



County of Santa Cruz

DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060
 (831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

THOMAS L. BOLICH
 DIRECTOR OF PUBLIC WORKS

AGENDA: MARCH 27, 2001

March 16, 2001

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
 701 Ocean Street
 Santa Cruz, California 95060

SUBJECT: TRACT 1348, HARBOR VISTA

Members of the Board:

On October 25, 2000, the Santa Cruz County Planning Commission approved an amendment to the Tract 1348 conditions of approval that allows lot grading to be undertaken as part of the subdivision improvements. Public Works has reviewed and approved the necessary revisions to the subdivision improvement plans.

The County and the subdivider must sign a new subdivision agreement (copy attached) that encompasses and secures both the original work of improvement and the additional grading work. The subdivider submitted additional securities on March 16, 2001, (copies attached) to cover the additional work of grading. These securities will supplement the original securities that remain in place.

It is therefore recommended that the Board of Supervisors take the following action:

1. Authorize the Director of Public Works to sign the subdivision agreement between Harbor Vista Partnership and the County of Santa Cruz.

2. Direct the Clerk of the Board to file the new recorded subdivision agreement submitted by Harbor Vista Partnership, return a copy to Harbor Vista Partnership, and furnish a copy to Public Works.

Yours truly,



THOMAS L. BOLICH
Director of Public Works

GG:mg

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works Department
 Planning Department

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SUBDIVISION AGREEMENT
(Partial Release Tract)

THIS AGREEMENT, by and between HARBOR VISTA PARTNERSHIP, hereinafter referred to as SUBDIVIDER, and the COUNTY OF SANTA CRUZ, hereinafter referred to as COUNTY.

WITNESSETH:

WHEREAS, in connection with the development of that certain subdivision known as Tract 1348, HARBOR VISTA, SUBDIVIDER has previously filed with the Santa Cruz County Planning Director a tentative map of said subdivision, which said tentative map was duly approved; and

WHEREAS, SUBDIVIDER has submitted, for approval and acceptance, a final map of said subdivision; and

WHEREAS, certain work and improvements required by Chapter 14.01 of the Santa Cruz County Code have not been completed, to wit:

Work and improvements required as conditions for approval of the tentative subdivision map for this subdivision, including, but not limited to, site grading, driveway access, drainage, erosion control, including the prevention of sedimentation or damage to off-site property, street construction, sewer construction, and landscaping, all to be built or completed in accordance with improvement plans on file with, and approved by the Director of Public Works of the County of Santa Cruz, the Santa Cruz County Code and the Subdivision Map Act.

WHEREAS, SUBDIVIDER hereby proposes to enter into an agreement with COUNTY, by the terms of which agreement SUBDIVIDER agrees to have the work and improvements set forth above completed on or before two years from the date of execution of this agreement, pursuant to Sections 14.01.5 10, et seq. of the Santa Cruz County Code.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. CONSTRUCTION OF IMPROVEMENTS: SUBDIVIDER shall do all necessary work and construct the improvements described hereinabove, and complete such work and improvements in accordance with the provisions of the conditions of the tentative map approval, which are incorporated herein by reference. If the approved tentative map is amended, the SUBDIVIDER shall apply for and obtain an amendment to this agreement as necessary. All the improvements described above shall be completed on or before two years from the date of the execution of this agreement pursuant to Sections 14.01.101, et seq. of the Santa Cruz County Code, unless a written extension has been granted by the County.

All required off-site improvements shall be substantially complete to the satisfaction of the County Engineer, **prior** to the granting of occupancy for any new unit.

All off-site work if any, shall be done prior to or concurrently with on-site work, unless otherwise expressly specified by the conditions of the tentative map.

All materials used shall comply with the County's specifications. SUBDIVIDER hereby guarantees that the above mentioned work and improvements shall in all respects meet specifications prescribed by the Director of Public Works of the County of Santa Cruz. SUBDIVIDER guarantees and warrants all work and materials, and further agrees to replace defective work and materials and maintain all of said work and improvements to the satisfaction of COUNTY in accordance with Chapter 14.01 of the Santa Cruz County Code. SUBDIVIDER further agrees that all survey work shall comply with the requirements prescribed by the COUNTY SURVEYOR.

2. EROSION CONTROL: SUBDIVIDER will take all necessary actions during the course of construction to prevent erosion damage to adjacent properties during inclement weather. It is understood and agreed that in the event of failure on the part of SUBDIVIDER to prevent erosion, COUNTY may do the work on an emergency basis and back-charge the SUBDIVIDER for the actual expenses incurred, or, if necessary, proceed against the Faithful Performance Security to cover COUNTY'S expenses.

