

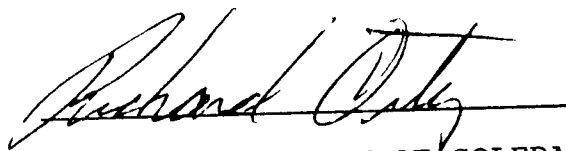
RESOLUTION NO. 1848

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
 AUTHORIZING THE EXECUTION OF AN AGREEMENT
 FOR SUBDIVISION IMPROVEMENTS BY AND
 BETWEEN THE CITY OF SOLEDAD AND
 ANDALUCIA LIMITED

BE IT RESOLVED by the City Council of the City of Soledad, that the Mayor and the City Clerk are hereby authorized and directed to execute with Andalucia Limited, and agreement for subdivision improvements, in the form of the document hereunto attached, marked Exhibit "A", and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 12th day of April, 1988, by the following vote.

AYES, and in favor thereof, Councilmembers: Campos,
 Ledesma, Untalon, Mayor Pro Tem Slagle, Mayor Ortiz
 NOES, Councilmembers. None
 ABSENT, Councilmembers: None


 MAYOR OF THE CITY OF SOLEDAD

ATTEST:


 CITY CLERK OF THE CITY OF SOLEDAD

AGREEMENT

(SUBDIVISION IMPROVEMENTS)

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called CITY, and ANDALUCIA LIMITED, a limited partnership, hereinafter referred to as SUBDIVIDER.

RECITALS:

A. SUBDIVIDER has filed with the City Clerk of CITY, for presentation to the City Council for its approval, a final subdivision map entitled "Tract No. 1075, Andaluca Subdivision," which includes Phase 2 and Phase 3 of the total development known as Andaluca Subdivision.

B. SUBDIVIDER has requested approval of said map prior to the construction and completion of improvements, including streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision shown on said map, all in accordance with the Plans and Specifications for said improvements which heretofore have been filed with the City Clerk and which have been approved by the City Engineer.

C. Before the City Council of CITY can approve said final map and accept the dedications therein offered, it is necessary that SUBDIVIDER first enter into and execute this agreement with CITY.

"A"

AGREEMENT:

Therefore, for and in consideration of the approval of said subdivision map and of the acceptance of the dedications therein and herein offered, and pursuant to the requirements of the Subdivision Map Act of the State of California and the subdivision ordinance of the City of Soledad (Title 16 of the Municipal Code), the parties agree as follows:

1. Performance of Work. SUBDIVIDER will do and perform, or cause to be done and performed, at SUBDIVIDER's own expense, in a good and workmanlike manner, and will furnish all required materials, all under the direction and to the satisfaction of the City Engineer, all of the following work and improvements within and without the subdivision:

(a) Street improvements, as per plans and specifications approved by the City Engineer;

(b) Water, gas, sewer, drainage, electrical, telephone and cable TV utilities;

(c) Landscaping as per plans and specifications and this agreement; and

(d) All other work specified in this agreement.

SUBDIVIDER shall also do all work and furnish all materials necessary in the opinion of the City Engineer, and on his order, to complete the improvements in accordance with said plans and specifications, or with any changes required or ordered by the City Engineer which in his opinion are necessary or required to complete the work.

2. Work to Conform to Engineer's Requirements. All

of said work shall be done at the places, of the materials, in the manner, and at the grades, shown upon the plans and specifications approved by the City Engineer, and to the satisfaction of the City Engineer. SUBDIVIDER shall obtain and pay for any testing required by the City Engineer, employing a firm or firms approved by the City Engineer.

3. Time of Commencement and Completion of Work.

The time for the commencement of said work shall be April 20, 1988, and all such work shall be completed within three hundred sixty-five (365) days thereafter. At least fifteen (15) calendar days prior to the commencement of work hereunder, SUBDIVIDER shall notify the City Engineer in writing of the date fixed by SUBDIVIDER for commencement thereof, so that the City Engineer may provide inspection services.

4. Time of the Essence; Extension. Time is of the essence of this agreement; provided, that in the event good cause is shown therefor, the City Council of CITY may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the SUBDIVIDER's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension.

