

Recording Requested By:

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of

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9/12/2006
8:15:50

When recorded mail to:

MONTEREY COUNTY PUBLIC WORKS DEPARTMENT

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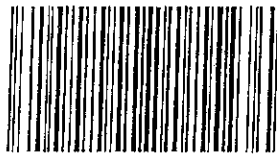
SALINAS, CA 93901

ATTN: BRYCE HORI

Chicago Title

DOCUMENT: 2006079967

Titles: 1/ Pages: 23



Fees.... 74.00

Taxes...

Other...

AMT PAID \$74.00

Title of Document:

SUBDIVISION IMPROVEMENT AGREEMENT

Attachment

(With Deed of Trust Exhibit Added)

MONTEREY COUNTY
SUBDIVISION IMPROVEMENT AGREEMENT
FOR TEHAMA PHASE IV

THIS TEHAMA PHASE IV IMPROVEMENT AGREEMENT ("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 Canada Woods, LLC, a Delaware limited liability company, hereinafter "Canada Woods, LLC".

RECITALS

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

Final Map: Tehama Phase IV ("Tehama Phase IV")

Tentative Map Resolution of Approval No. ("Tentative Map" or "Resolution of Approval"): Board of Supervisors Resolution No. 95-384.

Title of Improvement Plans: Tehama Phase IV Improvement Plans

Name of Surety or Financial or Other Institution Providing Security Instrument (hereafter referred to as "Surety"), **Address, and Contact Person:** Kaufman, Bernstein, Oberman, Tivoli & Miller, LLC, Attn: Roy D. Kaufman.

Estimated Cost of Improvements:

Streets - Public/Private:	\$108,000.00
Storm Drain:	\$ 10,500.00
Sewer:	\$ -0-
Water:	\$ -0-
Landscaping:	\$ -0-
Other Infrastructure: Earthwork	\$ 8,800.00
Estimated Total Cost of Improvements	\$127,300.00
10% Contingency	\$ 12,730.00
Faithful Performance Bond (100% of Est. Total Cost):	\$127,300.00
Form of Security, if other than bond:	Deed of trust
Reference information (e.g., Bond Number): No.	-0-

Labor & Materials Bond (50% of Est. Total Cost):	\$ 63,750.00
Form of Security, if other than bond: ()	Deed of Trust
Reference information (e.g., Bond Number):	N/A
Warranty Security (20% of Est. Total Cost)	\$ 25,500.00
Estimated Total Cost of Monumentation	\$ 5,000.00
Monumentation Bond No.:	Deed of Trust

A. Canada Woods, LLC has presented to COUNTY for approval and recordation a final map of a 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 Tehama Phase IV 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 Tehama Phase IV by the COUNTY Board of Supervisors, Canada Woods, LLC desires to enter into this Agreement, whereby Canada Woods, LLC promises to install and complete, at Canada Woods, LLC's own expense, all the improvement work required by COUNTY (hereinafter "Improvements") in connection with the proposed subdivision. Canada Woods, LLC has secured this Agreement by improvement security required by the Subdivision Laws and approved by the County Counsel.

D. Complete Improvement Plans for the construction, installation and completion of the Improvements have been prepared by Canada Woods, LLC 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 Tehama Phase IV be installed.

NOW, THEREFORE, in consideration of the approval and recordation by the COUNTY of the final map of Tehama Phase IV, and the mutual covenants and agreements contained herein, Canada Woods, LLC and COUNTY agree as follows:

1. **Canada Woods, LLC's Obligations to Construct Improvements.** Canada Woods, LLC shall:
 - a. Comply with all the requirements of the Conditions of Approval of the tentative map for Tehama Phase IV.
 - b. Construct and install at Canada Woods, LLC's own expense all the Improvements in conformance with the Improvement Plans and applicable COUNTY and State standards.
 - 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 180 days from the COUNTY'S approval of said final map and complete said work within ONE (1) 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 Canada Woods, LLC'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 Canada Woods, LLC, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the COUNTY Engineer may require Canada Woods, LLC 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, 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. Canada Woods, LLC'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 Canada Woods, LLC and COUNTY. Canada Woods, LLC shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the Tehama Phase IV.

f. **Erosion Control.** Canada Woods, LLC 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 Canada Woods, LLC to prevent erosion, COUNTY may do the work on an emergency basis and back-charge the Canada Woods, LLC for the actual expenses incurred, and, if necessary, after providing notice to Canada Woods, LLC, proceed against the Faithful Performance Security to cover COUNTY'S expenses.

