

SUBDIVISION AGREEMENT
(Right of Way Landscaping)
(Government Code §66462 and §66463)

Subdivision: RA 04-1168 (X-Ref. SD ~~8006~~
SD 8856)

Effective Date: May 12, 2009

Subdivider: Shapell Homes, a Division of Shapell of
Industries, Inc., a Delaware Corp.

Completion Period: **2 years**

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY

SUBDIVIDER: (Name and Title)

Julia R. Bueren, Public Works Director

By: _____

(signature) Ken Cox
(print name & title) Ken Cox - Asst. Secty.

RECOMMENDED FOR APPROVAL:

By: [Signature]
Engineering Services Division

(signature) [Signature]
(print name & title) Robert D. Moore - Asst. V.P.

FORM APPROVED: Victor J. Westman, County Counsel

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313.)

- PARTIES & DATE. Effective on the above date, the County of Contra Costa, California, hereinafter called "County," and the above-mentioned Subdivider, mutually promise and agree as follows concerning this subdivision:
- IMPROVEMENTS. Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping, and such other improvements (including appurtenant equipment) as required in the improvement plans for this subdivision as reviewed and on file with the Contra Costa County Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

Subdivider shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof as required by the California Subdivision Map act (Government Code §§66410 and following), in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

- IMPROVEMENT SECURITY. Upon executing this Agreement, the Subdivider shall, pursuant to Government Code §66499, and the County Ordinance Code, provide as security to the County:

- A. For Performance and Guarantee: \$2,200.00 cash, plus additional security, in the amount of \$215,400.00 which together total one hundred percent (100%) of the estimated cost of the work. Such additional security is presented in the form of:
- _____ Cash, certified check or cashiers check.
 - X Acceptable corporate surety bond.
 - _____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

- B. For Payment: Security in the amount of \$108,800.00, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:
- _____ Cash, certified check, or cashier's check
 - X Acceptable corporate surety bond.
 - _____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

- Upon acceptance of the work as complete by the Board of Supervisors and upon request of the Subdivider, the amount securities may be reduced in accordance with §94-4.406 and §94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Subdivider guarantees that said work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one-year from and after the Board of Supervisors accepts the work as complete in accordance with Article 96-4.6, "Acceptance", of the Ordinance Code. Subdivider agrees to correct, repair, or replace, at his expense, any defects in said work.

The guarantee period does not apply to road improvements for private roads which are not to be accepted into the County road system.

5. PLANT ESTABLISHMENT WORK. Subdivider agrees to perform establishment work for landscaping installed under this agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control and other work determined by the Public Works Department to be necessary to insure establishment of plants. Said plant establishment work shall be performed for a period of one-year from and after the Board of Supervisors accepts the work as complete. At the discretion of the County, bids may be released after final acceptance of landscaping improvements by the County.

6. IMPROVEMENT PLAN WARRANTY. Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the Board of Supervisors accepts the work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the work as promised.

7. NO WAIVER BY COUNTY. Inspection of the work and/or materials, or approval of work and/or materials or statement by any officer, agent or employee of the County indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments, therefor, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this agreement as prescribed; nor shall the County be thereby be stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY: Subdivider shall hold harmless and indemnify the indemnitees from the liabilities as defined in this section:

A. The indemnities benefited and protected by this promise are the County, and its special district, elective and appointive boards, commissions, officers, agents, and employees.

B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the County reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s), or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor, or any officer, agent, or employee of one or more of them;

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any Indemnitee has prepared, supplied, or approved any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnity.

9. COSTS: Subdivider shall pay when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS. Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the County Road Commissioner-Surveyor before acceptance of any work as complete by the Board of Supervisors.

11. NON-PERFORMANCE AND COSTS: If Subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the County may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the County (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the subdivision property by the County and its forces, including contractors, in the event the County proceeds to complete and/or maintain the work.

Once action is taken by County to complete or maintain the work, Subdivider agrees to pay all costs incurred by the County, even if Subdivider subsequently completes the work.

Should County sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by County in connection therewith, even if Subdivider subsequently proceeds to complete the work.

12. INCORPORATION/ANNEXATION. If, before the Board of Supervisors accepts the work as complete, the subdivision is included in territory incorporated as a city or is annexed to an existing city, the County's rights under this agreement and/or any deposit, bond, or letter of credit securing said rights shall be transferred to the new or annexing city. Such city shall have all the rights of a third party beneficiary against Subdivider, who shall fulfill all the terms of this agreement as though Subdivider had contracted with the city originally.

13. RECORD MAP. In consideration hereof, County shall allow Subdivider to file and record the Final Map or Parcel Map for said Subdivision.

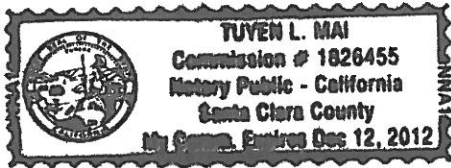
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

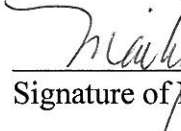
County of Santa Clara

On **April 16, 2009**, before me, **Tuyen L. Mai**, Notary Public personally appeared **Robert D. Moore and Ken Cox** who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

Optional Information

Title or Type of Document: **Subdivision Agreement (Subdivision: RA 04-1168(X-Ref. SD 8306)**

Capacity Claimed by Signer: **Assistant Vice President and Assistant Secretary of Shapell Industries, Inc.**

STAMPED
LUCAS J. WAI
Commission # 188408
Notary Public - California
Santa Clara County
My Comm. Expires Dec 15, 2018

