

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ANNEXING PROPERTIES TO CITY OF MILPITAS COMMUNITY  
FACILITIES DISTRICT NO. 2005-1**

The City Council of the City of Milpitas DOES RESOLVE as follows:

**WHEREAS**, on May 17, 2005 the City Council created by resolution the City of Milpitas Community Facilities District No. 2005-1 to fund Public Services (the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, California Government Code Section 53311 et seq.; and

**WHEREAS**, a Special Tax shall be levied on all Assessor's Parcels of Residential Property in City of Milpitas Community Facilities District No. 2005-1 (Public Services) ("CFD No. 2005-1"), and collected each Fiscal Year commencing in Fiscal Year 2005-06, in an amount determined by the Council through the application of the appropriate Special Tax, as described in the Attached Exhibit B to this resolution. All of the real property in CFD No. 2005-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner provided.

**WHEREAS**, the City Council provided for the future annexation of certain territory to the District to be included in CFD No. 2005-1; and

**WHEREAS**, the developers of several residential developments and subdivisions (the "Project") as part of each Project's conditions of approval and/or Development Agreements and subsequent agreements with the City, have agreed to annex certain properties to the District pursuant to the formation of the District, as shown on the map labeled Exhibit A attached hereto; and

**WHEREAS**, the City has prepared for recordation an amendment to the notice of special tax lien, which includes the resolution, description, a map and a description of the rate and method of apportionment of the special tax for the District, a copy of which is attached hereto and fully incorporated herein as Exhibit B.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of Milpitas as follows:

**Section 1. Findings and Determinations**

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City set forth below.

**Section 2.     Direction**

A.     The City Council hereby confirms the annexation of Milpitas Town Center Residential Subdivision Tract 9886 (properties), as shown on Exhibit A attached hereto, to City of Milpitas Community Facilities District 2005-1 (Public Services); and

B.     The City Engineer is hereby directed to include Milpitas Town Center Residential Subdivision Tract 9886 (properties) to the assessment set forth in the engineer’s report prepared for the District’s fiscal year 2006-2007 annual assessment. In no event shall the annual per-lot assessment exceed the maximum amount authorized by the Fiscal Year 2006-2007 Engineer’s Report for the District.

**Section 3.     Certification**

The City Clerk shall certify the adoption of this Resolution.

**Section 4.**

This Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

Subdivider: Shapell Industries of Northern California

Project Name: Town Center Residential

File No.: 100.01.223

Private Job Account No.: 3208

Improvement Plan No.: 2-1083

Tract/Parcel Map No.: 9886

Council Approval Date: 8/7/2007

Completion Period: Per Section E.5

## CITY OF MILPITAS

### SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this 7th day of August, 2007, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and Shapell Industries of Northern California, 100 North Milpitas Blvd, Milpitas, CA 95035 (hereafter referred to as "SUBDIVIDER"):

#### R E C I T A L S

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a map filed with the City Council of the CITY, marked and designated Tract No. 9886 (Milpitas Town Center).
- B. Said map shows certain easements which are offered for dedication for public use.
- C. Pursuant to the terms of this agreement, SUBDIVIDER will complete certain improvements associated with the street dedications, including undergrounding existing utilities.
- D. CITY desires that certain utilities on roadways that are adjacent to but not within the map area be undergrounded ("the Additional Work") and believes that some efficiencies would be created if such work is completed in conjunction with the subdivision improvements.
- E. SUBDIVIDER is amenable to completing the Additional Work provided that the City reimburses the developer for such costs.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements listed in the Improvement Plan No. 2-1083, consisting of 27 sheets and specifications approved by said City Council on August 7, 2007, including setting survey monuments and identified by Project/Agency Fund Account No. 3208 (hereby referred to and made a part hereof the same as if set forth at length herein).
2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.
3. SUBDIVIDER agrees that said improvements will be constructed under and subject to the inspection of and to the satisfaction of the City Engineer.

4. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
5. All said improvements shall be completed and ready for final inspection by the City Engineer within **24** months of the date of execution of this Agreement or prior to City issuance of Occupancy Permit Final inspection of the last residential building, whichever occurs first. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER.
6. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of **five-hundred and forty thousand dollars** (\$540,000.00), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder.
7. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.
8. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of **five-hundred thousand dollars** (\$540,000.00), inuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.
9. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
10. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
11. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1000,000 for each person and \$1,000,000 for each occurrence and \$1000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY, its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this

paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.

12. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:
- a) In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

  - b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.
13. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.
14. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/Private Job Account No. 3208 for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement:

a) Plan-check and Inspection (Partial Deposit) (10% of Construction Costs Estimate)	(PJ3204-13-2500)	<u>\$54,000.00</u>
b) Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c) Other <u>Traffic Impact Fee</u>	(100-3718)	<u>N/A</u>
	<b>Sub-total</b>	<b><u>\$54,000</u></b>

B. Fees to be paid at the time of building permit issuance:

a) Water Connection Fee (65-units @ \$1,910.00 per unit)	(402-3715)	<u>\$124,150.00</u>
b) Potable Water Meter Fee (To be determined )	(400-3662)	<u>TBD</u>
c) Recycled Water Meter Fee	(406-3622)	<u>N/A</u>
d) Sanitary Sewer Connection Fee	(452-3715)	<u>\$124,020.00</u>

	(65-units @ \$1,908.00 per unit)		
e)	Sewer Treatment Plant Fee	(452-3714)	<u>\$57,200.00</u>
	(65 units @ \$880 per unit)		
f)	Sewer Bypass Benefit Fund	(HA1320-2500)	<u>N/A</u>
g)	Storm Drain Connection Fee	(340-3711)	<u>\$80,670.00</u>
h)	Parksite Fee		
	1. Park Dedication In-Lieu Fee	(320-3712)	<u>\$772,850.00</u>
	2. PUD Park Fee	(320-3712)	<u>N/A</u>
		<b>Sub-total</b>	<b>\$1,158,890.00</b>
		<b>Total</b>	<b>\$1,212,890.00</b>

15. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.
16. Upon completion of the work, and before City Council final acceptance thereof, SUBDIVIDER shall be billed for and pay the outstanding balance of the project's private job account or shall be refunded the difference between the amount of City costs and expenses in each instance and the amount of said remittance.
17. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY, SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
18. City will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
19. SUBDIVIDER hereby irrevocably offers to convey title of the water and sanitary sewer mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation of law.
20. SUBDIVIDER agrees to comply with all requirements set forth on **Exhibit "A"** (attached hereto, hereby referred to and made a part hereof).
21. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision.
22. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy,

restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.

23. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
24. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
25. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

\*Signed and Sealed this \_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF MILPITAS

By: \_\_\_\_\_  
City Manager

\*\* Attach proper acknowledgment.

**Shapell Industries of Northern California**  
Subdivider

\_\_\_\_\_  
Subdivider's Capacity

APPROVED AS TO FORM THIS

\_\_\_\_ day of \_\_\_\_\_, 2007

\*\*By: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Typed Name and Capacity/Title

APPROVED AS TO SUFFICIENCY THIS

\_\_\_\_ day of \_\_\_\_\_, 2007

\*\*By: \_\_\_\_\_

By: \_\_\_\_\_  
City Engineer

\_\_\_\_\_  
Typed Name and Capacity/Title

\* Date should be same as date on Page 1 of 6.

\*\* It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

**EXHIBIT "A"**

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the connection fees prior to Building Permit issuance.
2. The Subdivider agrees to pay to the City an in-lieu Park Fee of \$772,850.00, at the time of building permit issuance.
3. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.
4. The Subdivider agrees to execute a petition to annex and establish, with respect to the property, the Special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services, upon execution of this Agreement.
5. The Subdivider agrees to comply with the special conditions and notes of approval for this Subdivision.

Principal: \_\_\_\_\_  
Project Name: Town Center Residential

Project No. 3208  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: Public Improvement for Town Center Residential as on shown on Improvement Plans 2-1083.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of five-hundred forty thousand dollars (\$540,000.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, its heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2007.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_  
\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2007. )

THIS JURAT MUST BE COMPLETED  
) BY A NOTARY IF THE VERIFICATION  
) IS EXECUTED OUTSIDE OF CALIFORNIA  
)  
)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:

\_\_\_\_\_

Principal: \_\_\_\_\_  
Project Name: Town Center Residential

Project No. 3208  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: Public Improvement for Paragon Condominiums as on shown on Improvement Plans 2-1065.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of five-hundred forty thousand dollars (\$540,000.00), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2007.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2007. )

THIS JURAT MUST BE COMPLETED  
) BY A NOTARY IF THE VERIFICATION  
) IS EXECUTED OUTSIDE OF CALIFORNIA  
)  
)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:  
\_\_\_\_\_

