

Attachment B

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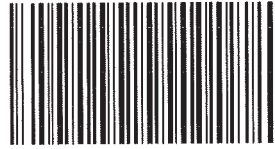
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

County of Monterey
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, California 93901
Attn: Juan Hernandez

Stephen L. Vagnini
Monterey County Recorder
Filed at the request of
First American Title

CRLUPE
8/02/2016
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Titles: 1/ Pages: 21

Fees.... 72.00
Taxes...
Other...
AMT PAID \$72.00

COUNTY OF MONTEREY

SUBDIVISION IMPROVEMENT AGREEMENT

FOR THE BRIGGS MINOR SUBDIVISION

THIS SUBDIVISION IMPROVEMENT AGREEMENT hereinafter "AGREEMENT" is made and effective as of the last date opposite the respective signatures, by and between the County of Monterey, a political subdivision of the State of California, hereinafter "COUNTY", and Briggs Investment Company, a California general partnership ("BIC"), hereinafter "SUBDIVIDER", owners of that certain real property in the County of Monterey, State of California being more particularly described below, , and the 2005 Briggs Children Irrevocable Trust UTA dated December 14, 2005, intended transferees of the property, hereinafter "TRANSFEE".

RECITALS

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

Parcel Map: Briggs Minor Subdivision, described as the Parcel Map being filed for record on August 2, 2016, 2016 in Volume 23, Page 55 of Parcel Maps, Office of County Recorder of the County of Monterey. ("MINOR SUBDIVISION")

Legal Description of the Property:

Parcels "B-1," "B-2," "B-3," and "B-4," as said parcels are shown and so designated on that certain map filed for record on August 2, 2016 in Volume 23, Page 55 of Parcel Maps, Office of County Recorder of the County of Monterey ("Property").

Tentative Map Resolution of Approval No.: Minor Subdivision Committee, Resolution No. 09007

Title of Improvement Plans: Briggs Subdivision Improvement Plans

Name of Surety or Financial or Other Institution Providing Security Instrument

A first deed of trust in favor the County of Monterey, in the form attached hereto as Exhibit 1 and incorporated herein by reference, shall be recorded concurrently with the recordation of the Parcel Map for the MINOR SUBDIVISION and recordation of this AGREEMENT (hereafter referred to as "Surety").

Address: First American Title Company (Trustor of the Deed of Trust)
 Dolores 3 SW of 7th
 Carmel-By-The-Sea, CA 93921

Contact Person: Natalie Nickerson

Estimated Cost of Improvements:

Streets – Public/Private:	\$756,361
Storm Drain:	\$89,000
Sewer:	n/a
Water:	\$1,005,125
Landscaping:	n/a
Other Infrastructure:	
Utilities Joint Trench	\$40,000
Estimated Total Costs of Improvements:	\$1,890,486
10% Contingency	\$189,049
Performance Bond (100% of Estimated Total Cost + Contingency):	n/a
Form of Security, if other than bond:	Deed of Trust ¹
Reference information (e.g., Recorded Document No.):	
Material & Labor Bond (50% of Estimated Total Cost):	\$945243

Form of Security, if other than bond:	Deed of Trust ¹
Reference information (e.g., Recorded Document No.):	
Warranty Security (20% of Estimated Total Costs) ²	\$
Form of Security, if other than bond:	
Reference information (e.g., Recorded Document No.):	
Estimated Total Cost of Monumentation	\$
Form of Security, if other than bond:	Deed of Trust ¹
Reference information (e.g., Recorded Document No.):	
¹ County shall be holder of the first Deed of Trust recorded against the subject Property	
² This Bond or Security shall be provided to County upon acceptance of dedicated subdivision improvements by County	

A. SUBDIVIDER has presented to COUNTY a parcel map of the proposed minor subdivision for approval and recordation pursuant to the Subdivision Map Act (California Government Code Section 66410 *et. seq.*) and COUNTY ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and COUNTY ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this AGREEMENT as the "Subdivision Laws."

B. A tentative map of the MINOR SUBDIVISION has been approved subject to the Subdivision Laws and to the requirements and conditions of approval ("Conditions of Approval") contained in the Resolution of Approval. The Resolution of Approval is on file in the Resource Management Agency Planning Department and is incorporated into this AGREEMENT by reference.

C. In consideration of approval of a parcel map for the MINOR SUBDIVISION by the COUNTY Board of Supervisors, SUBDIVIDER desires to enter into this AGREEMENT, whereby SUBDIVIDER promises to install and complete, at SUBDIVIDER'S own expense, all the improvement work required by COUNTY (hereinafter "Improvements") in connection with

the proposed minor subdivision. SUBDIVIDER has secured this AGREEMENT by improvement security required by the Subdivision Laws and approved by the Office of the County Counsel and authorized by the Board of Supervisors. The parties acknowledge that the SUBDIVIDER intends to transfer the Property to the TRANSFEREE, and that upon such transfer, TRANSFEREE will assume all of the SUBDIVIDER'S obligations under this Agreement. If the intended transfer does not occur, SUBDIVIDER will remain responsible for all Improvements and all of the SUBDIVIDER'S obligations under this AGREEMENT.

