

**RESOLUTION NO. 2694**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
ACCEPTING THE SUBDIVISION IMPROVEMENT  
AGREEMENT FOR THE PINNACLES II  
SUBDIVISION, STAGE I, PHASE II,  
SUB PHASES II AND III  
(VISTA SOLEDAD DEVELOPMENT)**

**WHEREAS**, South County Homes II is the subdivider of an 88-lot residential development designated as the Pinnacles II Subdivision, being a portion of Vista Soledad Vesting Tentative Map, Phase II, Stage I; and

**WHEREAS**, the subdivider has recorded a Final Map on December 19, 1997 for the subject subdivision in accordance with the requirements of the Subdivision Map Act, the Soledad Municipal Code and the Conditions of Approval set forth by the Soledad Planning Commission; and

**WHEREAS**, the Pinnacles II subdivision is divided into 5 sub phases for development of the 88 residential parcels and Subdivision Improvement Plans have been prepared for the entire subdivision and its sub phases.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Soledad; as follows:

**Section 1.** That the City Council hereby finds and determines that all Conditions Approval and Development Agreement have been met for the development of sub phases II and III of the Pinnacles II Subdivision.

**Section 2.** That the City Engineer and Planning Director have reviewed the Improvement Plans and found the documents to be in compliance with the Subdivision Map Act, the Soledad Municipal Code and Conditions of Approval set forth by the Planning Commission and City Council on August 8, 1994.

**Section 3.** That the City Manager, City Engineer and the Planning Director have reviewed the proposed Improvement Agreement and found the documents to be in compliance with the Development Agreement approved by the City Council on February 13, 1995.

**Section 4.** That the City Council of Soledad certified the Vista Soledad Environmental Impact Report on August 8, 1994.

**Section 5.** That the City of Soledad accepted the Final Map for recordation on December 17, 1997 and the map was recorded on December 19, 1997 with the Monterey County Recorder.

**Section 6.** That the City Council of the City of Soledad hereby accepts the Subdivision Improvement Agreement for development of Sub Phases II and III of the Pinnacles II Subdivision in the form of the document hereunto attached marked, "Exhibit A" and by reference made a part hereof.

**Section 7.** The City Engineer has determined that there is no requirement for reimbursement of impact fees for the proposed subdivision improvements for the Pinnacles II Subdivision.

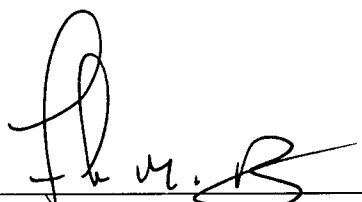
**NOW, THEREFORE, BE IT FURTHER RESOLVED,** that the City Council does hereby approves and accepts the proposed Improvement Agreement for the development of Sub Phases II and III of the Pinnacles II Subdivision as shown on "Exhibit A," hereunto attached.

**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 2nd day of September 1998, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Fred Ledesma, Richard Ortiz, Mayor Pro Tem Gary Gerbrandt, Mayor Fabian Barrera

NOES, Councilmembers: None

ABSENT, Councilmembers: None

  
\_\_\_\_\_  
MAYOR OF THE CITY OF SOLEDAD

ATTEST:

  
\_\_\_\_\_  
CITY CLERK OF THE CITY OF SOLEDAD

AGREEMENT

(Subdivision Improvements - Vista Soledad Subdivision:  
Phase II of Stage 1; Sub-Phases II, III (lots 22-31, and 35-55)  
The Pinnacles Subdivision)

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called CITY, and South County Homes II, a California Limited Partnership, hereinafter referred to as SUBDIVIDER.

RECITALS.

A. CITY, by Resolution No. 2407, dated January 23, 1995, approved a vesting tentative map for the Vista Soledad Subdivision (hereinafter "Subdivision"), subject to certain conditions including the construction of certain improvements.

