

Subdivision Improvement Agreement

Chapin-Axtell
PLN080039

Board of Supervisors
July 12, 2011

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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 Donald D. Chapin Jr. and Barbara A. Chapin, also known as Barbara Chapin; Donald D. Chapin Jr. and Barbara A. Chapin, Co-Trustees of the Chapin Living Trust dated April 27, 1999; and Donald D. Chapin, Jr., Successor Trustee, Non-Exempt Marital Trust Under The Chapin Living Trust Dated November 10, 1989, hereinafter "SUBDIVIDER"

[NAME OF SUBDIVIDER]

RECITALS

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

Final Map: Axtell Street Properties
[NAME OF SUBDIVISION]

Described as Tract _____ per map recorded in volume _____, page(s) _____,
Of Cities and Towns, office of County Recorded of the County of Monterey.

Tentative Map Resolution of Approval No.: 09-185

Title of Improvement Plans: Axtell Street Properties Improvement Plans

Name of Surety or Financial or Other Institution Providing Security Instrument

TRAVELERS CASUALTY AND SURETY COMPANY (hereafter referred to as "Surety"),

Address: 575 Auto Center Drive Watsonville California

, and Contact Person: Deborah Tablack

Estimated Cost of Improvements:	Parcels A & B	Parcels C - H
Streets – Public/Private	\$ <u>68,267.20</u>	\$ <u>35,674.50</u>
Storm Drain	\$ <u>18,600.00</u>	\$ <u>20,005.50</u>
Sewer:	\$ <u>108,450.00</u>	\$ <u>13,900.00</u>
Water:	\$ <u>56,785.00</u>	\$ <u>21,182.50</u>
Landscaping:	\$ <u>0.00</u>	\$ <u>0.00</u>
Other Infrastructure:	\$ _____	\$ _____
_____	\$ _____	\$ _____
Estimated Total Cost of Improvements:	\$ <u>252,102.20</u>	\$ <u>90,762.50</u>
10% Contingency	\$ <u>25,210.22</u>	\$ <u>9,076.26</u>
Faithful Performance Bond (100% of Estimated Total Cost + Contingency):	\$ <u>277,312.42</u>	\$ <u>99,838.75</u>
Form of Security, if other than bond:	_____	_____
Reference Information (e.g., Bond No.):	<u>DC EC</u> <u>DRR</u> #105557988	<u>DC EC</u> <u>DRR</u> #105557089
Labor & Materials Bond (50% of Estimated Total Cost):	\$ <u>126,051.10</u>	\$ <u>45,381.25</u>
Form of Security, if other than bond:	_____	_____
Reference Information (e.g., Bond No.):	<u>DC EC</u> <u>DRR</u> #105557088	<u>DC EC</u> <u>DRR</u> #105557089
Warranty Security (20% of Estimated Total Cost) ¹	\$ <u>50,420.44</u>	\$ <u>18,152.50</u>
Form of Security, if other than bond:	_____	_____
Reference Information (e.g., Bond No.):	<u>DC EC</u> <u>DRR</u> #105557088	<u>DC EC</u> <u>DRR</u> #105557089
Estimated Total Cost of Monumentation	\$ <u>0.00</u>	\$ <u>0.00</u>

¹ This Bond or Security shall be provided to County upon acceptance of dedicated subdivision improvements by County.

Form of Security, if other than bond: _____

Reference information (e.g., Bond No.) _____

- A. SUBDIVIDER has presented to COUNTY for approval and recordation of a final proposed subdivision 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 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 office of the Clerk to the Board of Supervisors and is incorporated into this AGREEMENT by reference.
- C. In consideration of approval of a final map for the 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 subdivision. SUBDIVIDER has secured this AGREEMENT by improvement security required by the Subdivision Laws and approved by the Office of the County Counsel.
- D. Complete Improvement Plans for the construction, installation and completion of the Improvements have been prepared by SUBDIVIDER and approved by the County Engineer (hereinafter "Improvement Plans"). The Improvement Plans for this subdivision 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.
- 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 final map for the SUBDIVISION be installed.

NOW, THEREFORE, in consideration of the approval and recordation by the COUNTY of the final map of the 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 the requirements of the Conditions of Approval of the tentative map for the subdivision.
 - b. Construct and install at SUBDIVIDER'S own expense all the Improvements in conformance with the Improvement Plans and applicable COUNTY and State standards.

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- 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 365 ~~180~~ ^{TWO (2)} days from the COUNTY'S approval of said final map and complete said work within ~~ONE (1)~~ ^{TWO (2)} year 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 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.
- e. 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, or 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.
- f. **Erosion Control.** 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 Faithful Performance Security to cover COUNTY'S expenses.