Principal: \_\_\_\_\_  
Project Name: Town Center Residential

Project No. 3208  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
SURVEY MONUMENTATION BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to install and complete certain designated public improvements, including setting of survey monuments by an engineer or surveyor prior to a certain date.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force an effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Milpitas, California, and that Engineer or Surveyor, who set said survey monuments in the penal sum of ten thousand dollars (\$10,000.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2007.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2007. )

THIS JURAT MUST BE COMPLETED  
BY A NOTARY IF THE VERIFICATION  
IS EXECUTED OUTSIDE OF CALIFORNIA

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:  
\_\_\_\_\_

Subdivider: Shapell Industries of Northern California

Project No. 3208

Project Name: Town Center Residential

**CITY OF MILPITAS**

**CERTIFICATE RELATING TO WORKER'S COMPENSATION  
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

(Subdivision)

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of the following):

\_\_\_\_\_ Any general contractor engaged by me for said work will have in full force and effect Worker's Compensation Insurance pursuant to the attached certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

\_\_\_\_\_ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on \_\_\_\_\_  
at \_\_\_\_\_.  
(Date) (City)

By: \_\_\_\_\_

\_\_\_\_\_  
Official Title

On behalf of: \_\_\_\_\_  
Contractor

**NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND  
MUST MEET THE REQUIREMENTS SET FORTH ABOVE.**

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS, 888 NORTH FIRST STREET, SAN JOSE, CALIFORNIA, TELEPHONE: 277-1265.

Subdivider: Shapell Industries of Northern California

Project No. 3208

Project Name: Town Center Residential

**CITY OF MILPITAS**  
**CERTIFICATE OF WORKER'S COMPENSATION INSURANCE**

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number \_\_\_\_\_) to \_\_\_\_\_ in connection with the above project, title and subdivider. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
INSURANCE COMPANY

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Signature)

Address: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Type Name)

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007. \*\*

\_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type Name)

Subdivider: Shapell Industries of Northern California

Project No. 3208

Project Name: Town Center Residential

**CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE**

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number \_\_\_\_\_ to \_\_\_\_\_ in connection with a work of improvement generally described as Street and underground improvement on \_\_\_\_\_. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person ) \$1,000,000 each occurrence )
(2) Property Damage			)* \$1,000,000 each occurrence ) \$1,000,000 aggregate )

**This policy provides:** (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

\_\_\_\_\_  
Insurance Company  
\_\_\_\_\_  
Authorized Signature (Sign)  
\_\_\_\_\_  
Authorized Signature (Type)

Address of Signatory:  
\_\_\_\_\_  
\_\_\_\_\_

If project involves less than \$50,000, City will accept \$300,000/\$50,000

**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.  
Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007. \*\*

\_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a  
Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type Name)

\*\* If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: \_\_\_\_\_, 2007, by \_\_\_\_\_



**OWNERS' STATEMENT**

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

- 1. EASEMENTS FOR PUBLIC SERVICE UTILITY EASEMENT PURPOSES (PSUE). [A], [B], [C], [D], [E], [F], [G], [H], [K], [L], [M], [N], [P], [R], [S], [T], [W], AND [Y].
- 2. EASEMENTS FOR EMERGENCY VEHICLE ACCESS EASEMENT PURPOSES (EAE). [A], [C], [G], [K], [L], [P], [R], AND [W].

THE ABOVE MENTIONED EASEMENTS (PSUE, AND EAE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

AND WE HEREBY RETAIN FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS AND TENANTS, WITH MAINTENANCE BY THE HOMEOWNERS ASSOCIATION AS STATED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS, THE FOLLOWING:

- 1. PARCEL "D" FOR PRIVATE STREETS "SHAUGHNESSY DRIVE", "COURT A", "COURT B", "COURT C", "COURT D", "COURT E", "COURT F", "COURT G", AND "BELSHAW DRIVE". SAID PRIVATE STREETS WILL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION OF MILPITAS TOWN CENTER, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.
- 2. PARCELS "A" AND "B" FOR RECREATION AND PRIVATE OPEN SPACE PURPOSES (POS). SAID LOTS SHALL REMAIN FREE FROM HABITABLE STRUCTURES AND SHALL NOT BE USED FOR FUTURE DEVELOPMENT.
- 3. EASEMENTS FOR PRIVATE STORM DRAINAGE PURPOSES (PSDE). FOR THE CONSTRUCTION, REPAIR, AND MAINTENANCE OF PRIVATE DRAINAGE FACILITIES BY THE HOMEOWNERS ASSOCIATION OF MILPITAS TOWN CENTER, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS. [A], [C], [G], [K], [L], [P], [R], AND [W].
- 4. EASEMENTS FOR PRIVATE SANITARY SEWER PURPOSES (PSSE). FOR THE CONSTRUCTION, REPAIR, AND MAINTENANCE OF PRIVATE SEWER FACILITIES BY THE HOMEOWNERS ASSOCIATION OF MILPITAS TOWN CENTER, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS. [A], [C], [G], [K], [L], [P], [R], AND [W].
- 5. EASEMENTS FOR PRIVATE INGRESS AND EGRESS PURPOSES (PIE). SAID EASEMENTS ARE FOR PEDESTRIAN ACCESS ONLY. [A], [C], [G], [K], [L], [P], [R], AND [W].