D. Complete Water System Improvement Plans for the construction, installation and completion of only the water system improvements have been prepared by SUBDIVIDER and approved by the County Environmental Health Bureau (hereinafter "Water System Improvement Plans"). The Water System Improvement Plans for this MINOR SUBDIVISION are on file in the office of the Environmental Health Bureau and are hereby incorporated into this AGREEMENT by this reference. All references in this AGREEMENT to the Water System Improvement Plans shall include reference to any specifications for the Improvements as approved by the Environmental Health Bureau. It is further acknowledged that updated plans for subdivision improvements, including but not limited to private roads and bridges, private drives, fire hydrants, private water systems and storm drainage systems, and Mitigation Measures 1 through 7 ("Updated Improvement Plans"), and an updated engineer's estimate are required to be prepared and submitted by SUBDIVIDER prior to County issuance of any permit for construction of the Improvements, and County may also, at County's option, require SUBDIVIDER to provide updated security. The Water System Improvement Plans, together with the Updated Improvement Plans, constitute the "Improvement Plans" referenced in this AGREEMENT. The water system improvements, together with the additional improvements referenced in the Updated Improvement Plans, together constitute the "Improvements" referenced in this AGREEMENT.

E. Within thirty (30) days after completion of the required Improvements and their acceptance or approval by COUNTY, it is necessary that certain monuments and stakes as specified on the parcel map for the SUBDIVISION be installed.

NOW, THEREFORE, in consideration of the approval and recordation by the COUNTY of the parcel map of the MINOR SUBDIVISION, and the mutual covenants and agreements contained herein, SUBDIVIDER and COUNTY agree as follows:

1. **SUBDIVIDER'S Obligations to Construct Improvements.** SUBDIVIDER shall:
 - a. Comply with all of the requirements of the Conditions of Approval of the tentative map for the minor subdivision.
 - b. Provide Updated Improvement Plans for subdivision improvements, including but not limited to private roads and bridges, private drives, fire hydrants, private water systems and storm drainage systems, and Mitigation Measures 1 through 7 ("Updated Improvement Plans"), together with an updated engineer's estimate and, if required by COUNTY, updated security acceptable to the COUNTY, prior to County issuance of any permit. Mitigation Measures 1 through 7 shall be included as notes on the Updated Improvement Plans. Mitigation Measures 1 through 7 are as follows:

1. Mitigation Measure 1 (MM-1):

In order to minimize short-term construction emissions, the project shall implement the following MBUAPCD-recommended mitigation measures during grading and construction activities. The County's designated construction contractor shall monitor grading and construction activities on a daily basis to ensure that these measures are implemented. Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure; Prohibit all grading activities during periods of high wind (over 15 mph); Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days); Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations and hydroseed areas; Cover and maintain two feet of freeboard on all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard; Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles, such as dirt, sand, etc; Cover inactive storage piles; Sweep streets daily, with water sweepers, if visible soil materials are carried onto adjacent public streets; Install sandbags or other erosion control measures to prevent silt runoff to public roadways; Install wheel washers at the entrance to construction sites for all exiting trucks; "Pave all roads at construction sites; Construction equipment shall not be left idling for periods longer than 5 minutes when not in use; and Post a publicly visible sign which specifies the telephone number and person to contact regarding emissions-related complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Monterey Bay Unified Air Pollution Control District shall be visible to ensure compliance with Rule 402 (Nuisance).

2. Mitigation Measure 2 (MM-2):

If tree removal or grading activities occur between February 15 and August 15, in order to adequately determine the presence of active raptor nests within the oak woodland habitat, the applicant shall arrange for a pre-construction raptor survey to be prepared by a County-approved biological consultant within 30 days prior to the initiation of development activities. If active raptor nests are found and the biologist determines that construction or development activities would remove the nest or have the potential to cause abandonment, then those activities shall be avoided until the raptor young have fledged as determined through monitoring of the nest. Once the raptor young have fledged, development activities may resume.

3. Mitigation Measure 3 (MM-3):

An erosion control plan shall be prepared prior to the issuance of a grading or building permit. The erosion control plan shall include features, techniques and facilities that reduce erosion potential to protect riparian areas and watercourses. All areas where water drains off new roads and culverts shall have energy dissipaters to help prevent and reduce potential erosion. Subdivision improvement plans shall include these facilities in the project design. A note shall be included on the recorded parcel map to ensure that

future development of each parcel is aware of these requirements and includes these facilities on all future development plans.

