

Attachment B

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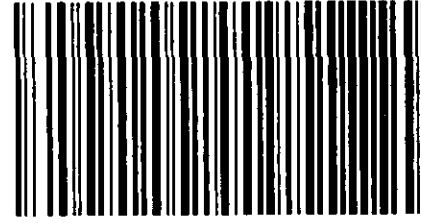
Stephen L. Vagnini
Monterey County Recorder
Filed at the request of
First American Title

RANJELIQUE
5/31/2012
11:02:18

Recording Requested By And
When Recorded Return to:

County of Monterey
Department of Public Works
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

DOCUMENT: **2012031807**



Titles: 1/ Pages: 103

Fees.....
Taxes....
Other...
AMT PAID

COUNTY OF MONTEREY

SUBDIVISION IMPROVEMENT AGREEMENT

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 MONTEREY COUNTY BANK and UNITED SECURITY BANK (hereinafter "SUBDIVIDERS" or "OWNERS").

RECITALS

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

Final Map: *York Highlands Resubdivision ("RESUBDIVISION")*

Tentative Map Resolutions of Approval No.: *Board of Supervisors Resolution Nos. 11-342 and 12-038*

Title of Improvement Plans: *York Highlands Resubdivision*

Name of Surety or Financial or Other Institution Providing Security Instrument (hereafter referred to as "Surety"), Address, and Contact Person:

Estimated Cost of Improvements:

<i>Streets – Public/Private</i>	\$	4,067,485.00
<i>Storm Drain</i>	\$	528,170.00
<i>Sewer</i>	\$	927,836.00
<i>Water</i>	\$	1,333,300.00

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<i>Landscaping</i>	\$	32,545.00
<i>Other Infrastructure</i>	\$	786,000.00
Estimated Total Cost of Improvements:	\$	7,675,336.00
<i>10% Contingency</i>	\$	767,533.60
<i>10% Construction Management</i>	\$	767,533.60

Faithful Performance Bond (100% of

Estimated Total Costs): \$
Form of Security, if other than bond: deed/trust \$ **9,210,403.20**

Reference Information (e.g. Bond No.): N/A

Labor & Materials Bond (50% of Estimated Total Cost): \$

Form of Security, if other than bond: deed/trust \$ **4,605,201.60**

Reference Information (e.g. Bond No.): N/A

Warranty Security (20% of Estimated Total Cost): \$

Form of Security, if other than bond: deed/trust \$ **1,842,080.64**

Reference Information (e.g. Bond No.): N/A

Estimated Total Cost of Monumentation \$ 34,000.00

Form of Security, if other than bond: deed/trust **(\$34,000.00)**

Reference Information (e.g. Bond No.): N/A

- A. The RESUBDIVISION involved a redesign of a portion of Monterra Phase VIII and all of Monterra Phase X arising out of the failure by the Monterra Ranch Subdivision developer MONTERRA RANCH PROPERTIES, LLC, a California limited liability company to perform its obligations to complete improvements for Monterra Phase VIII and Phase X as set forth in those documents entitled "Monterey County Subdivision Improvement Agreement" recorded at Document No. 2005095835 on September 14, 2005 and "Monterey County Subdivision Improvement Agreement For Monterra Ranch Phase X" recorded at Document No. 2005127220 on December 1, 2005 filed with the

Monterey County Recorder in the County of Monterey (hereinafter "PRIOR SUBDIVISION IMPROVEMENT AGREEMENTS").

- B. Existing Deeds of Trust encumber the properties within the RESUBDIVISION in favor of the County of Monterey to guarantee faithful performance of the work required to complete Monterra phased subdivision improvements including (1) that Deed of Trust given by Hanover-Monterra Investors, II filed for record on September 29, 1992 in Reel 2851 at Page 689; (2) that Deed of Trust given by Monterra Ranch Properties LLC, a California limited liability company at Document 2005095835 filed for record on September 14, 2005, and (3) that Deed of Trust given by Monterra Ranch Properties LLC, a California limited liability company at Document 2005127220 filed for record on December 1, 2005 each recorded in the Official Records in the Office of the Recorder for the County of Monterey, State of California ("hereinafter EXISTING DEEDS OF TRUST"). From the time of recordation of these EXISTING DEEDS OF TRUST, a lien attached to the properties within Monterra Phase VIII and Monterra Phase X and such lien has the priority of a judgment lien in the amount necessary to complete the Improvements not to exceed the amount specified in the PRIOR SUBDIVISION IMPROVEMENT AGREEMENTS.
- C. Monterey County Bank and United Security Bank are owners of property located within the YORK HIGHLANDS RESUBDIVISION.
- D. In 2009, COUNTY notified OWNERS and other property owners of lots in Monterra Phases VIII and X that the County expected the current owners of property within Monterra Phases VIII and X to take necessary steps to provide adequate security for the completion of subdivision improvements, and that if appropriate substitute security was not received, the County may either initiate foreclosure proceedings on the EXISTING DEEDS OF TRUST securing completion of improvements and payment to contractors under the PRIOR SUBDIVISION IMPROVEMENT AGREEMENTS, or initiate reversion proceedings to revert the subdivision to acreage as provided by law.

