank, has transferred certain real property which is the subject of this Agreement to York Monterey Properties, Inc., a California corp., and the

parties have agreed that York Monterey Properties, Inc., a California corp. shall be added as an OWNER and party to this Agreement;

WHEREAS, it is contemplated in the Agreement that the Resubdivision would be transferred to one or more developers who would in turn complete the subdivision improvements;

WHEREAS, Signature York Highlands, LLC, a California limited liability company purchased certain real property in the York Highlands Resubdivision from OWNERS and installed the first \$5,000,000 of subdivision improvements, and the COUNTY released its security in ten (10) lots in the York Highlands Resubdivision as contemplated under the Agreement;

WHEREAS, completion of the remaining subdivision improvements is delayed because the remaining lots in the York Highlands Resubdivision have not yet been transferred to a developer due to various processing and regulatory delays; and

WHEREAS, OWNERS have requested an extension of time under the Agreement to complete the subdivision improvements;

WHEREAS, the parties desire to amend the Agreement to extend the time for completion of the subdivision improvements for the York Highlands Resubdivision;

Now therefore, the parties agree that the Agreement is amended as follows:

1. MCBL-1, Inc., a California corp., is hereby added as an OWNER and party to this Agreement.
2. York Monterey Properties, Inc., a California corp., is hereby added as an OWNER and party to this Agreement.
3. The first sentence of Paragraph d, at line 2 on Page 10, is amended to read as follows:

Commence the construction, installation, and completion of the Improvements no later than December 31, 2022, unless otherwise mutually agreed to by the Parties.

4. Paragraph c, to section 20 on page 19 is hereby added to read as follows:

In addition to, and without alteration to the indemnification provided by this section 20 of this Agreement, United Security Bank, 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) from The Don Chapin Co., Inc., Seatec Underground Utilities Company, Inc., and/or their assigns, arising from or in connection with this Subdivision Improvement Agreement, including but not limited to, any claim made against the COUNTY in the existing litigation between those third parties and United Securities Bank and/or Signature York Highlands, LLC. United Security Bank shall have the discretion and authority to choose defense counsel

under this subsection of the indemnification clause, subject to approval by and in coordination with the Office of the Monterey County Counsel, which approval shall not be unreasonably withheld.

5. Recordation. Upon execution of this Amendment No. 4 to the Agreement, OWNERS shall cause recordation thereof with the County Recorder's Office.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written below.

OWNER:

MONTEREY COUNTY BANK

DATE: 4/21/21

By: Charles T. Chrietberg, Jr.
Charles T. Chrietberg, Jr., President

OWNER:

MCBL-1, INC.

DATE: 4/21/21

By: Charles T. Chrietberg, Jr.
Charles T. Chrietberg, Jr., Chairman

OWNER:

UNITED SECURITY BANK

DATE: 4/20/21

By: Dennis R. Woods
Dennis R. Woods, President

OWNER:

YORK MONTEREY PROPERTIES, INC.

DATE: 4/20/21

By: Porsche Saunders
Porsche Saunders, Secretary

COUNTY OF MONTEREY:

DATE: 5-4-2021

By: Wendy Root Askew
Wendy Root Askew
Chair of the Board of Supervisors
County of Monterey, State of California

ATTEST:

DATE: 5.4.21

By: Valerie Ralph
Valerie Ralph
Clerk of the Board of Supervisors
County of Monterey, State of California

APPROVED AS TO FORM:
LESLIE GIRARD, COUNTY COUNSEL
COUNTY OF MONTEREY

DATE: 4-22-21

By: Robert E. Brainer
Name: Robert E. Brainer
Deputy County Counsel
County of Monterey, State of California

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.

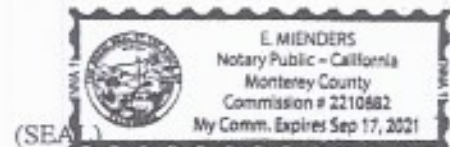
State of California
County MONTEREY

On April 21, 2021 before me, E. Mienders, a Notary Public,
personally appeared **Charles T. Chrietberg, Jr.**, 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 E. Mienders



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 4/20/21 before me, Bernadette Alaniz, a Notary Public,
personally appeared **Dennis R. Woods**, 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 Bernadette Alaniz



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.