5. Repairs and Replacements. SUBDIVIDER shall

replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and SUBDIVIDER shall replace, or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repair of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

6. Utility Deposits; Statement. SUBDIVIDER shall file with the City Clerk, prior to the commencement of any work to be performed within the area delineated on the Map, a written statement signed by SUBDIVIDER, and each public utility corporation involved, to the effect that SUBDIVIDER has made all deposits legally required by such public utility corporation for the connection of any and all public utilities to be supplied by such public utility corporation within the subdivision.

7. Permits; Compliance with Law. SUBDIVIDER shall, at SUBDIVIDER's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices, and pay all fees and taxes required by law,

including sewer impact fees as provided in Chapter 14.04 of the Municipal Code.

8. Superintendence by SUBDIVIDER. SUBDIVIDER shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, present at the work site at all times during construction, with authority to act for SUBDIVIDER.

9. Inspection by CITY. SUBDIVIDER shall at all times maintain proper facilities, and provide safe access for inspection by CITY personnel to all parts of the work and to the shops wherein the work is in preparation.

10. Site Maintenance; Deposits. At all times during the construction period, SUBDIVIDER shall: (a) take all reasonable measures to control dust originating on the project site; (b) take all necessary action to control erosion on the site so that eroded soil or silt will not be carried by storm water onto adjacent lands or into the municipal storm sewer system; and (3) otherwise maintain the site so as not to cause any nuisance, disturbance, or damage to other persons, or to the property of other persons, within or without the subdivision. Upon the execution of this agreement, SUBDIVIDER shall pay to CITY the sum of \$5,000.00 as a deposit to insure compliance with this requirement. If at any time the City Engineer, in his sole judgment, finds that such measures have not been taken, or that measures taken are incomplete or inadequate, he shall so notify SUBDIVIDER, either verbally or

in writing, and SUBDIVIDER shall forthwith take corrective action as directed by the City Engineer. Upon the failure of SUBDIVIDER to take, and thereafter diligently pursue, such corrective action as specified in said notice, CITY may have the necessary work performed at SUBDIVIDER's expense and may utilize the funds deposited hereunder by SUBDIVIDER for that purpose; all of the deposited funds not so utilized by CITY shall be refunded to SUBDIVIDER upon the completion of the improvements required by this agreement, and the acceptance of the same by CITY. Should the deposited funds be insufficient for the aforesaid purpose, SUBDIVIDER agrees to pay to CITY the amount of any such deficiency, on demand.

11. Excavation Permit. SUBDIVIDER shall obtain an excavation permit from the City Engineer before the commencement of any excavation in, on, or under the surface of any existing public street, lane, alley, sidewalk, or other public place. SUBDIVIDER further agrees to notify the City Engineer at least five (5) days in advance of the exact date and time when the proposed excavation is to commence.

12. Street Lighting. SUBDIVIDER agrees that it will, at its own expense, install street lighting facilities, including but not limited to electroliers and luminaires, in accordance with all laws, codes, rules and regulations of governmental authorities applicable to such work. Said facilities shall be dedicated to CITY immediately upon installation. Said installation shall include underground wiring

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circuits and electrical service equipment.

13. CATV Cable. SUBDIVIDER shall provide for the installation of an underground television cable within the subdivision in accordance with applicable requirements of CITY's CATV ordinance and the franchise issued pursuant thereto.

14. Curb Marking of Utilities. SUBDIVIDER shall cause the location of water and sewer laterals serving each parcel within the subdivision to be marked with an identifying letter (e.g., "S" for sewer), said letter to be impressed on the concrete curb face above the exact location of the line to which it refers.

15. Landscaping; Trees. Street trees shall be installed as part of the street improvements called for by this agreement in accordance with a landscape plan prepared by SUBDIVIDER and approved by CITY. Upon the execution of this agreement SUBDIVIDER shall pay to CITY a sum equal to \$150.00 for each street tree shown on the approved landscape plan, and thereupon shall be relieved of all further obligation for the planting or maintenance of said trees within the subdivision. In consideration of said payment by SUBDIVIDER, CITY agrees to purchase and plant said trees in accordance with the approved landscape plan, and thereafter to maintain the same in good condition at CITY expense.