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- E. In 2010, COUNTY notified OWNERS that COUNTY would refrain from such foreclosure or reversion proceedings to facilitate the RESUBDIVISION of Monterra Phases VIII and X to afford OWNERS an opportunity to provide appropriate security.
- F. OWNERS presented to COUNTY for approval and recordation a final map of the RESUBDIVISION pursuant to the Subdivision Map Act (California Government Code Section 66499.20-1/2) 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."
- G. A vesting tentative map of the RESUBDIVISION has been approved subject to the Subdivision Laws and to the requirements and conditions of approval ("Conditions of Approval") contained in Board of Supervisors Resolution Nos. 11-342 and 12-038 ("Resolutions"). These Resolutions are on file in the office of the Clerk to the Board of Supervisors and are incorporated into this AGREEMENT by reference.
- H. In consideration of approval of a final map for the RESUBDIVISION by the County Board of Supervisors and reimbursement for costs incurred beyond its proportionate share of subdivision improvement costs, OWNERS desire to enter into this AGREEMENT, whereby OWNERS promise to complete all the improvement work described in the Improvement Plans (hereinafter "Improvements") within the RESUBDIVISION. OWNERS intend to transfer their respective properties within the RESUBDIVISION to one or more developers (hereinafter individually "DEVELOPER", and collectively, "DEVELOPERS"). Pursuant to Paragraph 9 herein, in the event of such transfer, each DEVELOPER will assume all obligations of the transferor OWNER(S) under this AGREEMENT by executing a replacement agreement to this AGREEMENT as part of the transfer of the properties within the RESUBDIVISION, thereby relieving the transferor OWNER(S) of their obligations hereunder..
- I. OWNERS have secured this AGREEMENT by improvement security required by the Subdivision Laws and approved by the Office of the County Counsel.

- J. Complete Improvement Plans for the construction, installation and completion of the Improvements have been prepared by OWNERS and approved by the County Engineer (hereinafter "Improvement Plans"). These Improvement Plans identify some changes or alterations in the work identified on the improvement plans for Monterra Ranch Phase VIII, and engineer estimates identify that such changes or alterations will substantially reduce the cost of improvements. The Improvement Plans for this RESUBDIVISION are on file in the office of the County Engineer and are incorporated into this AGREEMENT by reference. All references in this AGREEMENT to the Improvement Plans shall include reference to any specifications for the Improvements as approved by the County Engineer. 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.
- K. 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 final map for the RESUBDIVISION be installed.

NOW, THEREFORE, in consideration of the approval and recordation by the COUNTY of the final map of the RESUBDIVISION and the mutual covenants and agreements contained herein, OWNERS and COUNTY agree as follows:

1. **Partial Reconveyances of Existing Deeds of Trust.** COUNTY shall release the properties located within the RESUBDIVISION from the EXISTING DEEDS OF TRUST (copies of which are attached hereto as Exhibit A) upon completion of one or both of the following:

- (a) Full and complete payment of mechanic's liens encumbering each of the existing lots located within the boundaries of the RESUBDIVISION *prior* to recordation of the final map for the RESUBDIVISION; and/or

- (b) The recordation of a separate promissory note for each reconfigured lot within the RESUBDIVISION each secured by a new First Deed of Trust, respectively. The amount of each such new promissory note is \$105,217.55. Said promissory notes and corresponding First Deeds of Trust, in the form

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attached hereto as Exhibit B. shall be recorded for each lot concurrently with the recordation of the final map for the RESUBDIVISION