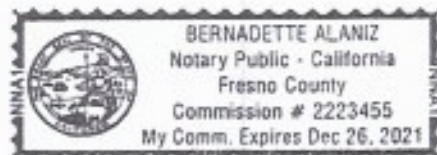
On 4/20/21 before me, Bernadette Alaniz, a Notary Public, personally appeared **Porsche Saunders**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

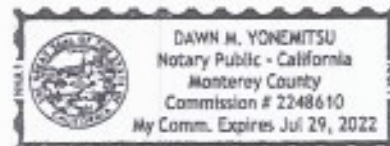
On 5.4.2021 before me, DAWN M. YONEMITSU, a Notary Public, personally appeared **Wendy Root Askew**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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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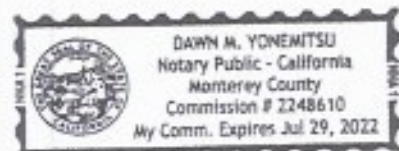
On 5.4.2021 before me, DAWN M. YONEMITSU, a Notary Public, personally appeared **Valerie Ralph**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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)



ATTACHMENT

2

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

County of Monterey
Department of Public Works
1441 Schilling Place, 2nd Floor
Salinas, CA 93901

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AMENDMENT NO. 5 TO THE COUNTY OF MONTEREY SUBDIVISION
IMPROVEMENT AGREEMENT
FOR YORK HIGHLANDS RESUBDIVISION**

This Amendment No. 5 to the County of Monterey Subdivision Improvement Agreement For York Highlands Resubdivision ("Amendment No. 5") is entered into by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "COUNTY"), and Monterey County Bank, United Security Bank, MCBL-1, Inc., a California corporation, York Monterey Properties, Inc., a California corporation, and Signature York Highlands LLC, a California limited liability company (hereinafter collectively, "SUBDIVIDERS" or "OWNERS"). COUNTY and SUBDIVIDERS or OWNERS are referred to singularly as a "party" and collectively as "parties."

WHEREAS, a Subdivision Improvement Agreement was executed by the COUNTY, Monterey County Bank and United Security Bank recorded on May 31, 2012 as Official Records Document Number 2012031807 for the York Highlands Resubdivision (hereinafter "Resubdivision"), and Amendment No. 1 to said Subdivision Improvement Agreement was executed by the COUNTY, Monterey County Bank and United Security Bank and recorded on May 29, 2014 as Official Records Document Number 2014024695, and Amendment No. 2 to said Subdivision Improvement Agreement was executed by the COUNTY, Monterey County Bank and United Security Bank and recorded on March 31, 2016 as Official Records Document Number 2016016626, and Amendment No. 3 to said Subdivision Improvement Agreement was executed by the COUNTY, Monterey County Bank and United Security Bank and recorded on September 20, 2018 as Official Records Document Number 2018041573, and Amendment No. 4 to said Subdivision Improvement Agreement was executed by the Parties and recorded on May 12, 2021 as Official Records Document Number 2021034249. (The Subdivision Improvement Agreement, as amended pursuant to Amendment Nos. 1, 2, 3, and 4 is hereinafter referred to as "Agreement.")

WHEREAS, OWNERS Monterey County Bank and United Security Bank are banks subject to the regulatory authority of the FDIC, and are not proper entities to complete the subdivision improvements contemplated under the Agreement;

WHEREAS, OWNER, Monterey County Bank, transferred certain real property which is the subject of this Agreement to MCBL-1, Inc, a California corporation, and by Amendment No. 4, MCBL-1, Inc., a California corporation, was added as an OWNER and party to the Agreement;

WHEREAS, OWNER, United Security Bank, transferred certain real property which is the subject of this Agreement to York Monterey Properties, Inc., a California corporation, and by Amendment No. 4, York Monterey Properties, Inc., a California corporation, was added as an OWNER and party to the Agreement;

WHEREAS, it is contemplated in the Agreement that the Resubdivision would be transferred to one or more developers who would in turn complete the subdivision improvements contemplated under the Agreement;

WHEREAS, Signature York Highlands LLC, a California limited liability company, purchased certain real property in the Resubdivision from OWNERS and installed the first \$5,000,000 of subdivision improvements, and the COUNTY released its security in ten (10) lots in the Resubdivision as contemplated under the Agreement, and the parties have agreed that Signature York Highlands LLC, a California limited liability company, shall be added as an OWNER and party to this Agreement;

WHEREAS, completion of the subdivision improvements contemplated under the Agreement has been delayed because the Resubdivision has not yet been transferred to a developer due to litigation and various processing and regulatory delays, which has now been resolved, however, several roads must now be reengineered, resulting in further delays;

WHEREAS, OWNERS have requested an extension of time under the Agreement to complete the subdivision improvements contemplated under the Agreement; and

WHEREAS, the parties desire to amend the Agreement to extend the time for completion of the subdivision improvements for the Resubdivision.