AND WE HEREBY RETAIN FOR THE BENEFIT OF PARCEL 1 OF BOOK 813 OF MAPS, AT PAGES 21-26, EASEMENTS FOR PEDESTRIAN ACCESS EASEMENT PURPOSES (PAE). [J].

THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

OWNER: SHAPELL INDUSTRIES, INC., A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, INC., A CALIFORNIA CORPORATION.

BY: \_\_\_\_\_ BY: \_\_\_\_\_
NAME: \_\_\_\_\_ NAME: \_\_\_\_\_
ITS: \_\_\_\_\_ ITS: \_\_\_\_\_

**OWNER ACKNOWLEDGMENT:**

STATE OF CALIFORNIA } ss.
COUNTY OF \_\_\_\_\_

ON \_\_\_\_\_, 2007, BEFORE ME, \_\_\_\_\_,

PERSONALLY APPEARED \_\_\_\_\_

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/HEY 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.

NOTARY'S SIGNATURE: \_\_\_\_\_
NAME OF NOTARY (PLEASE PRINT): \_\_\_\_\_
PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_
MY COMMISSION NUMBER: \_\_\_\_\_
MY COMMISSION EXPIRES: \_\_\_\_\_

**OWNER ACKNOWLEDGMENT:**

STATE OF CALIFORNIA } ss.
COUNTY OF \_\_\_\_\_

ON \_\_\_\_\_, 2007, BEFORE ME, \_\_\_\_\_,

PERSONALLY APPEARED \_\_\_\_\_

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/HEY 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.

NOTARY'S SIGNATURE: \_\_\_\_\_
NAME OF NOTARY (PLEASE PRINT): \_\_\_\_\_
PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_
MY COMMISSION NUMBER: \_\_\_\_\_
MY COMMISSION EXPIRES: \_\_\_\_\_

**SOILS REPORT**

A SOIL AND GEOTECHNICAL REPORT FOR TRACT 9886, MILPITAS TOWN CENTER RESIDENTIAL AREA, HAS BEEN PREPARED BY ENGEO INC., PROJECT NO. 5953.201.01, DATED SEPTEMBER 27, 2006, AND IS ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF MILPITAS.

**ENGINEER'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AT THE REQUEST OF SHAPELL INDUSTRIES, INC., A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, INC., A CALIFORNIA CORPORATION, IN MAY 2006 AND JUNE 2007. I HEREBY STATE THAT THIS FINAL MAP COMPLES WITH THE FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP CONFORMS TO THE APPROVED TENTATIVE MAP, AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE JULY 2008, THAT SAID MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP IS TECHNICALLY CORRECT.

I FURTHER STATE THAT THE GROSS AREA WITHIN "TRACT 9886, MILPITAS TOWN CENTER" CONTAINS 4.81 ACRES, MORE OR LESS.

PETER P. ROSENBERG, RUC# NO. 25281 DATE: \_\_\_\_\_
REGISTRATION EXPIRES: 12-31-2007

**CITY ENGINEER'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE HERIN MAP; THAT THE SUBDIVISION AS SHOWN HEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_
GREG ARVENDARIZ
CITY ENGINEER, CITY OF MILPITAS
R.C.E. NO. 40283
EXPIRES: 12-31-2008

**CITY SURVEYOR'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE HERIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_
MICHAEL K. COOPER
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 28072
EXPIRES: 3-31-2009

**CITY CLERK'S CERTIFICATE**

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL OF THE CITY OF MILPITAS, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON \_\_\_\_\_, 20\_\_\_\_, HAS TAKEN THE FOLLOWING ACTIONS:

- 1. APPROVED THIS FINAL MAP, "TRACT 9886, MILPITAS TOWN CENTER".
- 2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
a.) EASEMENTS FOR PUBLIC SERVICE UTILITY EASEMENT PURPOSES (PSUE). [A], [B], [C], [D], [E], [F], [G], [H], [K], [L], [M], [N], [P], [R], [S], [T], [W], AND [Y].
b.) EASEMENTS FOR EMERGENCY VEHICLE ACCESS EASEMENT PURPOSES (EAE). [A], [C], [G], [K], [L], [P], [R], AND [W].
- 3. PURSUANT TO SECTION 66499.20 1/2 OF THE SUBDIVISION MAP ACT, THE FILING OF THIS MAP SHALL CONSTITUTE ABANDONMENT OF THE FOLLOWING:
c.) THAT PORTION OF THE 10' WIDE EASEMENT FOR A WATER MAIN, BEING DESCRIBED AS PARCEL 3, IN THE DEED TO THE CITY OF MILPITAS RECORDED FEBRUARY 27, 1984 IN BOOK 1333, PAGE 681, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CONTAINED WITHIN THE SUBDIVISION SHOWN HEREON.

DATED: \_\_\_\_\_ MARY LAVELLE
CITY CLERK, CITY OF MILPITAS

**RECORDER'S STATEMENT**

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OF MAPS, AT PAGES \_\_\_\_\_, SERIES NUMBERS \_\_\_\_\_, AT THE REQUEST OF FIRST AMERICAN TITLE.

FEE: \_\_\_\_\_
REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY: \_\_\_\_\_ DEPUTY

**TRACT 9886 MILPITAS TOWN CENTER**

FOR TOWN HOME PURPOSES
CITY OF MILPITAS
SANTA CLARA COUNTY, CALIFORNIA
A SUBDIVISION OF PARCELS 1-9 SHOWN ON THAT CERTAIN PARCEL MAP FILED APRIL 19, 2007, IN BOOK 813 OF MAPS, AT PAGES 21 THRU 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared by:
ROGGERI-JENSEN-AZAR & ASSOCIATES
8005 Camino Arroyo, Gilroy, CA 95020
JUNE 2007

## EXHIBIT B

### CITY OF MILPITAS

#### COMMUNITY FACILITIES DISTRICT NO. 2005-1 (PUBLIC SERVICES)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels of Residential Property in City of Milpitas Community Facilities District No. 2005-1 (Public Services) ("CFD No. 2005-1"), and collected each Fiscal Year commencing in Fiscal Year 2005-06, in an amount determined by the Council through the application of the appropriate Special Tax, as described below. All of the real property in CFD No. 2005-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"**Act**" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"**Administrative Expenses**" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2005-1: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2005-1 or any designee thereof of complying with City, CFD No. 2005-1 or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2005-1 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2005-1 for any other administrative purposes of CFD No. 2005-1, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"**Affordable Housing**" means any Dwelling Units located on Residential Property that are subject to deed restrictions, resale restrictions and/or regulatory agreements recorded on the property that provide housing for persons that meet the Low, Very Low, and/or Extremely Very Low income levels pursuant to, as applicable, California Health & Safety Code Sections 50093, 50079.5, 50105, or 50106. The Fiscal Year after the January 1 following the termination of the agreement containing covenants or similar instrument, a Dwelling Unit shall no longer be considered Affordable Housing.

"**Assessor's Parcel**" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"**Assessor's Parcel Map**" means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

"**Certificate of Occupancy**" means a certificate issued by the City that authorizes the actual occupancy of a Dwelling Unit for habitation by one or more residents.

"**CFD Administrator**" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"**CFD No. 2005-1**" means City of Milpitas Community Facilities District No. 2005-1 (Public Services).

"**City**" means the City of Milpitas.

"**Consumer Price Index**" means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area, measured as of the month of February in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco-Oakland-San Jose Area.

"**Council**" means the City Council of the City, acting as the legislative body of CFD No. 2005-1.

"**County**" means the County of Santa Clara.

"**County Median Income**" means the current median income for the County of Santa Clara as determined by the U.S. Department of Housing and Urban Development.

"**Developed Property**" means, for each Fiscal Year, all Assessor's Parcels of Residential and Non-Residential Property for which a Certificate of Occupancy, or equivalent certificate, was issued before February 1 of the prior Fiscal Year, but not earlier than February 1, 2005.

"**Dwelling Unit**" means a building or portion thereof designed for and occupied in whole or part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

"**Extremely Low-Income Affordable Housing**" means Affordable Housing suitable for households with incomes at or below 30% of the County Median Income.