4. Mitigation Measure 4 (MM-4):

The intent of this mitigation measure is to avoid impacts to newt during grading and construction activities near the cattle pond found south of proposed parcels B-1 and B-4. A biologist shall conduct a pre-construction survey, within 30 days of construction of the road, identifying the possibility of newt impacts related to road construction near the pond. The biologist shall recommend measures to avoid any newt impacts, including the following:

- delaying construction in the pond area until newt breeding season (spring) has been completed; or
- relocating newt during construction activities, if allowed by the California Department of Fish and Wildlife (CDFW) (formerly known as Department of Fish and Game); or relocating the road alignment to any area sufficiently distant, as determined by the biologist (in consultation with CDFW), from any newt breeding areas. Any road relocation must be approved by the Monterey County Planning, Building Services, and Public Works Departments, and must be in substantial conformance with the approved road location. Substantial road relocation would require an amendment to the permit.

5. Mitigation Measure 5 (MM-5):

The intent of this mitigation measure is to protect riparian vegetation and water quality of Watson Creek. Prior to construction of the road crossing of Watson Creek, the applicant shall obtain a Streambed Alteration Permit (SAP) from California Department of Fish and Wildlife. All work done in the streambed shall occur only after the creek has dried up for the season and shall be completed prior to October 1 of that year, or as otherwise stated by the SAP. All work shall be completed in compliance with the terms and conditions of the SAP. (RMA-Planning Department).

6. Mitigation Measure 6 (MM-6):

In order to minimize geotechnical impacts, the applicant shall adhere to the special recommendations contained in the Geotechnical Investigation and Percolation Investigation reports prepared by Soil Surveys, Inc. (April 2003), including but not limited to the following recommendations for development on Parcel B-2: 1. Spread footings shall be constructed a minimum of 18 inches below finished building pad subgrade, measured from the lower of the inside or outside soil grade adjacent to the foundation, for both one and two story portions of the new buildings, and continuous footings shall be reinforced with four #4 reinforcing bars, two placed near the bottom and two near the top of footing; 2. Foundation excavations shall be flooded with three to four inches of water at least 24 hours prior to pouring concrete, and subgrade for building slabs and foundations should be brought to the low plastic limit range of moisture (19% to 25%) for a depth of at least eight inches prior to pouring concrete; 3. Concrete floor slabs-on-grade shall be at least 5 inches thick and shall be reinforced with a minimum of #3 steel rebars placed 16 inches on center, or #4 steel rebars placed 24 inches on center, both ways; 4. No tree or

high water using shrub should be planted within 15 feet of any building foundation; 5. Any lawns and landscaped strips near the buildings should be well watered and maintained after completion of the project; 6. Roof and site water should be directed away from the building foundation; positive drainage shall be established away from the building, and no water draining from up-slope of the building shall be allowed to flow against any part of the building foundation; 7. The subgrade for the access roads, driveways and parking areas in all parcels shall be prepared for aggregate base as specified in Section VIII, "Recommended Specifications," of the Geotechnical Investigation prepared by Soil Surveys, Inc. dated April 2003.

7. Mitigation Measure 7 (MM-7):

In order to mitigate construction and grading truck impacts on Highway 68, the applicant shall arrange for the hauling of grading and construction materials pursuant to the recommendations prescribed by a construction and management plan. Hauling operations shall not occur on weekends and holidays. The only exception shall be structural concrete, which will be allowed to be hauled during the 7:00 am to 9:00 am time period on non-holiday weekdays only.

- c. Construct and install at SUBDIVIDER'S own expense all the Improvements in conformance with the Improvement Plans and applicable COUNTY and State standards.
- d. All required off-site Improvements included in the Improvement Plans shall be substantially completed to the satisfaction of the County Engineer and the Director of Environmental Health prior to issuance of a construction permit or other grant of approval for development on the Property (excepting such permits as are necessary for construction of the Improvements) . The term "County Engineer" as used in this AGREEMENT refers to the COUNTY Director of Public Works or his/her designee licensed to practice civil engineering in the State of California.;
- e. Commence the construction and installation of the Improvements within four (4) years from the COUNTY'S approval of said parcel map and complete said work within six (6) years from the date of said approval unless otherwise approved by the COUNTY. 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 the 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.

- f. Acquire and dedicate, or pay the cost of acquisition by COUNTY, of all right-of-way, easements and other interests in real property for construction or installation of the Improvements, free and clear of all liens and encumbrances that compromise or interfere with the intended purposes of the rights-of-way, easements and other interests. SUBDIVIDER'S obligations with regard to acquisition by COUNTY of off-site rights-of-way, easements and other interests in real property may be subject to a separate agreement between SUBDIVIDER and COUNTY. SUBDIVIDER shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the SUBDIVISION.
- g. SUBDIVIDER will take all necessary actions during the course of construction to prevent erosion damage to adjacent properties during inclement weather. It is understood and agreed that in the event of failure on the part of SUBDIVIDER to prevent erosion, COUNTY may do the work on an emergency basis and back-charge the SUBDIVIDER for the actual expenses incurred, and, if necessary, after providing notice to SUBDIVIDER, proceed against the Performance Security to cover COUNTY'S expenses.