16. Road Easement for Municipal Use. SUBDIVIDER shall execute and deliver to CITY, in recordable form

satisfactory to the City Attorney of CITY, a deed conveying to CITY, free and clear of all liens and encumbrances, a road easement and right of way over and across a strip of land, twenty feet wide, extending from Granada Street to Cordoba Street and located adjacent to, and immediately north of, the northerly line of Lots 63 and 84 in said subdivision, to be used by CITY for fire protection and other municipal purposes. Said easement and right of way shall be improved by SUB-DIVIDER, at its own expense, with a roadway, twenty feet wide, consisting of not less than four inches of base rock (Class 2 aggregate base), with a double chip-seal surface. SUBDIVIDER hereby agrees to keep and maintain said roadway in good condition and repair at all times, at its own expense. When and if the Andalucia Subdivision is extended to the land situated north of said easement and right of way, and a final map therefor is recorded, and street improvements therein have been completed and accepted, CITY will quitclaim to SUB-DIVIDER, or to the person then entitled thereto, all of its right, title and interest in said easement and right of way.

17. Grading of Granada Street; Protection of Existing Water Main. SUBDIVIDER is aware that the existing water main installed within Granada Street is at too shallow a depth, leaving a clearance between the top of the main and the finished street grade less than the thirty-six inches specified as a condition of the approval of the tentative map of said subdivision. In consideration of being relieved of the

necessity of relocating said water main at a lower depth prior to the installation of street improvements, SUBDIVIDER affirms that it is willing to assume all risk involved in not relocating the same and therefore agrees as follows:

(a) That it will use extreme caution in the excavation of said street so as to avoid damage to the water main, or appurtenances thereto;

(b) That SUBDIVIDER shall be solely responsible for any damage to said main, or to the appurtenances thereto, resulting from the installation of said street improvements and shall, at its own expense, repair any damage occurring to said waterline, or appurtenances thereto, within 24 hours after being notified of such damage; that in the event such damage is not repaired within said 24 hours' period, SUBDIVIDER will pay to CITY as liquidated damages the sum of \$500.00 per day until said repairs have been completed and the water main has been restored to full service.

(c) That the acceptance by CITY of the subdivision improvements as a whole, including said water main, shall not constitute a waiver or relinquishment of any of SUBDIVIDER's obligations under this Paragraph 17, notwithstanding anything to the contrary contained elsewhere in this agreement.

(d) That SUBDIVIDER hereby agrees to indemnify

and hold harmless CITY, its officers, employees, agents, and representatives, from and against all liability to third persons for personal injury or property damage, arising out of the breakage of said water main, or appurtenances thereto, resulting from the installation of said street improvements.

18. Fencing. SUBDIVIDER shall, at its own expense, install a six-foot tall redwood fence along the easterly and southerly boundaries of the subdivision, bordering the rear lot lines of Lots 47 to 62, inclusive, in accordance with plans and specifications to be prepared by SUBDIVIDER and approved by the City Engineer and by the Architectural Review Committee of CITY. All internal fences in the subdivision shall conform to said boundary fence as to design and materials.

19. Grading Plan. SUBDIVIDER shall prepare and submit to the City Engineer for approval a detailed grading plan for the subdivision, showing how each of the lots within the subdivision will be cut and filled to drain storm waters to street drains. All grading of lots shall be done in accordance with said approved plan. Any slope with a vertical height of two feet or more shall be planted with erosion-resistant ground cover, of a variety approved by the City Engineer and the Architectural Review Committee of CITY.

20. Project Drainage Study. SUBDIVIDER shall prepare and submit to the City Engineer for approval a

drainage study to show how storm waters originating within the subdivision, and from locations outside of the subdivision, particularly Bryant Canyon, will be collected and disposed of within the subdivision.

21. Fire Hydrants. SUBDIVIDER shall, at its own expense, install fire hydrants throughout the subdivision at locations approved by the City Engineer, not more than 300 feet apart.

22. Street Lighting. SUBDIVIDER shall, at its own expense, install street lighting facilities, including but not limited to electroliers and luminaires, underground wiring circuits, and electrical service equipment, all in accordance with plans and specifications to be prepared by SUBDIVIDER and approved by the City Engineer in accordance with all applicable codes, rules and regulations applicable to said work.