2. **Underground Utilities.** The following new utilities provided for in Tehama Phase IV 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 Canada Woods, LLC 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.**

Canada Woods, LLC 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 Tehama Phase IV 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, Canada Woods, LLC shall seed and/or plant all cut and fill areas of Tehama Phase IV 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. Canada Woods, LLC 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.

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 Canada Woods, LLC's expense. If necessary, topsoil and commercial fertilizer shall be used by the Canada Woods, LLC to promote the desired effect. The planted areas and streets shall be kept by Canada Woods, LLC 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 Canada Woods, LLC.

Should the Canada Woods, LLC request the release of the security described in this Agreement, prior to the end of the maintenance period, Canada Woods, LLC shall deliver to County a landscape and maintenance bond (or cash in lieu thereof) in the amount of (50% of Landscape Bond) \$0.00. 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 County Counsel and shall be conditioned upon the performance of this Agreement.

The parties agree that upon expiration of the one-year maintenance period, the Canada Woods, LLC or Canada Woods, LLC's successor shall assume maintenance of the planted areas within Tehama Phase IV 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 Canada Woods, LLC, 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. Canada Woods, LLC 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 Canada Woods, LLC.

6. **Security.** Canada Woods, LLC shall at all times guarantee Canada Woods, LLC's performance of this Agreement by furnishing to COUNTY good and sufficient security acceptable to the County and in conformity with 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; and
- d. Canada Woods, LLC shall also furnish to COUNTY good and sufficient security acceptable to County in the amount of 100% of the estimated cost of setting Tehama Phase IV monuments; 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.
- f. Performance by Canada Woods, LLC of this Agreement shall be by Deed of Trust to the County of Monterey in the form of a Deed of Trust attached hereto as Exhibit "A" and incorporated herein by reference ("Deed of Trust"), to be recorded concurrently with the recordation of the final map for Tehama Phase IV. The Deed of Trust shall constitute security for Tehama Phase IV improvements for Tehama Phase IV pursuant to Government Code Section 66499(a)(5). The Deed of Trust shall guarantee faithful performance of all work required under this Agreement in compliance with all of the applicable provisions of Title 19 of the County Code and shall secure payment to the contractor, his subcontractors, and the persons renting equipment or furnishing labor, materials, or equipment to them for the Improvements required under this Agreement. From the time of recordation of the Deed of Trust, a lien shall attach to the real property described in Exhibit 1 to said Deed 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.

7. **Inspection.** Canada Woods, LLC 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. Canada Woods, LLC shall at all times maintain proper facilities and safe access for periodic inspection of the Improvements by COUNTY. Upon completion of the work, the Canada Woods, LLC's Engineer shall file original sealed "as-built" plans with COUNTY Engineer and shall submit a sealed letter to COUNTY Engineer

certifying that Canada Woods, LLC'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. Canada Woods, LLC 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.** Canada Woods, LLC shall replace or have replaced, or repair or have repaired, as the case may be, all Improvements, public utilities facilities and surveying or Tehama Phase IV monuments which are destroyed or damaged as a result of any work under this Agreement. Canada Woods, LLC 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.** Canada Woods, LLC shall, at Canada Woods, LLC'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 Canada Woods, LLC.**

- a. Default of Canada Woods, LLC shall include, but not be limited to, Canada Woods, LLC's failure to timely commence or complete construction of the Improvements; Canada Woods, LLC's failure to timely cure any defect in the Improvements; or Canada Woods, LLC's failure to perform any other obligation under this Agreement.