2. **Underground Utilities.** The following new utilities provided for in this MINOR SUBDIVISION shall be placed underground: electric power lines, gas lines, water lines, telephone lines, and television cables, if applicable. Underground utility services, including laterals to the lots, shall be installed by the SUBDIVIDER prior to placement of road base, concrete curb and gutter and/or gutter and/or A.C. Dike and pavement.

3. **Private Roads and Drives, Fire Hydrants, Roads, Storm Drainage Systems and Water Systems.** SUBDIVIDER shall pay for all maintenance and operation of private roads and private drives, fire hydrants, private water system and storm drainage systems from the time of installation until acceptance or approval of the Improvements by the Board of Supervisors and a Homeowners' Association duly incorporated and certified by the Secretary of the State of California and in good standing or other entity with legal authorization to collect fees sufficient to support the services is formed and assumes responsibility for the services, and until SUBDIVIDER records a water system agreement to provide for such maintenance and operation of the water system, which shall be maintained and operated in accordance with an Environmental Health Bureau-approved operations plan.. Fire hydrants shall be fully operational prior to occupancy of any dwelling within the SUBDIVISION unless otherwise approved by the fire protection agency with jurisdiction.

4. **Planting and Maintenance of Cut and Fill Area.** In addition to any landscaping requirements imposed by the Conditions of Approval, SUBDIVIDER shall seed and/or plant all cut and fill areas of the MINOR SUBDIVISION as approved by the County Engineer including private drives as shown on said parcel map. All erosion control work shall be done prior to the acceptance of the Improvements. The seeding and planting work shall be done between November and April or sufficient water provided to ensure germination and growth until established. SUBDIVIDER shall directly maintain, or guarantee through agreement or other means acceptable to the County Engineer, maintenance of the planted areas for one year from the time of completion of the work above described.

- a. Six months prior to termination of the one-year maintenance period, the plantings shall exhibit a normal healthy growth sufficient to the satisfaction of the County Engineer to control erosion. If in the opinion of the County Engineer, this condition does not exist, replanting shall be done at the SUBDIVIDER'S expense. If necessary, topsoil and commercial fertilizer shall be used by the SUBDIVIDER to promote the desired effect. The planted areas and streets shall be kept by SUBDIVIDER in a clean, neat and workmanlike condition, free of trash and other unsightly materials that might accumulate because of planting and landscaping activities. Any failure of the cut or fill slopes within the one-year maintenance period shall be rectified by SUBDIVIDER.
- b. Should the SUBDIVIDER request the release of the security described in this AGREEMENT prior to the end of the maintenance period, SUBDIVIDER shall deliver to COUNTY a landscape and maintenance bond (or other security approved by the County) in the amount of 50% of Estimated Total Costs of Landscaping Improvements. The bond shall be for a period consisting of the remainder of the one-year maintenance period and in a form approved by the County Engineer and Office of the County Counsel and shall be conditioned upon the performance of this AGREEMENT.
- c. The parties agree that upon expiration of the one-year maintenance period, the SUBDIVIDER or SUBDIVIDER'S successor shall assume maintenance of the planted areas within the SUBDIVISION with exception of private driveways, which shall be maintained by individual property owners.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements and land development work contemplated by this Agreement is to be constructed or installed on land not owned by SUBDIVIDER, no construction or installation on such land shall be commenced before:

- a. The offer of dedication to COUNTY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or
- b. The dedication to, and acceptance by, COUNTY of appropriate rights-of-way, easements or other interests in real property, as determined by the COUNTY Engineer, or
- c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. SUBDIVIDER shall comply in all respects with the order of possession.

Nothing in this Section shall be construed as authorizing or granting an extension of time to SUBDIVIDER.

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 as follows:

- a. A Deed of Trust acceptable to COUNTY to secure 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 to secure 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. 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 a Deed of Trust acceptable to COUNTY to secure the amount of 100% of the estimated cost of setting subdivision monuments; and
- e. SUBDIVIDER shall, if required by the County at County's option, provide to COUNTY updated security acceptable to the COUNTY after SUBDIVIDER provides Updated Improvement Plans to the COUNTY and prior to County issuance of any permit.
- f. 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 recorded Deed of Trust shall constitute a lien attaching to the Property, and such lien shall have priority of a judgment lien in the amounts necessary to secure the performance, payment, warranty, and setting of monuments as set forth above. 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. All bonds shall be issued by a surety duly authorized to do business in the State of California. 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.