**"Fiscal Year"** means the period starting July 1 and ending on the following June 30.

**"Land Use Class"** means the land use class into which an Assessor's Parcel of Residential Property has been assigned.

**"Low-Income Affordable Housing"** means Affordable Housing suitable for households with incomes at or below 80% of the County Median Income.

**"Maximum Special Tax"** means, for each Fiscal Year, the maximum Special Tax, determined in accordance with Section C, below, that can be levied on any Assessor's Parcel of Residential Property.

**"Market-Priced Residential Property"** means Residential Property not classified as Affordable Housing.

**"Non-Residential Property"** means, for each Fiscal Year, any Assessor's Parcel of Developed Property which is not a Residential Property.

**"Property Owner Association Property"** means, for each Fiscal Year, any Assessor's Parcel within the boundaries of CFD No. 2005-1 that is owned by or irrevocably offered for dedication to a property owner association, including any master or sub-association.

**"Proportionately"** means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Residential Property.

**"Public Property"** means, for each Fiscal Year, (i) any property within the boundaries of CFD No. 2005-1 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided however that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (ii) any property within the boundaries of CFD No. 2005-1 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

**"Residential Property"** means, for each Fiscal Year, any Assessor's Parcel of Developed Property for which a Certificate of Occupancy has been issued for purposes of allowing residents to inhabit one or more residential Dwelling Units.

**"Services"** means services that CFD No. 2005-1 is authorized to fund. CFD No. 2005-1 shall finance Services only to the extent that they are in addition to those provided in the territory of CFD No. 2005-1 before CFD No. 2005-1 was created and such Services may not supplant services already available within CFD No. 2005-1 when CFD No. 2005-1 was created.

**"Special Tax"** means the special tax to be levied in each Fiscal Year on each Assessor's Parcel of Residential Property to fund the Special Tax Requirement.

**"Special Tax Requirement"** means that amount to be collected in any Fiscal Year for CFD No. 2005-1 to pay for certain costs as required to meet the needs of CFD No. 2005-1 in that Fiscal Year. The costs to be covered shall be the costs of (i) Services, and (ii) Administrative Expenses; less (iii) a credit for funds available to reduce the annual Special Tax levy, if any, as determined by the CFD Administrator.

**"State"** means the State of California.

**"Undeveloped Property"** means, for each Fiscal Year, all property not classified as Residential Property, Non-Residential Property, Public Property, or Property Owner Association Property.

**"Very Low-Income Affordable Housing"** means Affordable Housing suitable for households with incomes at or below 50% of the County Median Income.

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, all Assessor's Parcels, as applicable within CFD No. 2005-1, shall be classified as Residential Property, Non-Residential Property, Undeveloped Property, Public Property, or Property Owner Association Property. However, only Residential Property shall be subject to annual Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. Residential Property shall be assigned to Land Use Classes 1-4, as listed in Table 1, below.

**C. MAXIMUM SPECIAL TAX RATE**

**1. Developed Property**

**a. Maximum Special Tax**

The Maximum Special Taxes for Fiscal Year 2005-06 for Residential Property are shown below in Table 1, based on the Land Use Class in which such Residential Property has been assigned. Under no circumstances shall a Special Tax be levied on Non-Residential Property, or for renovations to an existing Dwelling Unit located on Residential Property.

**TABLE 1**

**Maximum Special Taxes for Developed Property  
For Fiscal Year 2005-06  
Community Facilities District No. 2005-1**

<b>Land Use Class</b>	<b>Land Use Type</b>	<b>Maximum Special Tax Per Dwelling Unit</b>
1	Market-Priced Residential Property	\$310.61 per Dwelling Unit
2	Low- Income Affordable Housing	\$248.48 per Dwelling Unit
3	Very Low-Income Affordable Housing	\$155.30 per Dwelling Unit
4	Extremely Low-Income Affordable Housing	\$0.00 per Dwelling Unit

b. **Increase in the Maximum Special Tax**

On each July 1, commencing on July 1, 2006, the Maximum Special Taxes set forth above shall be increased annually by the greater of the change in the San Francisco-Oakland-San Jose Area Urban Consumer Price Index during the twelve months prior to February of the previous Fiscal Year, or two percent (2%).

2. **Undeveloped Property, Non-Residential Property, Public Property or Property Owner Association Property**

No Special Taxes shall be levied on Undeveloped Property, Non-Residential Property, Property Owner Association Property, Public Property or Residential Property assigned to Land Use Class 4.

D. **METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2005-06 and for each following Fiscal Year, the Council or its designee shall levy the annual Special Tax Proportionately for each Assessor's Parcel of Residential Property at up to 100% of the applicable Maximum Special Tax, until the amount of Special Taxes equals the Special Tax Requirement.