3. SECURITY. At the time of execution of this agreement, SUBDIVIDER shall furnish to COUNTY the following security in the form of cash deposits, or instrument of credit satisfactory to the County:

- A. Faithful Performance Security in the amount of \$95,500 plus an additional \$33,000 for lot grading and drainage to assure that all work specified in this agreement will be completed; except for that amount retained to provide the Guarantee, Warranty and Maintenance of Work Security, the Faithful Performance Security shall be released upon completion of the work and acceptance of the work to be performed hereunder, in whole or in part; provided that a partial release shall not be in an amount less than 25% of the total security amount and that no more than 50% of the total security amount shall be released prior to final completion and acceptance of the work hereunder. Since partial releases are to be made, a schedule of construction shall be made a part of this agreement. The schedule shall specify the portions of the work to be completed and target completion dates for those portions of work, as well as the amounts of partial release to be made for each portion of work. Failure on the part of SUBDIVIDER to meet a target date shall result in forfeiture of the corresponding partial release. Any partial release thus forfeited may be regained at the next target date if all portions of work due prior to and on that next target date are completed by that next target date. Any extension or modification of the schedule must be granted in writing by the County.

Provisions for partial release may be made at the written request of SUBDIVIDER. SUBDIVIDER shall submit documentation to the County in order to **verify** that the work required to gain a partial release has been completed.

- B. Labor and Material Security in the amount of \$47,750, plus an additional \$16,500 for lot grading and drainage, which said security, by its terms, shall secure payment to materialmen and laborers **furnishing** materials and/or labor in connection with the above-described work or improvement; the Labor & Material Security shall be released 90 days **after** the completion of all the work and provided that no liens have been filed against the project.
- C. Inspection Security in the amount of \$2,500 (**\$1,432.50** minimum in cash)
- D. Tax Security 96-97 Tax Lien \$10,000 (cash or instrument of credit)
- E. Monumentation Security in the amount of \$2,500.

At the time the COUNTY Board of Supervisors accepts the improvements and coincident with the release of the Faithful Performance Security, a sufficient amount of said security shall be retained to provide:

- F. Guarantee, Warranty and Maintenance of Work Security in the amount of \$47,750, which said security, by its terms, shall guarantee and warrant all work for a minimum period of twelve months following the completion and acceptance thereof by the Board against any defective work or labor done, or defective materials furnished and to maintain such work to the satisfaction of the County for said period, all as provided in Section 14.0151 l(b) (3) **of the** Santa Cruz County Code and Section 66499.3(c) of the Government Code. The Guarantee Warranty & Maintenance Security shall be released twelve months **after** the completion of the work and provided that the workmanship is approved.

Securities held by COUNTY on behalf of other agencies shall be included in the categories above. Work of improvements required under this agreement requires the holding of securities by COUNTY on behalf of the following agencies or companies in the following amounts:

- a. Water Purveyor: Santa Cruz City Water Department
Name of Agency
___ Security held by County: \$ _____
X Security is held by agency.

- b. Fire Agency N/A
 Name of Agency
 Security held by County: \$ _____
 Security is held by Agency.

- c. Other (Landscaping) County of Santa Cruz
 Name of Agency
 Security held by County: \$ 5,000
 Security is held by Company(ies)

- d. Other (Future Seventh Avenue roadside improvements)
County of Santa Cruz
 Name(s)
 Security held by County: \$ 3,000
 Security is held by Company(ies)

In all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, COUNTY shall not release the security until the obligation is performed to the satisfaction of such other agency, pursuant to Government Code Section 66499.8.

Deposits to COUNTY for the acquisition of any necessary easements or right-of-way shall be required. Work of improvements required under this agreement involves the acquisition of an easement or easements, or a right-of-way or rights-of-way, over the following parcels of land: APN(s) N/A. These easements or rights-of-way:

- HAVE been acquired. (Describe and attach documentation).
- HAVE NOT been acquired and the following standard condemnation clause is made a part of the agreement. At the time of execution of this agreement, SUBDIVIDER shall furnish to COUNTY a cash deposit in the amount of \$ _____ for processing and acquisition as outlined in the following condemnation clause.