7. **Inspection.** SUBDIVIDER shall retain a qualified and independent consulting Civil Engineer(s) to inspect construction of the Improvements and to certify that the Improvements are constructed in conformance with the Improvement Plans and any approved addenda thereto and applicable ordinances and regulations. SUBDIVIDER shall at all times maintain proper facilities and safe access for periodic inspection of the Improvements by COUNTY. Upon completion of the work, the SUBDIVIDER's Engineer shall file original "as-built" plans with County Engineer and shall submit a letter to County Engineer certifying that Subdivider's Engineer has inspected the Improvements throughout construction and that said Improvements are completed in conformance with the

Improvement Plans and in accordance with this AGREEMENT. No Improvements shall be finally accepted or approved by COUNTY unless all aspects of the work have been inspected and certified as completed in accordance with the Improvement Plans and COUNTY standards. SUBDIVIDER shall bear all costs of plan check, inspection and certification.

8. **Release of Securities.** Subject to approval by the County Board of Supervisors the securities required by this AGREEMENT shall be released as follows:
 - a. Release of improvement securities shall be in conformance with the Subdivision Map Act and the Monterey County Code.
 - b. COUNTY may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by COUNTY in successfully enforcing the obligation secured.

9. **Injury to Improvements, Public Property or Public Utilities Facilities.** SUBDIVIDER shall replace or have replaced, or repair or have repaired, as the case may be, all Improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this AGREEMENT. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this AGREEMENT, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by COUNTY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the County Engineer.

10. **Permits.** SUBDIVIDER shall, at SUBDIVIDER'S expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law. An encroachment permit shall be required for work in the County right-of-way.

11. **Default of SUBDIVIDER.**
 - a. Default of SUBDIVIDER shall include, but not be limited to, SUBDIVIDER'S failure to timely commence or complete construction of the Improvements; SUBDIVIDER'S failure to timely cure any defect in the Improvements; or SUBDIVIDER'S failure to perform any other obligation under this AGREEMENT.
 - b. Default of SUBDIVIDER shall also include SUBDIVIDER'S insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which SUBDIVIDER fails to discharge within thirty (30) days; or the commencement of a foreclosure action against the MINOR SUBDIVISION or a portion thereof; or any conveyance in lieu or in avoidance of foreclosure. Notwithstanding the foregoing, the COUNTY may find SUBDIVIDER is not in default under this subsection if COUNTY finds that SUBDIVIDER, in the opinion of the County Engineer, continues to prosecute construction of the Improvements to completion and the securities provided pursuant to this AGREEMENT remain in full force and effect.

- c. COUNTY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER'S obligations under this AGREEMENT. COUNTY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate COUNTY damages in event of default by SUBDIVIDER. The right of COUNTY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to COUNTY. The sums provided by the improvement security may be used by COUNTY for the completion of the Improvements in accordance with the approved Improvement Plans.
- d. In the event of SUBDIVIDER'S default under this AGREEMENT, SUBDIVIDER authorizes COUNTY to perform such obligation twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER'S Surety, and SUBDIVIDER agrees to pay the entire cost of such performance by COUNTY.
- e. COUNTY may take over the work and prosecute the same to completion, by contract or by any other method COUNTY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER'S Surety shall be liable to COUNTY for any excess cost or damages occasioned COUNTY thereby; and, in such event, COUNTY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for performance of the work.
- f. In the event that SUBDIVIDER fails to perform any obligation under this AGREEMENT, SUBDIVIDER agrees to pay all costs and expenses incurred by COUNTY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.
- g. The failure of COUNTY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of SUBDIVIDER.
- h. SUBDIVIDER recognizes that by approval of the parcel map for SUBDIVISION, COUNTY has conferred substantial rights upon SUBDIVIDER, including the right to sell, lease, or finance lots within the SUBDIVISION, and has taken the final act necessary for SUBDIVIDER to subdivide the property within the SUBDIVISION. As a result, SUBDIVIDER recognizes that COUNTY will be damaged by SUBDIVIDER'S failure to perform its obligations under this AGREEMENT, including, but not limited to, failure to complete construction of the Improvements by the time established in this AGREEMENT. COUNTY shall be entitled to all remedies available to it pursuant to this AGREEMENT and the Subdivision Laws in the event of a default by SUBDIVIDER.