2. **Underground Utilities.** The following new utilities provided for in this 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. 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 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 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 SUBDIVISION 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. 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 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 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 the estimated cost of Landscaping Improvements, if applicable. 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 and in the amounts as follows:

- a. A Performance Bond or security acceptable to COUNTY in the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements; and
- b. A Payment Bond or security acceptable to COUNTY in the amount of 50% of the estimated cost of the Improvements to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this AGREEMENT; and
- c. A Warranty Bond or security acceptable to COUNTY in the amount of 20% of the estimated cost of the Improvements to guarantee or warranty the work done pursuant to this AGREEMENT for a period of one (1) year following the completion and acceptance or approval thereof by COUNTY against any defective work or labor done or defective materials furnished.
- d. SUBDIVIDER shall also furnish to COUNTY good and sufficient security acceptable to COUNTY in the amount of 100% of the estimated cost of setting subdivision monuments. This Bond or Security shall be provided to County upon acceptance of the dedicated subdivision improvements by County; and

- e. The securities required by this AGREEMENT shall be kept on file with the Clerk to the Board of Supervisors. The amount of the security shall be as described herein above and in the recitals to this AGREEMENT. All bonds shall be issued by a surety duly authorized to do business in the State of California. If any security is replaced by another approved security, the replacement shall be filed with the Clerk to the Board of Supervisors and, upon filing, shall be deemed to be part of and incorporated into this AGREEMENT. Upon filing of a replacement security with the Clerk to the Board of Supervisors, the former security may be released. The COUNTY shall approve in advance of any such replacement of security and release of former security.

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. An encroachment permit shall be required for work in the County right-of-way. 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 sealed "as-built" plans with County Engineer and shall submit a sealed 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. 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. 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.

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 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 final 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 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.

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 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 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 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. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

- 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, broadform property damage, explosion, collapse and underground (XCU) 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 within ~~one hundred eighty (180)~~ ^{THREE HUNDRED SIXTY FIVE (365)} days from the County's approval of said final map. Any extensions shall be in accordance with Title 19 of the Monterey County Code.

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

SUBDIVIDER: Donald D. Chapin Jr.
 Barbara A. Chapin
 560 Crazy Horse Canyon Rd.
 Salinas, CA 93907

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 SUBDIVISION shall not serve to transfer the obligations of the SUBDIVIDER under this AGREEMENT. All obligations under this AGREEMENT attach to SUBDIVIDER until all obligations of SUBDIVIDER are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to COUNTY.

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

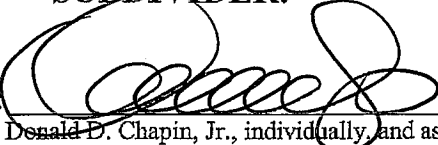
25. **Entire AGREEMENT.** This AGREEMENT constitutes the entire AGREEMENT of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this AGREEMENT must be in writing and approved and executed by the appropriate representatives of the parties.

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.

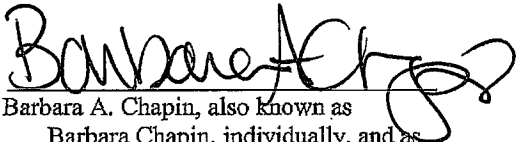
27. **Recordation.** Upon execution of this AGREEMENT, SUBDIVIDER shall cause recordation thereof with the County Recorder's Office.

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

SUBDIVIDER:

By: 
Donald D. Chapin, Jr., individually, and as
Co-Trustee of the Chapin Living Trust
dated April 27, 1999, and as
Successor Trustee, Non-Exempt Marital
Trust Under The Chapin Living Trust
Dated November 10, 1989

Date: 6-30-11

By: 
Barbara A. Chapin, also known as
Barbara Chapin, individually, and as
Co-Trustee of the Chapin Living Trust
dated April 27, 1999

Date: 6-30-2011

(Proper Notarization of SUBDIVIDER'S
signature is required and shall be attached)

COUNTY OF MONTEREY:

By: _____
[chair's name Type or Print]
Chair, Board of Supervisors

Date: _____

ATTEST:

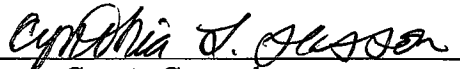
CLERK OF THE BOARD

By: _____
Gail T. Borkowski

Date: _____

APPROVED AS TO FORM:

**CHARLES J. McKEE
COUNTY COUNSEL**

By: 
Deputy County Counsel

Date: 7-8-11

ACKNOWLEDGMENT

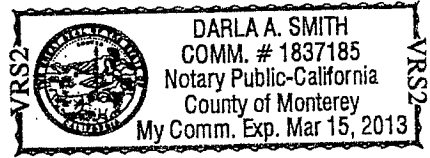
State of California
County of Monterey)

On June 30, 2011 before me, Darla A. Smith - Notary Public
(insert name and title of the officer)

personally appeared Donald D. and Barbara A. Chapin,
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 *Darla A. Smith* (Seal)