- b. Default of Canada Woods, LLC shall also include Canada Woods, LLC's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Canada Woods, LLC fails to discharge within thirty (30) days; or the commencement of a foreclosure action against the Tehama Phase IV Subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure. Notwithstanding the foregoing, the COUNTY may find Canada Woods, LLC is not in default under this subsection if COUNTY finds that Canada Woods, LLC, 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 Canada Woods, LLC'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 Canada Woods, LLC. 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 Canada Woods, LLC's default under this Agreement, Canada Woods, LLC authorizes COUNTY to perform such obligation twenty (20) days after mailing written notice of default to Canada Woods, LLC and to Canada Woods, LLC's Surety, and Canada Woods, LLC 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 Canada Woods, LLC, and Canada Woods, LLC'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 Canada Woods, LLC as may be on the site of the work and necessary for performance of the work.

- f. In the event that Canada Woods, LLC fails to perform any obligation under this Agreement, Canada Woods, LLC 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 Canada Woods, LLC.
- h. Canada Woods, LLC recognizes that by approval of the final map for Tehama Phase IV, COUNTY has conferred substantial rights upon Canada Woods, LLC, including the right to sell, lease, or finance lots within the Tehama Phase IV Subdivision, and has taken the final act necessary for Canada Woods, LLC to subdivide the property within the Tehama Phase IV Subdivision. As a result, Canada Woods, LLC recognizes that COUNTY will be damaged by Canada Woods, LLC'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 Canada Woods, LLC.

12. **Warranty.** Canada Woods, LLC 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 SUDVIDER fails to fulfill any of the requirements of this Agreement or conform to the Improvement Plans and specifications referred to herein, Canada Woods, LLC 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 Canada Woods, LLC fail to act promptly or in accordance with this requirement, Canada Woods, LLC hereby authorizes COUNTY, at COUNTY's option, to perform the work twenty (20) days after mailing written notice of default to Canada Woods, LLC and to Canada Woods, LLC's Surety, and Canada Woods, LLC agrees to pay the cost of such work by COUNTY. Should COUNTY determine that an emergency requires repairs or replacements to be made before Canada Woods, LLC can be notified, COUNTY may, in its sole discretion, make the necessary repairs or replacements to the Improvements or perform the necessary work, and Canada Woods, LLC shall pay to COUNTY the cost of such

emergency repairs, not to exceed the maximum amount of the warranty security under this Agreement.

13. **Canada Woods, LLC Not Agent of COUNTY.** Neither Canada Woods, LLC nor any of Canada Woods, LLC's agents or contractors are or shall be considered to be agents of COUNTY in connection with the performance of Canada Woods, LLC's obligations under this Agreement.

14. **Injury to Work.** Until such time as the Improvements are accepted or approved by COUNTY, Canada Woods, LLC 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, Canada Woods, LLC 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 Canada Woods, LLC.

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 therefor, nor shall anything in this Agreement commit COUNTY to any such apportionment. 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.

16. **Canada Woods, LLC's Obligation to Comply with Good Construction Practices.** Until final acceptance of the Improvements, Canada Woods, LLC 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 Canada Woods, LLC, its agents or employees in the

performance of this Agreement. Canada Woods, LLC 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 Canada Woods, LLC, 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 Tehama Phase IV, 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 Tehama Phase IV 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 Canada Woods, LLC 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, Canada Woods, LLC 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 Canada Woods, LLC 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 Canada Woods, LLC's duty to indemnify the COUNTY, Canada Woods, LLC 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 Canada Woods, LLC which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by COUNTY of any deposit with COUNTY by Canada Woods, LLC or any of the insurance policies described in herein. The aforesaid hold harmless agreement by Canada Woods, LLC 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 Tehama Phase IV, or regardless of whether or not such insurance policies have been determined to be applicable to any such damages or claims for damages. Further, Canada Woods, LLC shall not commence work under this Agreement until Canada Woods, LLC 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.** Canada Woods, LLC shall maintain, during the life of this Agreement, workers compensation insurance for all Canada Woods, LLC'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. Canada Woods, LLC 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 Canada Woods, LLC. 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, Canada Woods, LLC shall provide insurance acceptable to County for the protection of employees not otherwise protected. Canada Woods,

LLC hereby indemnifies COUNTY for any damage resulting to it from failure of either Canada Woods, LLC or any contractor or subcontractor to take out or maintain such insurance.