COUNTY shall not reconvey and release any of the Remaining Phase VIII properties under the Existing Deeds of Trust including that certain Deed of Trust given by Hanover-Monterra Investors, II filed for record on September 29, 1992 in Reel 2851 at Page 689, and that certain Deed of Trust given by Monterra Ranch Properties LLC, a California limited liability company at Document 2005095835 filed for record on September 14, 2005, each recorded in the Official Records in the Office of the Recorder for the County of Monterey, State of California ("1992 and Phase VIII Deeds of Trust"). The 1992 and Phase VIII Deeds of Trust shall remain as security to secure completion of subdivision improvements for the Remaining Phase VIII Properties, and to secure payment of costs for completion of subdivision improvement that benefit the Remaining Phase VIII Properties, including but not limited to providing reimbursement to OWNERS for actual costs expended beyond OWNERS' proportionate share that benefits the Remaining Phase VIII Properties secured by the 1992 and Phase VIII Deeds of Trust. Copies of the forms of reconveyance are attached as Exhibit C.

2. Substitute Security. OWNERS shall at all times guarantee performance of this AGREEMENT by furnishing to COUNTY good and sufficient security acceptable to 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. **New Deeds of Trust.** New subordinated deeds of trust in favor of the County of Monterey in the form attached hereto as Exhibit D and incorporated herein by reference ("Subordinated Deeds of Trust") shall be recorded concurrently with the recordation of the final map for the RESUBDIVISION. A first deed of trust for Lots 3, 4 and 5 in the form attached hereto as Exhibit E shall also be recorded in favor of the County of Monterey concurrently with the recordation of the final map for the RESUBDIVISION. These Subordinated Deeds of Trust and first deed of trust for Lots 3, 4 and 5 shall secure the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the

Improvements, plus 50% of the estimated costs 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; plus 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; plus 100% of the estimated cost of setting subdivision monuments. From the time of recordation of the Subordinated Deeds of Trust, a lien shall attach to the real property described in Exhibit 1 to said Subordinated Deeds of Trust, and such lien shall have priority of a judgment lien in the amount necessary to complete the Improvements not to exceed the amounts specified in the recitals to this Agreement.

- b. Upon request of OWNERS, COUNTY shall execute any and all documents necessary to subordinate the Subordinated Deeds of Trust securing performance hereunder, executed by OWNERS or OWNERS' successors in interest, in order to, secure a construction loan or loans constituting security pursuant to Government Code Section 66499(a)(2) or 66499(a)(3) for the construction of the Improvements set forth in this AGREEMENT. At such time as the OWNERS or OWNERS' successors interest submit that such construction loan or loans are secured, COUNTY shall release the properties encumbered by the Subordinated Deeds of Trust through the partial reconveyances as provided in Paragraph 2(c).
- c. **Substitute Security.** COUNTY shall reconvey the Subordinated Deeds of Trust releasing certain lots within the RESUBDIVISION at such time as the certain funds are irrevocably committed to a loan commitment account or other acceptable form of security approved by County Counsel consistent with Government Code Section 66499(a)(2) or 66499(a)(3) as follows:

- i. COUNTY shall release ten (10) lots selected by OWNERS within the RESUBDIVISION upon a first installment of committed funds in the sum of \$5 million;
- ii. COUNTY shall release an additional nine (9) lots selected by OWNERS within the RESUBDIVISION upon a second installment of committed funds in the sum of \$5 million;
- iii. COUNTY shall release the first deed of trust recorded on the remaining three (3) lots, Lots 3, 4, and 5, within the RESUBDIVISION upon a third installment of committed funds in the remaining security amounts or receipt of certification of completion of subdivision improvements by a qualified engineer. COUNTY may retain from such 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.

Any replacement security as provided herein, shall be filed with the COUNTY.

- d. The security provided herein shall not affect the personal liability of any person for payment of the indebtedness secured by the EXISTING DEEDS OF TRUST. OWNERS shall be entitled to reimbursement of costs incurred beyond OWNERS' proportionate share of shared subdivision improvements secured by the EXISTING DEEDS OF TRUST as set forth in Paragraph 3.