12. **Warranty.** SUBDIVIDER shall guarantee and warranty the work done pursuant to this AGREEMENT for a period of one (1) year following the completion of the work and Improvements and acceptance or approval thereof by the County Board of Supervisors' against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done,

furnished, installed, constructed or caused to be done, furnished, installed or constructed by SUBDIVIDER fails to fulfill any of the requirements of this AGREEMENT or conform to the Improvement Plans and specifications referred to herein, SUBDIVIDER shall without delay and without any cost to COUNTY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should SUBDIVIDER fail to act promptly or in accordance with this requirement, SUBDIVIDER hereby authorizes COUNTY, at COUNTY'S option, to perform the work twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER'S Surety, and SUBDIVIDER agrees to pay the cost of such work by COUNTY. Should COUNTY determine that an emergency requires repairs or replacements to be made before SUBDIVIDER can be notified, COUNTY may, in its sole discretion, make the necessary repairs or replacements to the Improvements or perform the necessary work, and SUBDIVIDER shall pay to COUNTY the cost of such emergency repairs, not to exceed the maximum amount of the warranty security under this AGREEMENT.

13. **SUBDIVIDER Not Agent of COUNTY.** Neither SUBDIVIDER nor any of SUBDIVIDER'S agents or contractors are or shall be considered to be agents of COUNTY in connection with the performance of SUBDIVIDER'S obligations under this AGREEMENT.
14. **Injury to Work.** Until such time as the Improvements are accepted or approved by COUNTY, SUBDIVIDER shall be responsible for and bear the risk of loss to any of the Improvements constructed or installed. Until such time as all Improvements required by this AGREEMENT are fully completed and accepted or approved by COUNTY, SUBDIVIDER will be responsible for the care, maintenance of, and any damage to such Improvements. COUNTY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or Improvements specified in this AGREEMENT prior to the completion and acceptance of the work or Improvements. All such risks shall be the responsibility of and are hereby assumed by SUBDIVIDER.
15. **Other Agreements.** Nothing contained in this AGREEMENT shall preclude COUNTY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of COUNTY ordinances providing therefore, nor shall anything in this AGREEMENT commit COUNTY to any such apportionment.
16. **SUBDIVIDER'S Obligation to Comply with Good Construction Practices.** Until final acceptance of the Improvements, SUBDIVIDER shall take all reasonable actions consistent with prevailing safety standards and generally accepted good construction practices to protect the public.
17. **Vesting of Ownership.** Upon acceptance or approval of the work on behalf of COUNTY, ownership of the Improvements constructed pursuant to this AGREEMENT shall vest as shown on the parcel map and in accordance with the provisions set forth in the Conditions of Approval.

18. **Indemnity/Hold Harmless.**

- a. COUNTY or any officer, agent, or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of SUBDIVIDER, its agents or employees in the performance of this AGREEMENT. SUBDIVIDER further agrees to protect, defend, indemnify, and hold harmless COUNTY, its officials, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of SUBDIVIDER, its agents or employees in the performance of this AGREEMENT, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and AGREEMENT to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said SUBDIVISION, and the Improvements as provided herein.
- b. Acceptance or approval by COUNTY of the Improvements shall not constitute an assumption by COUNTY of any responsibility for any damage or taking covered by this paragraph. COUNTY shall not be responsible for the design or construction of the MINOR SUBDIVISION or the Improvements pursuant to the approved Improvement Plans or map, regardless of COUNTY'S approval of the plans or map, unless the particular improvement design was specifically required by COUNTY over written objection by SUBDIVIDER submitted to the County Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. Except as may be provided above, COUNTY shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to COUNTY, its officials, agents and employees, by virtue of COUNTY'S approval of the plan or design of the Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. After acceptance or approval of the Improvements, SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect. It is the intent of this paragraph that SUBDIVIDER shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this AGREEMENT and that COUNTY shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph.

19. **Insurance.** Without limiting SUBDIVIDER'S duty to indemnify the COUNTY, SUBDIVIDER shall maintain in effect, prior to obtaining any COUNTY permits for construction of the Improvements, and until all Improvements are completed and accepted by COUNTY, a policy or policies of insurance with the limits of liability specified herein. COUNTY does not and shall not waive any rights against SUBDIVIDER which it may have by reason of the aforesaid hold harmless AGREEMENT, because of the acceptance by COUNTY of any deposit with COUNTY by SUBDIVIDER or any of the insurance policies described in herein. The aforesaid hold harmless AGREEMENT by SUBDIVIDER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid activities or operations referred to herein, regardless of whether or not COUNTY has prepared, supplied or approved plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies have been determined to be applicable to any such damages or claims for damages. Further, SUBDIVIDER shall not commence work under this AGREEMENT until SUBDIVIDER shall have obtained all insurance required herein. Prior to COUNTY issuance of any County permit for construction of the Improvements, SUBDIVIDER shall furnish written proof to the COUNTY that SUBDIVIDER has in effect all of the insurance required by this AGREEMENT. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier. SUBDIVIDER shall maintain or flow down all insurance requirements to his Contractors or Sub- Contractors.