4. FAILURE TO COMPLETE IMPROVEMENTS: In the event SUBDIVIDER has not completed the specified work and improvements within the period of time allowed by this agreement, SUBDIVIDER shall not proceed further with such work and improvements unless and until approval to do so is obtained from the COUNTY. Under normal circumstances, if it is not found to be contrary to the public interest, the COUNTY will allow renewals of this agreement, provided that all applicable requirements are met by SUBDIVIDER. The COUNTY reserves the right, upon each renewal, to increase the security amounts to reflect fluctuations in material and labor prices. It is understood that in the event the SUBDIVIDER fails to complete the work and improvements within the specified period of time that the COUNTY may proceed against the Faithful Performance Security, to obtain completion of such work and improvements, or may initiate proceedings to revert the subdivided property to acreage pursuant to the provisions of Sections 14.01.344 et. seq. of the Santa Cruz County Code.

5. INDEPENDENT CONTRACTOR: SUBDIVIDER agrees that, in making the above-mentioned improvements, SUBDIVIDER is an independent contractor and not an employee of COUNTY, and all persons hired to furnish labor and/or materials in connection with proposed improvements are not employees of COUNTY.

6. INDEMNIFICATION: SUBDIVIDER agrees to defend and hold the COUNTY, its' officers, employees, and agents harmless from any losses or damages occasioned by injuries to persons and/or property arising out of or in any way connected with the above-mentioned work or improvement.

7. FILING OF FINAL SUBDIVISION MAP: COUNTY, for and in consideration of the execution of this agreement and fulfillment by SUBDIVIDER of the terms set forth herein, agrees to accept for filing the final map of Tract No. 1348. Harbor Vista

8. BINDING ON SUCCESSORS AND ASSIGNS: This agreement shall be binding upon the successors and assigns of each of the parties. SUBDIVIDER shall inform potential buyers of parcels of land created by the underlying subdivision of the obligations on successors and assigns created by this paragraph. SUBDIVIDER shall provide copies of this executed agreement to those potential buyers. SUBDIVIDER is advised that the sale of all or part of the lands of the underlying subdivision does not automatically transfer **from** the SUBDIVIDER of the land the security obligations of this agreement. Those security obligations attach to SUBDIVIDER until all obligations of SUBDIVIDER under this agreement are fulfilled or transferred by substitution of a replacement agreement and replacement securities acceptable to the County.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto on _____, 2001.

COUNTY OF SANTA CRUZ

By: _____
Director of Public Works

By: James A. Gilbert
Subdivider

Address:
RPA Santa Cruz
Harbor Vista LLC
177 Webster St. #469
Monterey, Cal. 93940
Phone: 831-372-1499

APPROVED AS TO FORM:

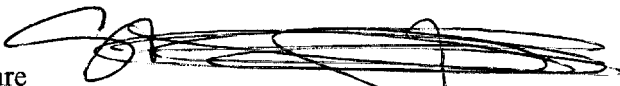
D. Mae 3-16-01
Chief Assistant County Counsel

HARBM

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

} SS.

On **MARCH 7**, 2001 before me, the undersigned a Notary Public, personally appeared **JAMES A. GILBERT** ~~personally known to me~~ (or proven 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/he/~~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.

Signature 
SANDI KISLING
Name (Typed or Printed)
Notary Public in and for said County and State



(Rec'd by DPW
on 3-16-01)

0356

ESCROW AGREEMENT TO SECURE PERFORMANCE OF IMPROVEMENTS

THIS AGREEMENT, made this 9th day of March, 2001, is by and between Santa Cruz Harbor Vista, LLC, (hereinafter called "Applicant") and First National Bank of Central California (hereinafter called "Escrowholder").

I. RECITALS

- 1.1 The County of Santa Cruz ("County") has authorized Applicant to construct and complete a grading and drainage system.
- 1.2 The grading and drainage system is to serve real property located at 145 1 7th Avenue, Santa Cruz, California (Assessor Parcel Nos. 026-62 1-01 through 11 and 026-62 1- 13) (hereinafter called "Project").
- 1.3 Applicant has executed a written Subdivision Agreement for Harbor Vista, Tract 1348 Agreement (hereinafter the Subdivision Agreement) dated March, 2001, to achieve this purpose.
- 1.4 County requires security to guarantee Applicant's responsibility for the completion of the Project including, but not limited to, the faithful performance of all obligations under the Subdivision Agreement and the payment of all labor and materials provided by Applicant, Contractor, all Subcontractors, Laborers and Materialmen as specified in the Subdivision Agreement.
- 1.5 Applicant agrees to pledge and deposit cash in the amount of \$33,000.00 to secure the completion of the Project including, but not limited to, the faithful performance of all obligations under the Subdivision Agreement provided by Applicant, all Subcontractors, Laborers and Materialmen as specified in the Subdivision Agreement.