3. Reimbursement. COUNTY agrees that some of the subdivision improvements under the Improvement Plans including street, drainage, sewer and water lines, and other underground utilities will benefit the remaining properties within Monterra Phase VIII located outside of the RESUBDIVISION ("Remaining Phase VIII Properties). The Improvement Plans identify some changes or alterations in the work identified on the improvement plans for the originally designed Monterra Ranch Phases VIII and X, and engineer estimates identify that such changes or alterations will reduce the cost of improvements. COUNTY shall not reconvey the EXISTING DEEDS OF TRUST releasing the Remaining Phase VIII Properties, which shall continue to secure the

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completion of subdivision improvements, as modified under the Improvement Plans for the RESUBDIVISION, and payment to contractors under the PRIOR SUBDIVISION IMPROVEMENT AGREEMENTS. OWNERS shall be entitled to reimbursement of actual amounts incurred beyond the proportionate share of subdivision improvement costs for the RESUBDIVISION that benefit the Remaining Phase VIII Properties. Any recovery by the COUNTY in exercising its remedies under the EXISTING DEEDS OF TRUST shall be used to repay or reimburse OWNERS of the RESUBDIVISION for costs incurred by OWNERS for completion of subdivision improvements beyond OWNERS' proportionate share of the costs of shared subdivision improvements, but such recovery is not the exclusive repayment source for this reimbursement. The proportionate share of costs of shared subdivision improvements located within the RESUBDIVISION boundaries benefitting the Remaining Phase VIII Properties are currently estimated at Eight Hundred and Fifty Thousand Dollars (\$850,000.00).

- 4. OWNERS' Obligations to Construct Improvements.** OWNERS intend to transfer their respective properties within the RESUBDIVISION to a one or more developers who will carry out the obligation of the transferor OWNERS(S) to construct the subdivision improvements for the RESUBDIVISION, thereby relieving the transferor OWNER(S) from such obligations. OWNERS agree to the obligations set forth herein provided that in the event of such transfer to DEVELOPER, COUNTY shall duly execute a replacement agreement agreeing to the full transfer of the obligations of the transferor OWNER(S) to DEVELOPER(S) in the form attached as Exhibit F. OWNERS shall:
- a. Comply with all of the requirements of the Conditions of Approval of the vesting tentative map for the RESUBDIVISION.
 - b. Construct and install all of the Improvements in conformance with the Improvement Plans for the RESUBDIVISION and applicable County and State standards subject to reimbursement as provided in Paragraph 3 above.
 - c. All required off-site Improvements included in the Improvement Plans shall be completed prior to or concurrently with on-site work and shall be substantially

completed to the satisfaction of the County Engineer prior to the granting of occupancy for any new unit:

- d. Commence the construction and installation of the Improvements within one year from the COUNTY'S approval of said final map and complete said work within two 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 any party who posts loan funds or other acceptable form of security pursuant to Paragraph 2 (the SECURITY PROVIDER") and shall not affect the validity of this AGREEMENT or release 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 OWNERS, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the County Engineer may require OWNERS 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.
- e. Acquire and dedicate, or pay the cost of acquisition by COUNTY, of all rights-of-way, easements and other interests in real property for construction or installation of the Improvements within RESUBDIVISION, free and clear of all liens and encumbrances that compromise or interfere with the intended purposes of the rights-of-way, easements, or other interests.
- f. **Erosion Control.** OWNERS 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 OWNERS to prevent erosion, COUNTY may do the work on an emergency basis and back-charge the OWNERS for the actual expenses incurred, and, if necessary, after providing notice to OWNERS, proceed against the Faithful Performance Security to cover COUNTY'S expenses.

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- 5. Underground Utilities.** The following new utilities provided for in this RESUBDIVISION 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 prior to placement of road base, concrete curb, and gutter and/or gutter and/or A.C. Dike and pavement.
- 6. Fire Hydrants, Roads, Sewer, and Storm Drainage Systems.** OWNERS shall pay for all maintenance and operation of private roads and private drives, fire hydrants, sewer, and storm drainage systems from the time of installation until acceptance or approval of the Improvements by the Board of Supervisors and until 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. Fire hydrants shall be fully operational prior to occupancy of any dwelling within the RESUBDIVISION unless otherwise approved by the fire protection agency with jurisdiction.
- 7. Planting and Maintenance of Cut and Fill Area.** In addition to any landscaping requirements imposed by the Conditions of Approval, OWNERS shall seed and/or plant all cut and fill areas of the RESUBDIVISION as approved by the County Engineer including private drives as shown on said final 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. OWNERS 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 in the opinion 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 OWNERS' expense. If necessary, topsoil and commercial fertilizer shall be used to promote the desired effect. The planted areas and streets shall be kept by OWNERS 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 OWNERS.