23. Street and Traffic Control Signs. SUBDIVIDER shall, at its own expense, install street signs at all street intersections within the subdivision, which shall conform to CITY requirements. SUBDIVIDER shall also, at its own expense, install traffic control signs within the subdivision as designated by the City Engineer and the Chief of Police, which shall conform to the requirements of CITY and of the State Vehicle Code.

24. Contract Security. Concurrently with the execution of this agreement SUBDIVIDER shall furnish to CITY:

(a) A surety bond in an amount equal to at

least one hundred percent (100%) of the estimated cost of construction of all improvements to be installed pursuant to this agreement, as determined by the City Engineer, as security for the faithful performance of SUBDIVIDER's obligations under this agreement.

(b) A surety bond in an amount equal to at least fifty percent (50%) of the estimated cost of construction of all improvements to be installed pursuant to this agreement, as determined by the City Engineer, as security for the payment of all persons performing labor and furnishing materials in connection with the construction of said improvements.

The surety bonds furnished under the provisions of this paragraph shall be in the form prescribed by Sections 66499.1 and 66499.2, respectively, of the Government Code. With the approval of the City Attorney, an alternate form of security as prescribed by Section 66499 of the Government Code may be substituted for one or more of the surety bonds required under the foregoing provisions of this paragraph. The decision of the City Attorney as to the acceptability of alternate security, or as to the acceptability of the form of any alternate security offered by SUBDIVIDER, shall be final and binding on SUBDIVIDER. The term "surety", as used in this Agreement, includes the issuer of any such alternate form of security.

25. Hold-Harmless Agreement. SUBDIVIDER hereby agrees to, and shall, hold CITY, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from SUBDIVIDER's or from SUBDIVIDER's contractors', subcontractors', agents', or employees' operations under this agreement, whether such operations be by SUBDIVIDER or by any of SUBDIVIDER's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, SUBDIVIDER or any of SUBDIVIDER's contractors or subcontractors. SUBDIVIDER agrees to, and shall, defend CITY and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

(a) That CITY 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 CITY, or the deposit with CITY by SUBDIVIDER, of any of the insurance policies described in paragraph 26 hereof.

(b) That 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 afore-
said operations referred to in this paragraph,
regardless of whether or not CITY has prepared,
supplied or approved of, plans and/or specifications
for the subdivision, or regardless of whether or not
such insurance policies shall have been determined
to be applicable to any of such damages or claims
for damages.

26. Subdivider's Insurance. SUBDIVIDER shall not
commence work under this agreement until SUBDIVIDER shall have
obtained all insurance required under this paragraph and such
insurance shall have been approved by the City Attorney as to
form, amount and carrier, nor shall SUBDIVIDER allow any
contractor or subcontractor to commence work on his contract
or subcontract until all similar insurance required of the
contractor or subcontractor shall have been so obtained and
approved. All requirements herein provided shall appear
either in the body of the insurance policies or as endorse-
ments and shall specifically bind the insurance carrier.

(a) Compensation Insurance. SUBDIVIDER shall
maintain during the life of this agreement Worker's
Compensation Insurance for all SUBDIVIDER's employ-
ees employed at the site of improvement, and in case
any work is sublet, SUBDIVIDER shall require any
contractor or subcontractor similarly to provide
Worker's Compensation Insurance for all contractor's

or subcontractor's employees unless such employees are covered by the protection afforded by SUB-DIVIDER. In case any class of employees is engaged in work under this agreement at the site of the project is not protected under any Worker's Compensation Law, SUBDIVIDER shall provide, and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. SUBDIVIDER hereby indemnifies CITY for any damage resulting to it from failure of either SUBDIVIDER or any contractor or subcontractor to take out or maintain such insurance.

(b) Public Liability and Property Damage Insurance. SUBDIVIDER shall take out and maintain during the life of this agreement such public liability and property damage insurance as shall insure CITY, its elective and appointive boards, commissions, 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, and the amounts of such insurance shall be as follows:

(1) Public Liability Insurance. In an amount not less than One Million Dollars (\$1,000,000.00) for injuries, including but not limited to, death, to any one person and, subject to the same limit for each person, in an amount not less than Three Million Dollars (\$3,000,000.00) on account of any one occurrence.