- a. **Workers' Compensation Insurance.** SUBDIVIDER shall maintain, during the life of this AGREEMENT, workers compensation insurance for all SUBDIVIDER'S employees employed at the site of improvement in accordance with California Labor Code Section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability. SUBDIVIDER shall require any contractor or subcontractor similarly to provide workers' compensation insurance for all contractors' and/or subcontractors' employees, unless such employees are covered by this protection afforded by SUBDIVIDER. In any case, if any class of employees engaged in work under this AGREEMENT at the site of the project is not protected under any workers' compensation law, SUBDIVIDER shall provide insurance acceptable to COUNTY for the protection of employees not otherwise protected. SUBDIVIDER hereby indemnifies COUNTY for any damage resulting to it from failure of either SUBDIVIDER or any contractor or subcontractor to take out or maintain such insurance.
- b. **Commercial General Liability Insurance.** SUBDIVIDER shall take out and maintain during the life of this AGREEMENT such commercial general liability insurance as shall protect the COUNTY, its officers, agents and employees, SUBDIVIDER and any contractor or subcontractor performing work covered by this AGREEMENT from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from SUBDIVIDER'S or any contractor's or subcontractor's operations hereunder, whether such operations be by SUBDIVIDER or any contractor or subcontractor, or by anyone directly or indirectly employed by

- either SUBDIVIDER or any contractor or subcontractor performing work covered by this AGREEMENT. The amount of such insurance shall be not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, independent contractors, personal injury, broad form property damage, explosion, collapse and underground products and completed operations.
- c. Business automobile liability insurance: SUBDIVIDER shall maintain during the life of this AGREEMENT, business automobile liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit of not less than \$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage.
 - d. Professional liability insurance: In connection with Section 18.B. above which provides that SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect and that SUBDIVIDER shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this AGREEMENT, SUBDIVIDER shall maintain in effect throughout the term of this AGREEMENT, professional liability insurance, as applicable, in the amount of not less than \$1,000,000 per claim and \$3,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this AGREEMENT.
 - e. All insurance required by this AGREEMENT shall be with a company acceptable to the COUNTY and authorized by law to transact insurance business in the State of California. The general liability insurance policies shall contain a standard form of endorsement, with coverage equal to that provided by ISO Form 20 10 (11-85 edition) insuring and naming the COUNTY OF MONTEREY, its officers, agents and employees as additional insured and providing that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY and that the insurance or self-insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the SUBDIVIDER'S insurance. Prior to or concurrently with the execution of this AGREEMENT, SUBDIVIDER shall furnish COUNTY with a certificate of insurance, showing that the SUBDIVIDER has in effect the insurance required by this AGREEMENT and showing that each carrier is required to give COUNTY at least thirty (30) days written prior notice of any cancellation or reduction in coverage of any policy during the effective period of this AGREEMENT. SUBDIVIDER shall file with the COUNTY a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information of the certificate then on file. Acceptance or approval of insurance shall in no

way modify or change the indemnification clause of this AGREEMENT, which shall remain in full force and effect.

20. **Time of the Essence.** Time is of the essence in the performance of this AGREEMENT.
21. **Time for Commencement of Work/Time Extensions.** SUBDIVIDER shall commence substantial construction of the improvements required by this AGREEMENT prior to the issuance of a construction permit or other grant of approval for development on the Property (except such permits as are necessary for construction of the Improvements). .
22. **Notices.** All notices required or provided for under this AGREEMENT shall be in writing and delivered in person or sent by mail, postage prepaid, and addressed as provided in this section. Notice shall be effective on the date it is delivered in person or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows, unless a written change of address is filed with the COUNTY.

COUNTY: Director of Resource Management Agency
County of Monterey
Resource Management Agency
168 West Alisal Street, 2nd Floor
Salinas, CA 93901

SUBDIVIDER: Briggs Investment Company
Law Offices of Carleton L. Briggs
740 Fourth Street, Suite 202
Santa Rosa, California 95404-4421

TRANSFeree: 2005 Briggs Children Irrevocable Trust UTA dated
December 14, 2005
376 Corral de Tierra
Salinas, California 93908

23. **Binding on Successors and Assigns.** This AGREEMENT shall be binding upon the successors and assigns of each of the parties. Sale of all or part of the lands of the underlying MINOR SUBDIVISION shall not serve to transfer the obligations of the SUBDIVIDER under this AGREEMENT, except as provided in this paragraph. The Parties acknowledge that Briggs Investment Company is the owner of a large parcel of land from which these parcels are being subdivided and that the SUBDIVIDER intends to immediately transfer ownership of all of the Property that is the subject of the subdivision to the 2005 Briggs Children Irrevocable Trust UTA dated December 14, 2005 (TRANSFeree) following recordation of the parcel map. All obligations under this AGREEMENT attach to SUBDIVIDER until all obligations of SUBDIVIDER are fulfilled or SUBDIVIDER conveys its right, title, and interest in the Property to TRANSFeree. If the SUBDIVIDER does not transfer all of its right, title, and interest in the Property to TRANSFeree, all obligations under this AGREEMENT remain the responsibility of the SUBDIVIDER until all obligations of SUBDIVIDER are fulfilled or transferred by