**E. EXEMPTIONS**

No Special Tax shall be levied on Undeveloped Property, Non-Residential Property, Public Property, Property Owner Association Property or Residential Property assigned to Land Use Class 4. However, should an Assessor's Parcel no longer be classified as Non-Residential Property, Public Property, Property Owner Association Property, or Residential Property assigned to Land Use Class 4, such Assessor's Parcel, if reclassified as Residential Property assigned to Land Use Classes 1, 2 or 3, shall be subject to the Special Tax. Furthermore, an Assessor's Parcel of Residential Property assigned to Land Use Classes 1, 2 or 3, if reclassified as belonging to a different Land Use Class, shall be subject to the Special Tax associated with its new Land Use Class.

Furthermore, no Special Tax shall be levied on the portion of Santa Clara County Assessor's Parcel Number 086-050-09 encompassed by the metes and bounds listed on Attachment 1.

**F. APPEALS AND INTERPRETATIONS**

Any landowner or resident may file a written appeal of the Special Tax on his/her property with the CFD Administrator, provided that the appellant is current in his/her payments of Special Taxes. During the pendency of an appeal, all Special Taxes previously levied must be paid on or before the payment date established when the levy was made. The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination. If the CFD Administrator agrees with the appellant, the CFD Administrator shall eliminate or reduce the Special Tax on the appellant's property and/or provide a refund to the appellant. If the CFD Administrator disagrees with the appellant and the appellant is dissatisfied with the determination, the appellant then has 30 days in which to appeal to the Council by filing a written notice of appeal with the City Clerk, provided that the appellant is current in his/her payments of Special Taxes. The second appeal must specify the reasons for the appellant's disagreement with the CFD Administrator's determination. The decision by the Council shall be final. The CFD Administrator may charge the appellant a reasonable fee for processing the appeal.

Interpretations may be made by the Council by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

**G. MANNER OF COLLECTION**

The annual Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 2005-1 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. In particular, the Special Tax for Affordable Housing may be collected off of the tax roll, to facilitate payment of the Special Tax by a party other than the property owner.

**H. TERM OF SPECIAL TAX**

The Special Tax shall be levied in perpetuity as necessary to meet the Special Tax Requirement.

**ATTACHMENT 1  
LEGAL DESCRIPTION**

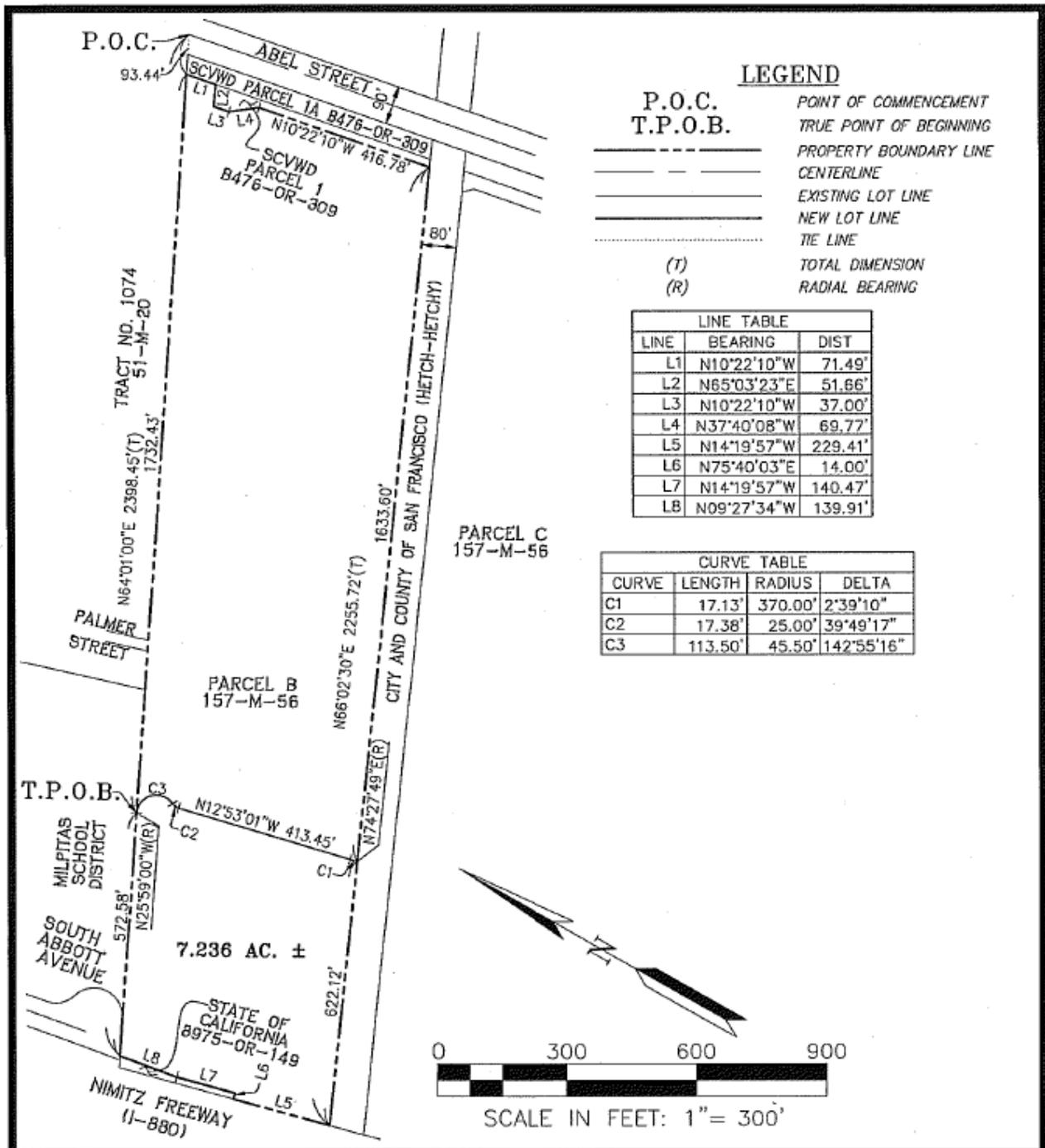
All that real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