(2) Property Damage Insurance. In an amount of not less than Fifty Thousand Dollars (\$50,000.00) for damage to the property of any one person and, subject to the same limit for each person, in an amount not less than One Hundred Thousand Dollars (\$100,000.00) on account of one occurrence.

(c) Contractual Liability Insurance. SUBDIVIDER shall take out and maintain during the life of this agreement an insurance policy in the amount of at least Three Hundred Thousand Dollars (\$300,000.00), insuring CITY, its elective and appointive boards, commissions, officers, agents and employees, SUBDIVIDER and any contractor or

subcontractor performing work covered by this agreement against damages sustained by reason of any action or actions at law or in equity, and/or any claims or demands by reason of any breach or alleged breach of contract, or provision thereof, or by reason of any contractual liability or alleged contractual liability on any contract, entered into by SUBDIVIDER and/or any of SUBDIVIDER's contractors, subcontractors, agents and/or employees.

In the event that any of the aforesaid insurance policies provided for in this paragraph 26 insures any entity, person, board, or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy CITY, its elective and appointive boards, commissions, officers, agents and employees, SUBDIVIDER and any contractor or subcontractor performing work covered by this agreement.

27. Evidence of Insurance. Concurrently with the execution of this agreement SUBDIVIDER shall furnish CITY with satisfactory evidence of the insurance required, and evidence that each carrier is required to give CITY at least ten (10) days' prior notice of the cancellation or reduction in coverage of any policy during the effective period of this agreement.

28. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by SUBDIVIDER shall

vest absolutely in CITY, upon completion and acceptance of such improvements by CITY.

29. Repair or Reconstruction of Defective Work.

If, within a period of one year after final acceptance of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by SUBDIVIDER, or any of the work done under this agreement, fails to fulfill any of the requirements of this agreement or the specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair or replace or reconstruct any defective part or parts of the work or structure. Should SUBDIVIDER fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before SUBDIVIDER can be notified, CITY may, at its option, make the necessary repairs or replacements or perform the necessary work and SUBDIVIDER shall pay to CITY the actual cost of such repairs plus fifteen percent (15%).

30. SUBDIVIDER Not Agent of CITY. Neither SUBDIVIDER nor any of SUBDIVIDER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of SUBDIVIDER's obligations under this agreement.

31. Deposit for Engineering, Legal and Administrative Costs. Upon the execution of this agreement SUBDIVIDER

shall deposit with CITY:

(a) The sum of Twenty-five Thousand Dollars (\$25,000.00) to cover the cost of all engineering, inspection, legal and administrative expenses incurred or to be incurred by CITY in connection with said subdivision improvements. Any portion of said deposit in excess of the actual amount of said expenses will be returned to SUBDIVIDER by CITY when all of SUBDIVIDER's obligations under this agreement have been fully performed. If at any time it appears to the City Manager of CITY that the amount so deposited will not be sufficient to cover said expenses, SUBDIVIDER shall, within ten (10) days after written request from CITY, make an additional deposit of funds in an amount determined by the City Manager to be sufficient to make up the deficiency; should SUBDIVIDER fail to do so, it shall be the responsibility of SUBDIVIDER's surety to make such additional deposit.

(b) The further sum of \$14,584.40, in payment of the costs already incurred by CITY for engineering, legal and administrative services in connection with Phases 2 and 3 of the Andalucia Subdivision, which have not been reimbursed by SUBDIVIDER, and for costs heretofore incurred by CITY for the replacement, care and maintenance of street trees

within Phase 1 of said subdivision, which sum constitutes a debt now due, owing and payable by SUBDIVIDER to CITY.

32. Maintenance of Improvements. All areas within the subdivision which CITY accepts for dedication, except as hereinabove in this agreement otherwise specifically provided, shall be maintained by CITY at CITY expense.