B. SUBDIVIDER filed with the City Clerk of CITY, for presentation to the City Council for its approval, a final subdivision map entitled Vista Soledad Vesting Tentative Map, Phase II, Stage 1 - The Pinnacles Subdivision. This map includes five Sub-Phases identified as II-I (lots 1, 32-34 and 70-88), II-II (Lots 29-31 and 35-46), II-III (lots 22-28 and 47-55), II-IV (Lots 9-21 and 56-62) and II-V (Lots 2-8 and 63-69).

C. SUBDIVIDER requested approval of said map prior to the construction and completion of improvements for any of the sub-phases, including streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the portion of the subdivision shown on said map, all in accordance with the Plans and Specifications for said improvements which heretofore have been filed with the City Clerk and which have been approved by the City Engineer. SUBDIVIDER is planning to stage the construction of improvements, commencing with Sub-Phase I. Improvement plans for Sub-Phases II and III have been submitted to CITY and approved.

D. CITY, by Resolution No. 2646, dated December 17, 1997, approved the Final Map for Phase II, Stage 1, entitled the "Vista Soledad Tentative Map, Phase II, Stage 1 - The Pinnacles Subdivision".

E. CITY and SUBDIVIDER have agreed that each Sub-Phase or combination of Sub-Phases, will require the execution of a separate Subdivision Improvement Agreement with separate security therefor.

**AGREEMENT:**

Therefore, in consideration of the recitals set forth above and pursuant to the requirements of the Subdivision Map Act of the State of California and the subdivision ordinance of the City of Soledad (Title 16 of the Municipal Code), the parties agree as follows:

1. **Performance of Work.** SUBDIVIDER will do and perform, or cause to be done and performed, at SUBDIVIDER's expense, in a good and workmanlike manner, and will furnish all required materials, all under the direction and to the satisfaction of the City Engineer of CITY, all of the improvements set forth in the "Pinnacles Phases II and III of Phase 2-Stage 1 Improvement Plans", as set forth in Attachment A attached hereto and incorporated herein as part of this Agreement.

SUBDIVIDER shall also do all work and furnish all materials necessary, in the opinion of the City Engineer and on his order, to complete the improvements in accordance with approved improvement plans and specifications, map conditions and mitigation monitoring plan, or with any changes required or ordered by the City Engineer which, in his opinion, are necessary or required to complete the work in a manner consistent with approved plans. All work shall be done at the places, of the materials, in the manner, and at the grades shown upon the plans and specifications approved by the City Engineer, and to the satisfaction of the City Engineer.

SUBDIVIDER shall also be responsible for assuring that any sub-contractors used in the installation, construction or completion of the improvements referenced herein, are acting in compliance with the City's "Business Licenses Taxes" ordinance, as set forth in Soledad Municipal Code Chapter 5.04.

2. **Work to Conform to Engineer's Requirements.**  
SUBDIVIDER has the responsibility of providing the design and improvement of Phase II of Stage 1, Village E, Lots 1-88 and all sub-phases thereof, of the Vista Soledad Subdivision and has submitted plans for the construction of all improvements for Sub-Phases II and III, all of which are incorporated herein and

made a part hereof. These plans have been reviewed by the responsible departments and approved as meeting CITY standards. However, CITY has not made an independent investigation of the job site, soils conditions and other conditions which might affect the design and construction of improvements. It is the responsibility of SUBDIVIDER to design and construct all required improvements in such a manner so as to insure reasonable accomplishment of their purposes. In the event that job conditions require changes in the approved plans, a request for such deviation must be submitted in writing by SUBDIVIDER's engineer for approval by the City Engineer; no deviation from such plans will be allowed without such approval.

3. **Time of Commencement and Completion of Work.** Work on that portion of the Vista Soledad Subdivision designated on the Final Map as "Phase II of Stage 1, Sub-Phase II-II and III (Lots 22-31 and 35-55)", shall be commenced on \_\_\_\_\_, 1998, and all such work shall be completed within three hundred sixty-five (365) days thereafter. All improvements must be completed before approval for the next sub-phase or sub-phases may be commenced.