II. COVENANTS

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties agree as follows:

- 2.1 Escrowholder agrees to hold in escrow the sum of \$33,000.00 for the account of Applicant for the purpose of securing the completion of the Project including, but not limited to, the faithful performance of all obligations under the Subdivision Agreement provided by Applicant, all Subcontractors, Laborers and Materialmen as specified in the Subdivision Agreement.

- 2.2 Except as otherwise provided herein, Escrowholder agrees that the money deposited will not be released to anyone other than County unless and until Escrowholder has received written authorization from the Director of the Public Works of the County of Santa Cruz (“Director”) for the release in whole or in part of said escrow fund. Upon release of said deposit, County shall provide Applicant with an accounting of all funds deposited including any offset or charges against said deposit. County shall not be responsible for the accrual or payment of any interest on said cash deposit. **(County shall not be responsible for the property division or apportionment of said cash deposit upon release of said deposit to Applicant.)**
- 2.3 If each and every obligation of Applicant under the Subdivision Agreement is not fully performed in a manner and within the time set forth in the Subdivision Agreement or the specifications referred to therein, then:
- 2.3.1 The Director or the Director’s designee may notify Escrowholder in writing of the specific breach or default under the Subdivision Agreement;
- 2.3.2 Escrowholder shall give Applicant ten (10) days written notice that the County has declared a breach or default of the Subdivision Agreement; and
- 2.3.3 The entire amount of said escrow funds, or any portion thereof demanded by County shall be paid over to County eleven (11) days after mailing notice of default to Applicant.
- 2.4 Escrowholder shall release the balance of said deposit, less applicable offset and charges, in the joint names of Applicant upon the final written acceptance by County of said work of improvement.
- 2.5 This Agreement is entered into not only for the use and benefit of Applicant and Escrowholder, but for the use and benefit of the County which is a third party beneficiary under this Agreement.
- 2.6 It is further agreed by the parties hereto that in the event it is necessary for either party, or County, to maintain any judicial action to secure performance of any obligations arising under this Agreement or the Subdivision Agreement, the prevailing party shall be entitled to reasonable attorney’s fees, as well as costs of suit.
- 2.7 This Agreement shall be interpreted under the laws of the State of California.
- 2.8 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Applicant may not assign this Agreement, or any part thereof, without the express written consent of County.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first hereinabove written.

APPLICANT:
Santa Cruz Harbor Vista, LLC

By: James A. Gilbert
James A. Gilbert
Managing Member

There have been two new equity partners added to the LLC: Kenneth Blackwell's brother, Tim Blackwell, with 9/12/00 net worth of \$6,826M and Blackwell's brother-in-law, Jeffrey Johnson, with a 12/31/00 net worth of \$10,178. Jeff Johnson had liquid assets in the form of marketable securities of \$4,381M. Johnson and the Blackwells have contributed \$3,500M to the LLC.

ESCROWHOLDER:
First National Bank of Central California

By: Mark P. Hamer
Mark P. Hamer
Its: Vice President

APPROVED:
COUNTY OF SANTA CRUZ

By: _____
Director, Department of Public Works

ESCROW AGREEMENT TO SECURE LABOR & MATERIALS OF IMPROVEMENTS

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- 1.5 Applicant agrees to pledge and deposit cash in the amount of \$16,500.00 to secure the completion of the Project including, but not limited to, the payment of all labor and materials provided by Applicant, all Subcontractors, Laborers and Materialmen as specified in the Subdivision Agreement.

II. COVENANTS

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties agree as follows:

- 2.1 Escrowholder agrees to hold in escrow the sum of \$16,500.00 for the account of Applicant for the purpose of securing the completion of the Project including, but not limited to, the faithful performance of all obligations under the Subdivision Agreement and the payment of all labor and materials provided by Applicant, all Subcontractors, Laborers and Materialmen as specified in the Subdivision Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first hereinabove written.

APPLICANT:
Santa Cruz Harbor Vista, LLC

By: James A. Gilbert
James A. Gilbert
Managing Member

ESCROWHOLDER:
First National Bank of Central California

By: Mark P. Hamer
Mark P. Hamer
Its: Vice President

APPROVED:
COUNTY OF SANTA CRUZ

By: _____
Director, Department of Public Works