substitution of replacement agreement with the County and replacement securities acceptable to COUNTY. If SUBDIVIDER conveys all of its right, title and interest in the Property to TRANSFEREE, then immediately upon that conveyance, all of the obligations of the SUBDIVIDER under this AGREEMENT shall automatically, with no further action of the COUNTY, become the obligation of TRANSFEREE, and Briggs Investment Company will be released from any further obligations under this AGREEMENT. Following transfer of the Property and the SUBDIVIDER's obligations under this AGREEMENT to TRANSFEREE, if TRANSFEREE thereafter sells all or part of the Property, such sale not serve to transfer the obligations of TRANSFEREE to fulfill all of the obligations of the SUBDIVIDER under this AGREEMENT, unless the obligations under this AGREEMENT are transferred by substitution of a replacement agreement with the COUNTY and replacement securities acceptable to the COUNTY.

24. **Sale and Use of Individual Parcels.** Parcels created by this SUBDIVISION cannot be sold individually until the terms of this AGREEMENT are satisfied and all subdivision improvements identified on the approved tentative parcel map, including but not limited to private roads and bridges, private drives, fire hydrants, private water systems and storm drainage systems are completed and accepted by COUNTY, unless the obligations under this AGREEMENT are transferred by substitution of a replacement agreement with the COUNTY and replacement securities acceptable to the COUNTY.
25. **Incorporation of Recitals.** The Recitals to this AGREEMENT are hereby incorporated into the terms of this AGREEMENT.
26. **Entire Agreement.** This AGREEMENT constitutes the entire AGREEMENT of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this AGREEMENT must be in writing and approved and executed by the appropriate representatives of the parties.
27. **Negotiated Document.** It is agreed and understood by the parties hereto, that this Agreement has been arrived at through negotiations and that neither party is deemed to be the party which prepared the Agreement within the meaning of Civil Code Section 1654.
28. **Warranty of Authority.** Any individual executing this AGREEMENT warrants that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.
29. **Counterparts.** This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.
30. **Recordation.** Upon execution of this AGREEMENT, SUBDIVIDER shall cause recordation thereof with the County Recorder's Office and shall be responsible for payment of all fees for said recordation.

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

SUBDIVIDER:
Briggs Investment Company

By: [Signature]
Signature

Date: 6/10/16

Name: Carleton L. Briggs

Title: General Manager, Briggs Investment Company

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 OF MONTEREY) SONOMA KR

On 6/10/2016 before me, KATHIE RUTHERFORD, a Notary Public, personally appeared CARLETON L. BRIGGS, 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 [Signature]



(Seal)

TRANSFEREE

2005 Briggs Children Irrevocable Trust UTA dated December 14, 2005

By: [Signature]
Signature

Date: 06/14/2016

Name: Marize H. Briggs
Marize H. Briggs

Title: Trustee for the 2005 children trust UTA dated December 14, 2005 MB

MB Trustee for the 2005 Briggs Children Irrevocable Trust UTA dated December 14, 2005

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 OF MONTEREY)

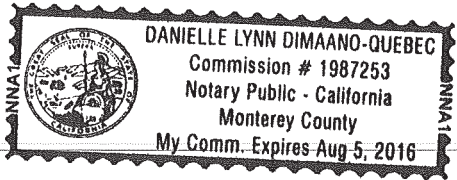
On ^{all} ~~June~~ June 14, 2016 before me, Danielle Lynn Dimaano Quebec
Notary Public, personally appeared Marize H. Briggs, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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 Danielle Lynn Dimaano Quebec

(Seal)



COUNTY OF MONTEREY

By: Jane Parker Date: 6-28-16
dh Jane Parker, Chair AKA Jane B Parker
Monterey County Board of Supervisors DH

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.

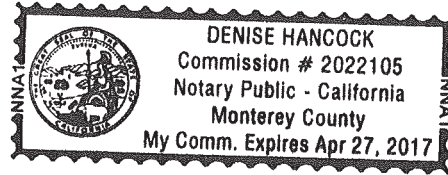
STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

On June 28, 2016 before me, Denise Hancock, a Notary Public, personally appeared Jane B. PARKER, 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 Denise Hancock



(Seal)

ATTEST:
CLERK OF THE BOARD OF SUPERVISORS
Gail T. Borkowski

By: Gail T. Borkowski
Deputy
Gail T. Borkowski
Print name

APPROVED AS TO FORM:

CHARLES J. McKEE
COUNTY COUNSEL

By: Wendy S. Stirling
Wendy S. Stirling
Senior Deputy County Counsel

Date: 6/16/16

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