SUBDIVIDER shall notify the City Manager/City Engineer at least two working days (48 hours) in advance of:

1. The date work is commenced;
2. Work stoppage of more than one day;
3. The accomplishment of work on a Saturday, Sunday or legal holiday;
4. Completion of the required improvements.

Notwithstanding, the City Manager/City Engineer may waive the 48 hour notification requirements in instances in which the department determines that such notice was not necessary or possible. (E.g. unexpected inclement weather)

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

judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension.

Any request for extension of any commencement and completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to CITY in the manner hereinafter specified for service of notices. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

In the event it is deemed necessary by the CITY to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by SUBDIVIDER pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time, alternation or addition to the term 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 the bond, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

The granting of any extension may be conditioned upon SUBDIVIDER providing CITY with increased inspection fees and new or amended surety bonds or security in amounts increased to reflect increases in the cost of constructing the required improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

5. **Repairs and Replacements.** SUBDIVIDER shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and SUBDIVIDER shall replace, or have replaced, repair, or have repaired, as the case may be, the entire cost of replacement or repair of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be performed in accordance with applicable City design and/or construction specifications and subject to approval of the City Engineer.

6. Coordination of Improvement Completion With Issuance of Building Permits and Certificates of Occupancy. SUBDIVIDER is proposing to construct Sub-Phases II and III of Phase II, Stage 1 of the subject project. SUBDIVIDER desires to commence single family building construction concurrent with the installation and construction of the public improvements referenced herein, thus by necessity requesting the issuance of building permits prior to the completion of all such improvements. SUBDIVIDER has delineated the sub-phasing of SUBDIVIDER's proposed development of Phase II of Stage 1, Village E, Lots 1-88 on the final subdivision map for Phase II. Once approved, said map shall be attached hereto and made a part of this Agreement. The following standards and requirements shall apply to the development and construction of Sub-Phases II and III improvements, and units therein:

- (a) Foundation only permits may be issued for any lot with a certified building pad.
- (b) Building permits for flammable construction beyond foundations shall only be permitted once fire protection is in place, including all-weather access and an adequate source of water within a 250-foot radius of flammable materials.
- (c) Prior to occupancy of any residential units to be developed within Sub-Phase II and III, the following work must be substantially complete and inspected:
  1. All landscaping must be installed as shown on approved landscaping plans.
  2. All improvements (including, but not limited to, paving, curbs, gutters, sidewalks, street lights, underground utilities, storm drains) must be complete and functioning.
  3. Mail drop-off boxes, as approved by the City and Postal Service, must be installed.
  4. The street trees, front yard landscaping and fencing must be installed for each individual home. Street trees shall be placed on each lot in accordance with the Planning

Directors instruction as designated on plot plans for each lot.

5. All street and traffic control signs shall be installed prior to occupancy of any home.
6. The temporary access road, located on Viewpointe and Apex Streets, as depicted on Sheet U-1 of "The Pinnacles - Phases II and III of Phase II, Stage 1" Improvement Plans must be fully installed.

The Planning Director shall have the discretion to issue a temporary certificate of occupancy ("TCO") for any unit in which a portion of the above-referenced work, unrelated to health and safety concerns, remains uncompleted. In all such instances, SUBDIVIDER shall be required to provide the Planning Director with a proposed written schedule for the completion of such improvements prior to the issuance of the TCO.

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

8. **Supervision by SUBDIVIDER.** SUBDIVIDER shall have a competent foreman or superintendent present at the work site at all times during construction, with authority to act for SUBDIVIDER.