- b. Should the OWNERS request the release of the security described in this AGREEMENT, prior to the end of the maintenance period, OWNERS shall deliver to COUNTY a landscape and maintenance bond (or other security approved by the County) in the amount of the estimated cost of maintaining such landscaping. 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 OWNERS or OWNERS' successor shall assume maintenance of the planted areas within the RESUBDIVISION with exception of private driveways, which shall be maintained by individual property owners.

8. 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 OWNERS, 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 owners 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. OWNERS shall comply in all respects with the order of possession.

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

- 9. 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 RESUBDIVISION shall not serve to transfer the obligations of the OWNERS under this AGREEMENT. All obligations under this AGREEMENT attach to OWNERS until all obligations of OWNERS are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to COUNTY. COUNTY understands that OWNERS intend to transfer the RESUBDIVISION property, or portions thereof to one or more DEVELOPER(S), whereupon the obligations of each transferor OWNER under this AGREEMENT will be transferred to such DEVELOPER(S) under a duly executed replacement agreement in the form attached as Exhibit F. Upon submittal of a replacement agreement executed by such DEVELOPER(S), COUNTY shall accept such replacement agreement and execute same thereby relieving each transferor OWNER of all obligations under this AGREEMENT.
- 10. Inspection.** OWNERS 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. An encroachment permit shall be required for any work in the County right-of-way. OWNERS shall at all times maintain proper facilities and safe access for periodic inspection of the Improvements by COUNTY. Upon completion of the work, the OWNERS' Engineer shall file original sealed "as built" plans with County Engineer and shall submit a sealed letter to County Engineer certifying that OWNERS' 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. Thereafter, the County Engineer shall file the notice of completion of the Improvements with the County Board of Supervisors. 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. OWNERS shall bear all costs of plan check, inspection and certification.

11. Injury to Improvements, Public Property or Public Utilities Facilities. OWNERS 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. OWNERS 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.

12. Permits. OWNERS shall, at OWNERS' expense, obtain all necessary permits and licenses for the construction and installation of the Improvements under this AGREEMENT, give all necessary notices, and pay all fees and taxes required by law.

13. Default of OWNER(S).

- a. Default of OWNERS shall include, but not be limited to, OWNERS' failure to timely commence or complete construction of the Improvements; OWNERS' failure to timely cure any defect in the Improvements; or OWNERS' failure to perform any other obligation under this AGREEMENT.
- b. Default of OWNERS shall also include OWNERS' insolvency, appointment of a receiver or the filing of any petition in bankruptcy, either voluntary or involuntary, which OWNERS fail to discharge within thirty (30) days; or action by a banking regulatory agency with appropriate jurisdiction that prevents either owner or both from fulfilling the obligations set forth herein, or the commencement of a foreclosure action against the RESUBDIVISION

or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure. Notwithstanding the foregoing, the COUNTY may find OWNERS are not in default under this subsection if COUNTY finds that OWNERS, in the opinion of the COUNTY Engineer, continue 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 the OWNERS' 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 OWNERS. 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. COUNTY reserves to itself all remedies available to it at law or in equity for breach of the original developer's obligations under the PRIOR SUBDIVISION AGREEMENTS. 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 OWNERS' default under this AGREEMENT, OWNERS authorize COUNTY to perform such obligation twenty (20) days after mailing written notice of default to OWNERS and to all SECURITY PROVIDERS, and OWNERS agree 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 OWNERS, COUNTY may realize on any security posted pursuant to this AGREEMENT 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

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belonging to OWNERS, as may be on the site of the work and necessary for performance of the work.

- f. In the event that OWNERS fail to perform any obligation under this Agreement, OWNERS agree 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 by OWNERS.
- h. OWNERS recognize that by approval of the final map for RESUBDIVISION, COUNTY has conferred substantial rights, including the right to sell, lease, or finance lots within the RESUBDIVISION, and has taken the final act necessary for the resubdivision of the property. As a result, OWNERS recognize that COUNTY will be damaged by OWNERS' failure to perform its obligations under this AGREEMENT, including but not limited to, failure to complete construction of 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 OWNER.

