



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Potter, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

- a. Approved Amendment 1 to the Monterey County Subdivision Improvement Agreement Fox Creek Ranch, Phase II, with Carmel Cutting Horses, Inc to update the Engineer's Estimate to complete the subdivision improvements, extend the time for completion of the improvements, and substitute the type of security for the improvements;
- b. Accepted the Deed of Trust as security for performance of the amended Monterey County Subdivision Improvement Agreement Fox Creek Ranch, Phase II;
- c. Authorized the Chair of the Board to execute Amendment 1 to the Monterey County Subdivision Improvement Agreement Fox Creek Ranch Phase II; and
- d. Approved the release of the Faithful Performance Bond in the amount of \$1,621,620 and the Laborers and Materialmen Bond in the amount of \$810,810 issued by the Insurance Company of the West (Bond No. 2187518) for infrastructure improvements.

PASSED AND ADOPTED on this 23rd day of April 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
 NOES: None
 ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on April 23, 2013.

Dated: April 25, 2013
File Number: A 13-053

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By *Denise Hancock*
Deputy

**MONTEREY COUNTY
SUBDIVISION IMPROVEMENT AGREEMENT
FOX CREEK RANCH – PHASE II**

Amendment 1 (with subordination clause)

This Amendment (“Amendment”) is entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter “COUNTY”, and Carmel Cutting Horses, Inc. hereinafter “SUBDIVIDER”. Collectively, COUNTY and SUBDIVIDER are referred to as the “parties”.

WHEREAS, a Subdivision Improvement Agreement (hereinafter the “Agreement”) was executed by the parties and recorded on August 3, 2007 at document number 2007061065 for street and water improvements for Phase II of the Fox Creek Ranch (hereinafter “Phase II Improvements”);

WHEREAS, completion of the Phase II Improvements were delayed due to the need for the SUBDIVIDER to enter into an agreement with U.S. Fish and Wildlife Service (USFWS) on a Habitat Conservation Plan (HCP), and the date the HCP will be obtained is uncertain; and

WHEREAS, the parties desire to amend the Agreement to update the Engineer’s Estimate to complete the improvements, extend the time for completion of the Phase II Improvements, and substitute the type of security for the Phase II Improvements; and

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

1. Amend the preliminary Recitals to read as follows:

This Agreement is made with respect to the following facts which each party acknowledges as true and correct:

Final Map: Parcel Map Of A Resubdivision of Parcels A, C & D as shown upon that certain Map recorded in Volume 14 of Parcel Maps at Page 86, Monterey County Record, California (“SUBDIVISION”)

Tentative Map Resolution of Approval No. (“Tentative Map” or “Resolution of Approval”): Minor Subdivision Resolution No. 05008

Title of Improvement Plans: Improvement Plans

Name of Surety: Deed of Trust

Estimated Cost of Improvements:

Streets - Public/Private:	\$398,350
Water:	\$186,401
Other Infrastructure:	\$-0-
Estimated Total Cost of Improvements	\$584,751
10% Contingency	\$58,475
Faithful Performance Bond (100% of Est. Total Cost):	\$643,226
Form of Security, if other than bond:	Deed of Trust
Labor & Materials Bond (50% of Est. Total Cost):	\$321,613
Form of Security, if other than bond:	Deed of Trust
Warranty Security (20% of Est. Total Cost)	\$128,645
Form of Security, if other than bond:	Bond
Estimated Total Cost of Monumentation	N/A
Monumentation Bond No.:	N/A

2. Paragraph 1.d. is amended to read as follows:

d. Commence the construction and installation of the Improvements within 180 days from date of the SUBDIVIDER'S agreement with USFWS for the HCP and complete said construction and installation within one year from the date of said agreement, and prior to the issuance of any permits beyond those necessary to construct the required improvements stated herein. Any extension shall be in accordance with the provisions of Title 19 of the Monterey County Code. Any such extension may be granted without notice to SUBDIVIDER'S Surety and shall not affect the validity of this Agreement or release the Surety or Sureties on any security given under this Agreement. Strikes, boycotts, or similar actions by employees or labor organizations which prevent the conducting of work and which were not caused by or contributed to by SUBDIVIDER, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the COUNTY Engineer may require SUBDIVIDER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the COUNTY Engineer.

3. Paragraph 6 is amended to read as follows:
6. 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. a Deed of Trust acceptable to COUNTY in the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements; and
 - b. a Deed of Trust acceptable to COUNTY in the amount of 50% of the estimated cost of the Improvements 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
 - 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; 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, as applicable;
 - e. The securities required by this Agreement shall be kept on file with the Clerk of the Board of Supervisors. The amount of the security shall be as described herein above and in the recitals to this Agreement. All bonds shall be issued by a surety duly authorized to do business in the State of California. If any security is replaced by another approved security, the replacement shall be filed with the Clerk to the Board of Supervisors and, upon filing, shall be deemed to be part of and incorporated into this Agreement. Upon filing of a replacement security with the Clerk to the Board of Supervisors, the former security may be released. COUNTY shall approve in advance of any such replacement of security and release of former security; and
 - f. COUNTY agrees to accept the above-referenced Deed of Trust to be recorded concurrently with this Agreement as security for the Phase II Improvements until such time as SUBDIVIDER is ready to commence construction of the Phase II Improvements.
 - g. When SUBDIVIDER is ready to commence construction on the Phase II Improvements, SUBDIVIDER shall prepare a revised Engineer's Estimate, subject to approval by the Director of Public Works. SUBDIVIDER shall repost a Faithful Performance Bond based on 100 percent of the Estimated Total Cost of Improvements plus contingency and a Labor & Materials Bond based on 50 percent of the Estimated Total Cost of Improvements plus contingency, corresponding to the revised Engineer's

Estimate. COUNTY shall release the Deed of Trust upon filing of the aforementioned bonds.

Recordation. Upon execution of this Amendment 1 to the Agreement, SUBDIVIDER 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.

SUBDIVIDER:

CARMEL

~~CALIFORNIA CUTTING HORSES, INC.~~

A California Corporation, manager/
member


COUNTY OF MONTEREY

Date: 12.5.12

By: 
THOMAS S. deREGT
Title: President

By: 
Chair, Board of Supervisors

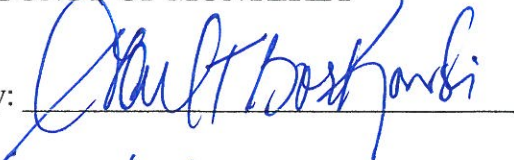
Date: 4-23-2013

By: 
THOMAS S. deREGT
Title: Secretary

ATTEST:

CLERK TO THE BOARD

COUNTY OF MONTEREY

By: 

Date: 4/23/13

APPROVED AS TO FORM:



Cynthia L. Hasson
Deputy County Counsel