9. **Inspection by CITY.** SUBDIVIDER shall at all times maintain proper facilities, and provide safe access for inspection by CITY personnel to all parts of the work and to the shops wherein the work is in preparation. CITY's inspection costs shall be borne by SUBDIVIDER, and SUBDIVIDER is obligated to deposit and maintain an expense account, pursuant to the terms of Tentative Map Condition Number 13, to pay for all such costs. CITY may reject defective work and require its repair, replacement, or removal by SUBDIVIDER all at no expense to CITY. All work shall meet the standards adopted or in current use by CITY, and otherwise shall conform to the attached plans and specifications.

10. **Site Maintenance; Deposits.** At all times during the construction period, SUBDIVIDER shall: (a) take all reasonable measures to control

dust originating on the project site; (b) take all necessary action to control erosion on the site so that eroded soil or silt will not be carried by storm water onto adjacent lands or into the municipal storm sewer system; and (c) otherwise maintain the site so as not to cause any nuisance, disturbance, or damage to other persons, or to the property of other persons, within or without the subdivision. Upon the execution of this Agreement, SUBDIVIDER shall pay to CITY the sum of \$5,000 as a deposit to insure compliance with this requirement. If at any time the City Engineer, in his/her sole judgment, finds that such measures have not been taken, or that measures taken are incomplete or inadequate, he shall so notify SUBDIVIDER, either verbally or in writing, and SUBDIVIDER shall forthwith take corrective action as directed by the City Engineer. Upon the failure of SUBDIVIDER to take, and thereafter diligently pursue, such corrective action as specified in said notice, CITY may have the necessary work performed at SUBDIVIDER's expense and may utilize the funds deposited hereunder by SUBDIVIDER for that purpose; all of the deposited funds not so utilized by CITY shall be refunded to SUBDIVIDER upon the completion of the improvements required by this Agreement, and the acceptance of the same by CITY. Should the deposited funds be insufficient for the aforesaid purpose, SUBDIVIDER agrees to pay to CITY the amount of any such deficiency, on demand.

11. Encroachment Permit. SUBDIVIDER shall obtain an encroachment permit from the CITY before the commencement of any excavation/encroachment in, on, or under the surface of any existing public street, lane, alley, sidewalk, or other public place. SUBDIVIDER further agrees to notify the Public Utilities Director and Public Works Superintendent at least two days (48 hours) in advance of the exact date and time when the proposed excavation/encroachment is to commence.

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

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

14. **Landscaping: General Requirements.** SUBDIVIDER shall, at its own expense, install landscaping and street trees within the subdivision according to a landscape plan to be prepared by SUBDIVIDER and approved by the Planning Department and Public Works Department of CITY. All trees shall be selected and installed at the direction of the Planning Director, in accordance with the provisions of Vesting Tentative Map Condition No. 23, in the manner shown on the approved landscape plan or on plot plans for each lot. Both tree selection and installation are subject to City Council approval by resolution. Landscaping within the public areas of the subdivision, other than street trees, shall be installed by SUBDIVIDER according to the approved landscape plan after the completion of street and utility improvements, and maintained by SUBDIVIDER for a period of one year from the date of acceptance. The front yard of each unit shall be installed prior to occupancy of said unit and utilize low water use "xeriscape" landscaping as defined by the City's "Mandatory Water Conservation Regulations" Ordinance pursuant to Vesting Tentative Map Condition No. 48. SUBDIVIDER shall also follow the State Model Water Efficient Landscape Ordinance. Street trees shall be installed by SUBDIVIDER on the right-of-way of individual lots within the subdivision prior to occupancy, in locations and in accordance with any timetable subsequently approved by City. Care, maintenance, and replacement where necessary of such trees shall be the responsibility of SUBDIVIDER for a period of one year after acceptance of improvements. Thereafter, street trees shall be regularly watered, cared for, maintained, and replaced when necessary, by the lot owner at owner's expense. The declaration of covenants, conditions, and restrictions to be recorded with the final map for the subdivision shall include a covenant (a) requiring each lot owner to water, care for, maintain, and replace when necessary each street tree installed on the owner's lot, at said owner's expense; (b) providing that said covenant may be enforced by the City of Soledad, as well as by the owners of other lots within the subdivision; (c) providing that upon the failure of an owner to do any such work, after receipt of written notice to do so from the City, the City may perform the work for at the expense of the owner, and the cost thereof shall constitute a debt from the owner to the City; and (d) providing that the City shall have a lien upon the owner's said lot as security for the payment of such indebtedness.