14. Warranty. OWNERS 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 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 OWNERS fails to fulfill any of the requirements of this AGREEMENT or conform to the Improvement Plans and specifications referred to herein, OWNERS 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 OWNERS fail to act

promptly or in accordance with this requirement, OWNERS hereby authorize COUNTY, at COUNTY'S option, to perform the work twenty (20) days after mailing written notice of default to OWNERS and to all SECURITY PROVIDERS, and OWNERS agree to pay the cost of such work by COUNTY. Should COUNTY determine that an emergency requires repairs or replacements to be made before OWNERS can be notified, COUNTY may, in its sole discretion, make the necessary repairs or replacements to the Improvements or perform the necessary work, and OWNERS shall pay to COUNTY the cost of such emergency repairs, not to exceed the maximum amount of the warranty security under this AGREEMENT.

15. OWNERS Not Agent of County. Neither OWNERS nor any of OWNERS' agents or contractors are or shall be considered to be agents of COUNTY in connection with the performance of OWNERS' obligations under this Agreement.

16. Injury to Work. Until such time as the Improvements are accepted or approved by COUNTY, OWNERS 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, OWNERS 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 OWNERS.

17. 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 parties for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of COUNTY ordinances providing therefor and consistent with the terms of this AGREEMENT. Nothing in this AGREEMENT shall be construed to create a third party beneficiary, or to create rights on any third party not otherwise provided for by law.

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18. OWNERS' Obligation to Comply with Good Construction Practices. Until final acceptance of the Improvements, OWNERS shall take all reasonable actions consistent with prevailing safety standards and generally accepted good construction practices to protect the public.

19. Vesting of Ownership. Upon acceptance or approval of the work on behalf of COUNTY and recordation of the Notice of Completion, ownership of the Improvements constructed pursuant to this Agreement shall vest as shown on the Final Map and in accordance with the provisions set forth in the Conditions of Approval.

20. 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 OWNERS, its agents or employees in the performance of this AGREEMENT. OWNERS further agree 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 attorneys fees and litigation expenses, because of, or arising out of, acts or omissions of OWNERS, 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 RESUBDIVISION, 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 RESUBDIVISION 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 OWNERS 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, OWNERS shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect, to the extent required by law. It is the intent of this paragraph that OWNERS 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 or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph.

21. Insurance. Without limiting OWNERS' duty to indemnify the COUNTY, OWNERS shall maintain in effect throughout this AGREEMENT a policy or policies of insurance with the limits of liability specified herein. COUNTY does not and shall not waive any rights against OWNERS which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by COUNTY of any deposit with COUNTY by OWNERS or any of the insurance policies described in herein. The aforesaid hold harmless agreement by OWNERS 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 RESUBDIVISION, or

regardless of whether or not such insurance policies have been determined to be applicable to any such damages or claims for damages. Further, OWNERS shall not commence work under this AGREEMENT until OWNERS shall have obtained all insurance required herein. All requirements herein shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

- a. **Workers' Compensation Insurance.** OWNERS shall maintain, during the life of this AGREEMENT, workers compensation insurance for all OWNERS' employees employed at the site of improvements in accordance with California Labor Code Section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability. OWNERS shall require any contractor or subcontractor similarly to provide worker's compensation insurance for all contractors' and/or subcontractors' employees, unless such employees are covered by this protection afforded by OWNER. 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, OWNERS shall provide insurance acceptable to COUNTY for the protection of employees not otherwise protected. OWNERS hereby indemnify COUNTY for any damage resulting from failure of either OWNERS or any contractor or subcontractor to take out or maintain such insurance.
- b. **Commercial General Liability Insurance.** OWNERS 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, OWNERS 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 OWNERS' or any contractor's or subcontractor's operations hereunder, whether such operations be by OWNERS or any contractor or subcontractor, or by anyone directly or indirectly employed by either OWNERS or any contractor or subcontractor performing work covered by this AGREEMENT. The amount of such insurance shall not be

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, broadform property damage, explosion, collapse and underground (XCU) products and completed operations.

- c. Business automobile liability insurance: OWNERS 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 19.B. above which provides that OWNERS shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect and that OWNERS shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this AGREEMENT, OWNERS 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

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

(11-85 edition) insuring and naming the COUNTY OF MONTEREY, its officers, agents and employees as additional insureds 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 Insureds shall not be called upon to contribute to a loss covered by the OWNERS' insurance. Prior to or concurrently with the execution of this AGREEMENT, OWNERS shall furnish COUNTY with a certificate of insurance, showing that the OWNERS have 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. OWNERS 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.