NOW, THEREFORE, the parties agree that the Agreement is amended as follows:

1. Signature York Highlands LLC, a California limited liability company, is hereby added as an OWNER and party to this Agreement.
2. The first sentence of Paragraph 4(d) of the Subdivision Improvement Agreement is amended to read as follows:

Commence the construction, installation, and completion of the Improvements no later than December 31, 2026, unless otherwise mutually agreed to by the parties.

3. Recordation. Upon execution of this Amendment No. 5 to the Agreement, OWNERS shall cause recordation thereof with the Monterey County Recorder's Office.
4. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, and such counterparts together

constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written below.

OWNER:
MONTEREY COUNTY BANK

DATE: _____ By: _____
Charles T. Chrietzberg, Jr., President

OWNER:
MCBL-1, INC.

DATE: _____ By: _____
Charles T. Chrietzberg, Jr., President

OWNER:
UNITED SECURITY BANK

DATE: _____ By: _____
Dennis R. Woods, President

OWNER:
YORK MONTEREY PROPERTIES, INC.

DATE: _____ By: _____
Porsche Saunders, Secretary

OWNER:
SIGNATURE YORK HIGHLANDS LLC

DATE: _____ By: _____
Nickolas Jekogian, Managing Member

COUNTY OF MONTEREY:

DATE: _____ By: _____
Mary L. Adams
Chair of the Board of Supervisors
County of Monterey, State of California

ATTEST:

DATE: _____

By: _____

Valerie Ralph
Clerk of the Board of Supervisors
County of Monterey, State of California

APPROVED AS TO FORM:
LESLIE GIRARD, COUNTY COUNSEL
COUNTY OF MONTEREY

DATE: _____

By: _____

Name: _____
Deputy County Counsel
County of Monterey, State of California

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 _____

COUNTY OF _____

On _____, before me _____,

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.

_____, (Seal)

Notary Public

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COUNTY OF _____

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COUNTY OF _____

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COUNTY OF _____

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STATE OF _____

COUNTY OF _____

On _____, before me _____,

Notary Public, personally appeared _____

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STATE OF _____

COUNTY OF _____

On _____, before me _____,

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.

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STATE OF _____

COUNTY OF _____

On _____, before me _____,

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.

_____ (Seal)

Notary Public

ATTACHMENT

3



Post Office Box 450
California 93921
License # 484304

Carmel-by-the-Sea
Telephone 831 625 1090
Fax 831 626 8069

November 29, 2022

Eric V. Lundquist, AICP
Director, Housing and Community Development
County of Monterey
1441 Schilling Place, 2nd Floor – South
Salinas, CA 93901

RE: Request for extension of Subdivision Improvement Agreement (York Highlands Resubdivision)

Dear Eric:

The following information is provided in connection with our pending request to Monterey County for an extension (i.e., Amendment No. 5) to the Subdivision Improvement Agreement for the York Highlands Resubdivision. Although certain delay-causing regulatory issues and litigation have now been resolved, additional time is still needed to complete the improvements, as certain roads in the subdivision require reengineering, which is currently in progress.

As previously stated in our previous similar request to the County, dated April 21, 2020, all York Highlands Resubdivision improvements have been made to Lots 1, 2, 6, 8, 9, 10, 11 and 12. Since that time, improvements have been constructed from Highway 68 to Cresta Madera [otherwise called fire road]. All utilities have been installed and rough grading completed with only retaining walls left to do. The estimated costs to finish these improvements are \$350,000. These retaining walls will be engineered in January 2023 and any revised estimate will be supplied to the County after their final design. The road is an all-weather road and is currently functioning as a fire road.

Improvements on Cresta Madera from the road to Lots 3, 4, and 5, and extending up to Phase 8, are being engineered and modified based on soil conditions. That work has been ongoing, and we hope that engineering will take place in January 2023 so that we can submit those wall designs for separate permitting. The obligation for these improvements will be assumed by the owners of the Phase 8 lots, who plan to submit for the wall permits in the Spring 2023 under separate permit. Once these retaining walls are engineered and approved by the County, they will be installed under the existing York Highlands grading permit. Estimated costs before rebid are \$1,525,000.

The improvements from Lot 12 south have all been graded and are ready for installation. This is a short road segment from where the driveway ends at Lot 12 to where the turnaround is at Parcel D and the driveway to Lot 7. The estimated costs of these improvements are \$963,500 and will be updated when new estimates are received in the Spring.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alan Williams', with a stylized flourish at the end.

R. Alan Williams