15. **Relationship to Development Agreement.** SUBDIVIDER and CITY acknowledge that SUBDIVIDER's proposed sub-phasing plan for development of units within Phase II, Stage 1 of the Vista Soledad Subdivision represents a deviation from the plan for development set forth in the previously executed "Development Agreement for the Vista Soledad Community Project Subdivision" ("Development Agreement"). CITY's approval of the final map for Phase II, Stage 1

of the Vista Soledad Subdivision project, the sub-phasing thereof and all development plans associated therewith, shall not be construed as a waiver of any of CITY's or SUBDIVIDER's rights, duties or responsibilities pursuant to said Development Agreement.

16. **Off-Site Improvements.** In accordance with approved improvement plans, SUBDIVIDER is required to install, construct or utilize off-site traffic, sewer, water and drainage improvements to serve the involved sub-phases of the subdivision. SUBDIVIDER shall be responsible for the installation, operational costs, maintenance, and where required, removal of all off-site temporary traffic, sewer, water and drainage improvements.

Specific requirements concerning off-site improvements include, but are not limited, as follows:

- (a) SUBDIVIDER shall be responsible for the installation and ongoing maintenance, repair and eventual removal of a temporary access road on Viewpointe and Apex Streets, as depicted on Sheet U-1 of "The Pinnacles - Phase II and III of Phase II - Stage 1" Improvement Plans. SUBDIVIDER agrees that it shall hold the City of Soledad harmless, indemnify, and at City's request, defend City from and against all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses, including attorneys' fees, for and in connection with any personal injury, including death, and damage to property, both real and personal, which arises out of or is in any way connected with the temporary access road.
- (b) SUBDIVIDER shall be responsible for all costs associated with operation and periodic maintenance of off-site storm drain retention ponds.
- (c) SUBDIVIDER shall be responsible for all costs associated with operation and periodic maintenance of the pump providing wastewater service to residential units. SUBDIVIDER agrees that it shall hold the City of Soledad harmless, indemnify, and at CITY's request, defend CITY from and against all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses, including attorneys' fees, for and in connection with any personal injury, including death, and damage to property, both real and personal, which is associated or in

any way connected to the installation, operation, maintenance or removal of said pump. SUBDIVIDER shall also be responsible for compliance with all spill reporting requirements established by law.

17. **Grading Plan.** SUBDIVIDER shall prepare and submit to the City Engineer for approval a detailed grading and drainage plan for the subdivision, showing how each of the lots within the subdivision will be cut and filled to drain storm waters to street drains. All grading of lots shall be done in accordance with said approved plan. With respect to public improvements, any slope with a vertical height of two feet or more shall be planted with erosion-resistant ground cover, or any other effective means of erosion control, approved by the City Engineer.

18. **Fire Hydrants.** SUBDIVIDER shall, at its own expense, install fire hydrants throughout the subdivision at locations not more than 500 feet apart as approved by the Public Works Superintendent and the Chief of the Fire Department.

19. **Street and Traffic Control Signs.** SUBDIVIDER shall, at its own expense, install street signs at all street intersections within the subdivision, which shall meet the intent for safe circulation and conform to CITY requirements. SUBDIVIDER shall also, at its own expense, install traffic control signs within the subdivision as designated by the Public Works Superintendent and the Chief of Police, which shall conform to the requirements of CITY and of the State Vehicle Code. All street and traffic control signs shall be installed within a given development phase prior to occupancy of any home in said release.