B. Commercial General Liability Insurance. Canada Woods, LLC 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, Canada Woods, LLC 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 Canada Woods, LLC's or any contractor's or subcontractor's operations hereunder, whether such operations be by Canada Woods, LLC or any contractor or subcontractor, or by anyone directly or indirectly employed by either Canada Woods, LLC 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: Canada Woods, LLC 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. 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 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 Canada Woods, LLC's insurance. Prior to or concurrently with the execution of this Agreement, Canada Woods, LLC shall furnish COUNTY with a certificate of insurance, showing that the Canada Woods, LLC 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. Canada Woods, LLC 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 of this Agreement.

21. **Time for Commencement of Work/Time Extensions.** Canada Woods, LLC shall commence substantial construction of the Improvements required by this Agreement within one hundred eighty (180) days of execution of this Agreement. Any extensions shall be in accordance with Title 19 of the Monterey County Code.

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
 Public Works Department
 168 W. Alisal Street, Second Floor
 Salinas CA 93901

SUBDIVIDER: Canada Woods, LLC, a Delaware limited liability company
 Kaufman, Bernstein, Oberman, Tivoli & Miller, LLC
 Attn: Roy D. Kaufman
 2049 Century Park East, Suite 2500
 Los Angeles, CA 90067-3127

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 Tehama Phase IV shall not serve to transfer the obligations of the Canada Woods, LLC under this Agreement. All obligations under this Agreement attach to Canada Woods, LLC until all obligations of Canada Woods, LLC 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.

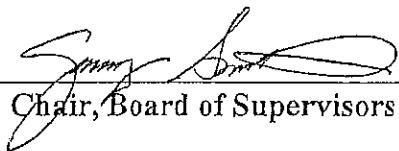
25. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and approved and executed by the appropriate representatives of the parties.

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

SUBDIVIDER:

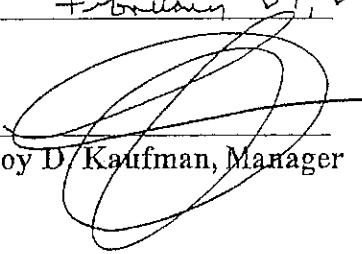
COUNTY OF MONTEREY

By: Canada Woods, LLC,
a Delaware limited liability company

By: 
Chair, Board of Supervisors

Date: February 27, 2006

Date: 8-30-06

By: 
Roy D. Kaufman, Manager

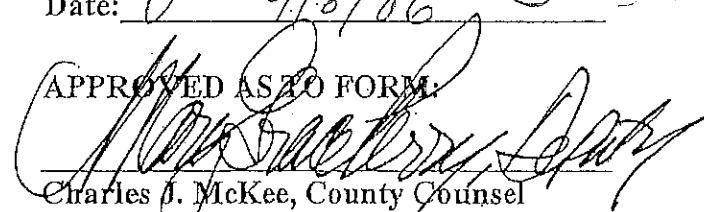
ATTEST:

LEW C. BAUMAN, CLERK OF THE BOARD
COUNTY OF MONTEREY

By: 
Deputy

Date: 9/8/06

APPROVED AS TO FORM:


Charles J. McKee, County Counsel

Date: 7-20-06

STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On February 27, 2006, before me, Heather Leider, Notary Public, personally appeared ROY D. KAUFMAN, personally known to me (~~or 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.

WITNESS my hand and official seal.



Heather Leider
Notary Public in and for said
County and State

EXHIBIT "A"

Recording Requested by
and When Recorded Return to:

MONTEREY COUNTY DEPARTMENT
OF PUBLIC WORKS
168 W. Alisal St., Second Floor
Salinas, CA 93901

SUBORDINATED
DEED OF TRUST

NOTICE: This Deed of Trust contains a subordination clause, which may result in your security interest in the property becoming subject to and of lower priority than the lien of some other or later security instrument, but in no event lower than second position in accordance with paragraph 10 at page A-3 below.