22. Time for Commencement of Work/Time Extensions. OWNERS shall commence construction of the Improvements required by this AGREEMENT within one year of execution of this AGREEMENT. Any extensions shall be in accordance with Title 19 of the Monterey County Code.

23. 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: Direct of Public Works
 County of Monterey Public Works Department
 168 W. Alisal Street, 2nd Floor
 Salinas, CA 93901

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

OWNERS:

Charles T. Chrietzberg, Jr., President
Monterey County Bank
601 Munras Avenue
Monterey, CA 93940

Dennis R. Woods, President
United Security Bank
2126 Inyo Street
Fresno, CA 93721

with a copy to:

Wanger Jones Helsley PC
Attention Timothy Jones Esq.
265 River Park Circle
Suite 310
Fresno, Ca 93720

24. Incorporation of Recitals. The Recitals to this AGREEMENT are hereby incorporated into the terms of this AGREEMENT.

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

25. 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.

26. 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.

27. Recordation. Upon execution of this AGREEMENT, OWNERS shall cause recordation thereof with the County Recorder's Office.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the dates set forth beside their respective signatures.

OWNER:

MONTEREY COUNTY BANK

DATE: 5-17-12 By: Charles T. Chritzberg, Jr.
Charles T. Chritzberg, Jr., President

OWNER:

UNITED SECURITY BANK

DATE: 5/17/12 By: Dennis R. Woods
Dennis R. Woods, President

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

COUNTY OF MONTEREY

Date: 5-23-12

Dave Potter
Chair, Board of Supervisors
DAVE POTTER

ATTEST:

Date: 5-23-12

Denise Hancock
Gail T. Borkowski Denise Hancock
Board Clerk, Board of Supervisors dh

APPROVED AS TO FORM:

CHARLES J. McKEE, COUNTY COUNSEL
COUNTY OF MONTEREY

Date: 5-21-12

By: Cynthia L. Hasson
Deputy County Counsel

Cynthia L. Hasson

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
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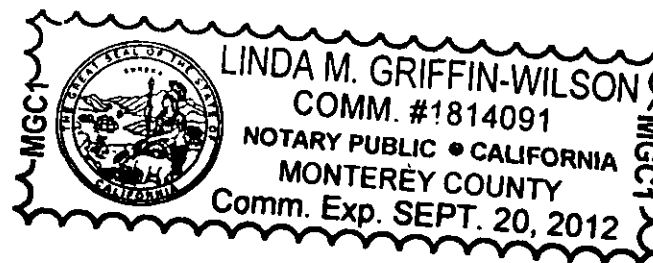
State of California)
County of Monterey) ss.

On MAY 17, 2012, before me, Linda M. Griffin-Wilson, a Notary Public, personally appeared Charles T. Chritzberg, 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 Linda M. Griffin-Wilson



(Seal)

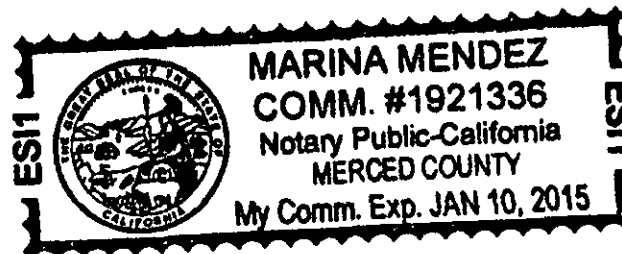
State of California)
County of Merced) ss.

On May 17, 2012, before me, Marina Mendez, 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 Marina Mendez



(Seal)

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

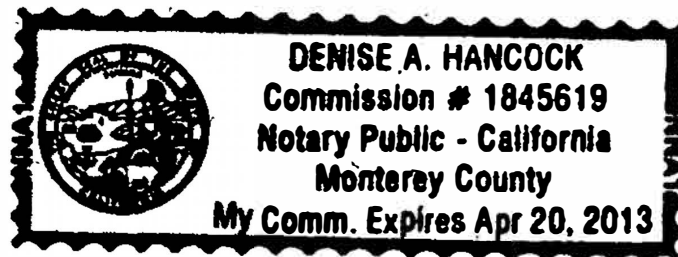
State of California)
County of Monterey) ss.

On May 23, 2012 before me, Denise A. Hancock a Notary Public, personally appeared Dave Potter, 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 A. Hancock



(Seal)

THIS DOCUMENT WAS NEGOTIATED BY THE PARTIES AND
APPLICANT SUBMITTAL

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