20. **Utilities.** SUBDIVIDER shall, at its own expense, cause all utilities on the project site and associated with the proposed subdivision, including gas, electrical and electrical transformers, telephone and Cable T.V., to be placed underground.

21. **Contract Security.** Concurrent with the execution of this Agreement SUBDIVIDER shall furnish to CITY:

a. A corporate surety bond in an amount equal to at least one hundred percent (100%) of the estimated cost of construction of all improvements within Sub-Phases II and III to be installed pursuant to this Agreement, as determined by the City Engineer, as security for the faithful performance of SUBDIVIDER's obligations under this Agreement. An additional 10% of the estimated cost of the construction of improvements shall be added to this sum

for costs and reasonable expenses and fees, including attorneys' and experts' fees, incurred in enforcing the secured obligation.

b. A corporate surety bond in an amount equal to at least fifty percent (50%) of the estimated cost of construction of all improvements within Sub-Phases II and III to be installed pursuant to this Agreement, as determined by the City Engineer, as security for the payment of all persons performing labor and furnishing materials in connection with the construction of said improvements. An additional 10% of the estimated cost of the construction of improvements shall be added to this sum for costs and reasonable expenses and fees, including attorneys' and experts' fees, incurred in enforcing the secured obligation.

The aforesaid bonds shall be in the form prescribed by Sections 66499.1 and 66499.2, respectively, of the Government Code. SUBDIVIDER may be given credit for bonds submitted for work to be performed pursuant to the terms of any Underground Utilities Agreement.

22. **Release of Security.** Upon completion of the improvements required for Sub-Phases II and III, as described in Attachment A, SUBDIVIDER shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the City Engineer a copy of the Notice of Completion required by said section bearing a certification of recordation by the County Recorder.

CITY shall not be required to either exonerate any surety nor release any security relating to the satisfactory completion of the improvements until acceptance of the improvements by CITY in the case of dedicated improvements or in the case of improvements which will not be dedicated and accepted by CITY until SUBDIVIDER has submitted certification by a registered civil engineer that the improvement work has been constructed in accordance with the approved plans and specifications and the improvements have passed any final inspections required by the responsible department. In addition, release of security and exoneration of sureties will be predicated upon the receipt of maintenance and/or warranty agreements and surety therefore, in an amount not less than 10% of the engineer's estimate of improvement costs.

With respect to street trees, CITY and SUBDIVIDER agree that in the event street trees have not been installed at the time all other subdivision improvements have been completed, the CITY may defer acceptance of street trees. A separate

warranty period shall commence upon the acceptance of said improvements. CITY retains the right to withhold the issuance of certificates of occupancy for any unit within the subdivision until street trees have been installed and accepted. Notwithstanding, the Planning Director shall have the discretion to issue a temporary certificate of occupancy ("TCO") for any unit within the subdivision, prior to the installation and acceptance of street trees.

Security given to secure payment to the SUBDIVIDER, sub-contractors, and to persons furnishing labor, materials, or equipment may, five days after passage of the time within which claims of lien are required to be recorded pursuant to Section 3114 et seq. of the Civil Code and after all conditions set forth in the paragraph above have been met, be reduced to an amount equal to the amounts of all claims therefore filed and of which notice has been given to CITY. The balance of the security shall be released upon settlement of all such claims and obligations for which the security was given.

CITY shall not be required to either exonerate any surety nor release any security relating to monumenting until SUBDIVIDER has presented to CITY evidence that the cost of monumenting has been paid and that the Engineer doing such work has receipted for such payment.