A portion of "Parcel B", as said Parcel is shown on that certain Record of Survey Map filed March 7, 1963, for record in Book 157 of Maps, at Page 56, Santa Clara County Records, being more particularly described as follows:

**Commencing** at the point of intersection of the centerline of Abel Street, 90.00 feet wide, as shown on said Map, with the prolongation of the northerly line of "Parcel B", as shown on said Map; thence running along said northerly line and the prolongation thereof

- a.) S64°01'00"W, a distance of 1,825.87 feet to the **TRUE POINT OF BEGINNING**; said point also being the beginning of a curve to the right, from which the radius point bears S25°59'00"E, a radial distance of 45.50 feet; thence leaving said northerly line
- 1.) Easterly and Southerly along said curve to the right, through a central angle of 142°55'16", a distance of 113.50 feet; to the beginning of a reverse curve to the left having a radius of 25.00 feet; thence
- 2.) Southerly along said curve, through a central angle of 39°49'17", a distance of 17.38 feet; thence
- 3.) S12°53'01"E, a distance of 413.45 feet to the beginning of a curve to the left having a radius of 370.00 feet; thence
- 4.) Southeasterly along said curve, through a central angle of 2°39'10", a distance of 17.13 feet to the southerly line of said "Parcel B", thence along said southerly line
- 5.) S66°02'30"W, a distance of 622.12 feet to the westerly line of said "Parcel B", said line also being the easterly line of State Highway "Interstate 880"; thence leaving said southerly line and running along said westerly and easterly line
- 6.) N14°19'57"W, a distance of 229.41 feet to the southerly line of the Lands of the State of California as described in the deed recorded July 3, 1970 in Book 8975, Page 149, Official Records of Santa Clara County, California; thence running along said southerly line
- 7.) N75°40'03"E, a distance of 14.00 feet to the easterly line of said Lands of the State of California; thence leaving said southerly line and running along said easterly line
- 8.) N14°19'57"W, a distance of 140.47 feet; thence continuing along said easterly line
- 9.) N09°27'34"W, a distance of 139.91 feet to the northerly line of said "Parcel B"; thence leaving said easterly line and running along said northerly line
- 10.) N64°01'00"E, a distance of 572.58 feet to the **TRUE POINT OF BEGINNING**.

Containing 315,187.25 square feet or 7.2357 acres, more or less.



ATTACHMENT 1  
PLAT TO ACCOMPANY  
LEGAL DESCRIPTION  
A PORTION OF PARCEL B  
BOOK 157 OF MAPS, PAGE 56  
RECORDS OF SANTA CLARA COUNTY, CALIFORNIA  
CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

PAGE 2 OF 2

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SCALE: 1" = 300'	DATE: 3-14-2005	JOB NO.: 032011
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