This DEED OF TRUST, is made between Tehama, LLC, a Delaware limited liability company ("Trustor"), Chicago Title Insurance Company ("Trustee"), and the County of Monterey, a political subdivision of the State of California ("Beneficiary").

Trustor hereby irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, that property situated in the County of Monterey, California, described in Exhibit "1" for the purpose of securing the performance of that certain recorded "Subdivision Improvement Agreement for Tehama Phase IV" (herein the "Agreement") executed as of the last date opposite the respective signatures, by Trustor and Beneficiary. The Agreement is hereby incorporated by reference.

To Protect the Security of this Deed of Trust, Trustor Agrees:

1. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
2. To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purpose; appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys fees.

3. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof.

4. That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said Agreement for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

The foregoing notwithstanding, this Deed of Trust is subject to partial releases and reconveyances of the security hereunder pursuant to the terms and conditions of the Agreement. Upon request by Trustor pursuant to the Agreement, Beneficiary shall join with Trustor, and instruct Trustee to so join, to execute and record any documents necessary to cause the releases and reconveyances required under the Agreement.

5. That upon written request of Beneficiary or Beneficiary's designee stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Agreement to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said Agreement and this Deed (unless directed in such request to retain them).

6. That upon default by Trustor in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record, Beneficiary also shall deposit with Trustee this Deed, said Agreement and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale at public auction to the highest bidder for cash in lawful money of the United States,

payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the Office of the Recorder of Monterey County, shall be conclusive proof of estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8. That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrator, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the Agreement secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

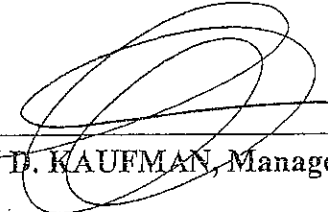
9. That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

10. This Deed of Trust is subject to subordination but in no event lower than second position, and in accordance with the terms and conditions of the Agreement. Upon request by Trustor, Beneficiary may consider joining with Trustor, and instruct Trustee to so join, to execute and record any document necessary to cause the subordination of this Deed of Trust but in no event lower than second position, and in accordance with the Agreement.

The undersigned Trustor requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to them in c/o Derinda L. Messenger at Lombardo & Gilles, P.O. Box 2119, Salinas, California 93902.

TRUSTOR:
CANADA WOODS, LLC,
a Delaware limited liability company

Date: _____

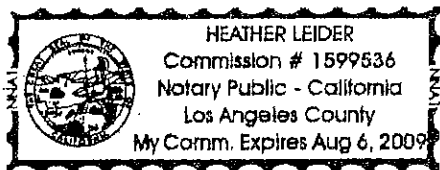
By: 

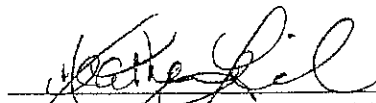
ROY D. KAUFMAN, Manager

STATE OF CALIFORNIA)
)ss.
COUNTY OF Los Angeles)

On February 27, 2006 before me, Heather Leider, Notary Public, personally appeared ROY D. KAUFMAN, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the with instrument and acknowledged to me that he executed the ^{same} in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.





Notary Public in and for said
County and State

Accepted by Beneficiary

COUNTY OF MONTEREY

Dated: _____

By: _____
JERRY SMITH
Chair, Monterey County Board of Supervisors

ATTEST:

Dated: _____

By: _____
LEW C. BAUMAN
Clerk of the Board of Supervisors

EXHIBIT "1"

All that real property described as Lot 45 as shown on the map filed for record on 9-12, 2006 in Volume 23, Cities and Towns, at Page 40, in the Office of the Recorder for the County of Monterey, State of California.

END OF DOCUMENT

Exhibit "1"

This Document was negotiated by the Parties and
Prepared by the law firm of Lombardo & Gilles, PC