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

- a. That CITY does not, and shall not, waive any rights against SUBDIVIDER which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by CITY, or the

deposit with CITY by SUBDIVIDER, of any of the insurance policies described in paragraph 24 hereof.

b. That the aforesaid hold-harmless agreement by SUBDIVIDER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied or approved of, plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

24. Subdivider's Insurance. SUBDIVIDER shall not commence work under this Agreement until SUBDIVIDER shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the City Attorney as to form and amount, nor shall SUBDIVIDER allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by CITY. 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) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

- (b) Minimum Limits of Insurance. SUBDIVIDER shall maintain limits no less than:
1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials and employees; or the SUBDIVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverage.
    - a. The CITY, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the SUBDIVIDER; products and completed operations of the SUBDIVIDER, premises owned, occupied or used by the SUBDIVIDER, or automobiles owned, leased, hired or borrowed by the SUBDIVIDER. The coverage shall contain no special limitations on the scope of the

protection afforded to the CITY, its officers, officials, employees or volunteers.

- b. The SUBDIVIDER's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be in excess of the SUBDIVIDER's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- d. The SUBDIVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers for losses arising from work performed by the SUBDIVIDER for the CITY.

3. All Coverage.

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.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- (f) Verification of Coverage. SUBDIVIDER shall furnish CITY all applicable insurance binders and certificates of insurance with original

endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

- (g) Subcontractors. SUBDIVIDER and/or SUBDIVIDER's general contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

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

25. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by SUBDIVIDER and dedicated to CITY shall vest absolutely in CITY, upon completion and acceptance of such improvements by CITY. SUBDIVIDER shall pay the cost of, and deliver to CITY, prior to acceptance of any dedication by CITY, a policy or policies of title insurance satisfactory to CITY's title to all real property dedicated to CITY by SUBDIVIDER.

In the event that either the improvements are not completed to the satisfaction of CITY or the monumenting work is not completed within the time specified by this Agreement, or any duly executed extension thereof, CITY in addition to any other remedy at law or equity, may complete such work with its own forces or by contract. In the event of such default by SUBDIVIDER and CITY's subsequent undertaking, SUBDIVIDER and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property hereinabove described and each of them shall totally reimburse CITY. Such obligation or reimbursement shall be limited to the actual cost of completion, including administrative costs.

26. Dedications of Real Property. All transactions necessary to effectuate SUBDIVIDER'S dedication to CITY of real property as set forth in the

Vista Soledad Vesting Tentative Subdivision Map Conditions and in relevant maps and plans, including an offer of dedication of all such real property and improvements and relevant actions as necessary to acquire title to said property, must be completed prior to the issuance of building permits.

27. Repair or Reconstruction of Defective Work. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, SUBDIVIDER guarantees all work executed by SUBDIVIDER and/or SUBDIVIDER's agents, and all supplies, materials, including street trees and landscaping, and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by CITY. Upon acceptance of any subdivision improvements by the City Council, SUBDIVIDER shall provide security to guarantee the improvements throughout a one-year warranty period. The cost of the warranty security for accepted improvements shall not be less than 10% of the cost of construction of the improvements, and shall be retained for the one-year warranty period.

SUBDIVIDER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to CITY. SUBDIVIDER further covenants and agrees that when defects in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period with respect to such repairs only shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the SUBDIVIDER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and SUBDIVIDER shall pay to CITY on demand all costs and expenses of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and SUBDIVIDER shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and

safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, SUBDIVIDER shall pay, in addition to actual costs and expenses of such repair or work, one hundred percent (100%) of the City's administrative costs, including attorneys' fees if necessary, plus interest at the maximum rate of interest permitted by law accruing sixty (60) days from the date of billing for such work or repairs.

It is the intention of the parties hereto that this Agreement bind themselves, their heirs, assigns, and successors in interest and for the obligation to run with the land. In addition, by recordation of this Agreement, it is the intention of the parties to give notice to all future purchasers of this intent to bind as described above. SUBDIVIDER acknowledges that if construction of the required improvement is not made in accordance with the terms of this agreement, CITY may, in addition to any other remedy at law or equity or in this Agreement, withhold building and zoning permits until the improvements have been satisfactorily completed. Building and zoning permits include, but are not limited to, certificates of occupancy for all lots not completed within the subdivision. During the life of this agreement, SUBDIVIDER hereby agrees to notify CITY MANAGER in the event of sale or transfer of ownership of any part of this project.