33. Notice of Breach and Default. If SUBDIVIDER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the SUBDIVIDER should be adjudged a bankrupt, or SUBDIVIDER should make a general assignment for the benefit of SUBDIVIDER's creditors, or if a receiver should be appointed in the event of SUBDIVIDER's insolvency, or if SUBDIVIDER, or any of SUBDIVIDER's contractors, subcontractors, agents or employees, should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon SUBDIVIDER and SUBDIVIDER's surety of the breach of this agreement, or of any portion thereof, and default of SUBDIVIDER.

34. Breach of Agreement; Performance by Surety or CITY. In the event of any such notice, SUBDIVIDER's surety shall have the duty to take over and complete the work and the improvements herein specified; provided, however, that if the

surety, within five (5) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contractor or any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, 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 therefor.

35. Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid. Notices to CITY shall be addressed as follows:

City of Soledad
 City Hall
 P. O. Box 156
 Soledad, California 93960

The address for notices to be sent to SUBDIVIDER hereunder shall be as shown below SUBDIVIDER's signature to this agreement. Notices to any surety furnishing a surety bond or other form of security under the provisions of paragraph 21 above shall be addressed to the surety, or the agent or

representative of the surety, as shown on the surety bond or other form of security provided to CITY; but if no such address is shown, then such notice may be addressed and mailed to the surety in care of the SUBDIVIDER. Any party hereto or the surety may change such address by notice in writing to the other party to this agreement and thereafter notices shall be addressed and transmitted to the new address.

36. Successors and Assigns. This agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have executed this agreement this 21st day of April, 1988.

CITY:

CITY OF SOLEDAD, a municipal corporation,

By Richard City
Mayor

ATTEST:

[Signature]
City Clerk

SUBDIVIDER:

ANDALUCIA LIMITED, a limited partnership,

By [Signature]
Partner

Address:

11 Box 643
Del Norte, CA 95953

**CALIFORNIA
FIRST BANK**



HEAD OFFICE, 350 CALIFORNIA STREET
P.O. BOX 7104 SAN FRANCISCO CALIFORNIA 94120 7104
(415) 445-0200

April 1, 1988

City of Soledad
P.O. Box 156
647 Front Street
Soledad, CA 93960

Re: Andalucia Subdivision

Gentlemen:

Pursuant to the terms of a Construction Loan Agreement, California First Bank ("Bank") has agreed to provide a construction ("Loan") in the amount of \$2,814,000 to Andalucia, Ltd. which includes the sum of \$750,000, ("Designated Fund") for the costs related to the installation of offsite improvements ("the improvements") as more fully described in the Agreement (Subdivision Improvements) hereinafter referred to as the "Contract" for the Andalucia subdivision ("the project")

Bank does hereby advise you that the Designated Fund shall be set aside from the Loan proceeds solely for use on the improvements, pursuant to the "Contract". These Designated Funds will be paid upon Andalucia's authorization solely for the purposes of satisfying Andalucia's obligations under said Contract.

In the event that Andalucia fails to pay or meet its obligations under Contract, all remaining undisbursed Designated Funds, upon written demand by the City of Soledad shall be immediately payable to City for use in completing payment for the improvements. In such event, Andalucia waives any claim or interest in such remaining funds and agrees funds so paid shall be deemed a disbursement of Loan proceeds repayable by Andalucia in accordance with the Construction Loan Agreement. City shall not be obligated to repay said funds so disbursed to Bank or Andalucia; however, upon completion, payment and acceptance of the improvements satisfactory to City, Bank shall be entitled to receive any remaining amounts of the Designated Fund.

Bank shall be discharged from all further obligations under this letter upon full disbursement of the Designated Fund in accordance with the terms set forth herein or upon payment of the remaining Designated Fund to City as provided above.

**CALIFORNIA
FIRST BANK**



HEAD OFFICE, 350 CALIFORNIA STREET
P.O. BOX 7104 SAN FRANCISCO CALIFORNIA 94120 7104
(415) 445-0200

City of Soledad
April 1, 1988
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This is an irrevocable allocation of the Designated Fund and is not subject to recall or offset by Bank.

Sincerely,

CALIFORNIA FIRST BANK

Barbara B. Goodale
Barbara B. Goodale
Assistant Vice President

ANDALUCIA, LTD.

By: *Walter Aguirre*

CITY OF SOLEDAD

By: *George A. [Signature]*