The parties hereto further intend to bind themselves to an agreement establishing a separate fund for use for reconstruction and/or repair of public improvements damaged by SUBDIVIDER and/or its agents, contractors and subcontractors during the development of subsequent sub-phases of this Project. Said remedy shall be in addition to the terms and conditions of this provision.

28. **Enforced Delay; Extension of Time of Performance.** In addition to other specific provisions of this Agreement, it is agreed that performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, severe rain or other inclement weather, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, litigation, or similar causes beyond the control of the performing party.

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

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

31. **Breach of Agreement: Performance by Surety or CITY.** In the event of any such notice, SUBDIVIDER's surety shall have the duty to take over and complete the work and the improvements herein specified; provided, however, that if the surety, within fifteen (15) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contractor or any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as may be on the site of the work and necessary therefor.

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

City of Soledad  
248 Main Street  
P.O. Box 156  
Soledad, CA 93960

The address for notices to be sent to SUBDIVIDER hereunder shall be as shown below SUBDIVIDER's signature to this Agreement. Notices to any surety furnishing a surety bond or other form of security under the provisions of paragraph 20 above shall be addressed to the surety, or the agent or representative of the surety, as shown on the surety bond or other form of security provided to CITY; but if no such address is shown, then such notice may be addressed and mailed to the surety in care of the SUBDIVIDER. Any party hereto or the surety may change such address by notice in writing to the other party to this Agreement and thereafter notices shall be addressed and transmitted to the new address.

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

34. **Agreement Conditional on Purchase of Property.** Execution of this Agreement is premised on the notion that SUBDIVIDER will obtain legal title and ownership of all real property contained in the relevant lots in Phase II of Stage 1 of the Vista Soledad Subdivision Project. None of the provisions of this Agreement shall be deemed to be in force and effect until SUBDIVIDER has presented CITY with written proof of purchase. Should SUBDIVIDER fail to acquire said property within one (1) year of execution of this Agreement, the Agreement and each of its provisions shall be null and void.

35. **Reimbursement for Costs.** SUBDIVIDER shall reimburse CITY for all engineering, inspection, legal and administrative costs incurred or to be incurred by the CITY in connection with the proposed project, including expenses incurred through the use of outside consultants where necessary. SUBDIVIDER agrees to deposit the appropriate sum for reimbursement with the City in the manner set forth in Vesting Tentative Map Condition 13. City shall provide documentation concerning all such expenses on a monthly basis.

36. **Performance of Related Agreements and Responsibilities.** SUBDIVIDER and CITY expressly recognize that numerous provisions of this Agreement require SUBDIVIDER to undertake specific action, obtain specific

approvals, and provide specific documentation or information. SUBDIVIDER agrees that all such requirements, as specified in this Agreement, as well as all duties and responsibilities established in the Vista Soledad Mitigation Monitoring Plan and Development Agreement for the Vista Soledad Community Project Subdivision, will be met to CITY's satisfaction.

37. Subsequent Development of Sub-Phases. SUBDIVIDER and CITY agree that prior to initiating construction of Sub-Phases IV or V, SUBDIVIDER and CITY will enter into separate Subdivision Improvement Agreements, with separate security therefor, for each Sub-Phase or combination thereof.

IN WITNESS WHEREOF, the said parties have executed this Agreement this 23<sup>rd</sup> day of September, 1998.

CITY:

SUBDIVIDER:

CITY OF SOLEDAD, a municipal corporation

SOUTH COUNTY HOMES II, a California Limited Partnership

By: [Signature]  
Mayor

By: Woodman Development Company, Inc.  
General Partner  
By: [Signature]  
John K. Anderson, President  
By: [Signature]  
William A. Silva, Secretary

ATTEST:

[Signature]  
City Clerk

August 26, 1998  
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