

**RESOLUTION NO. 2461****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT FOR  
VISTA SOLEDAD VESTING TENTATIVE MAP, PHASE I,  
STAGE I, PINNACLES SUBDIVISION BETWEEN  
THE CITY AND SOUTH COUNTY HOMES II  
AND RECINDING RESOLUTION NO. 2445**

**BE IT RESOLVED** by the City Council of the City of Soledad that the Mayor and the City Manager/City Clerk be, and they are hereby authorized and directed for and on behalf of the City of Soledad, to execute a Subdivision Improvement Agreement for Vista Soledad Vesting Tentative Map, Phase I, Stage I Pinnacles Subdivision between the City and South County Homes II (Woodman Development), in the form of the document hereunto attached, marked "Exhibit A," and by reference made a part hereof.

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

**Section 1.** That the City Engineer and Planning Director have reviewed the proposed Final Map and Subdivision Guarantee 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 2.** That the City as a condition of approval for the Vista Soledad Subdivision, requires the developer and the City to enter into a Subdivision Improvement Agreement.

**Section 3.** That the City Council has approved the entering into a Development Agreement with Westvail, Inc. for the Vista Soledad Development on February 13, 1995.

**Section 4.** That the City Council accepts the Subdivision Improvement Agreement for Vista Soledad Vesting Tentative Map, Phase I, Stage I, Pinnacles Subdivision between the City and South County Homes II (Woodman

## AGREEMENT

(Subdivision Improvements - Vista Soledad Subdivision  
Phase I of Stage I, Village G, Lots 1-8, 40-64 and  
Village I, Lots 1-12, 42-43)

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 Project Area 1 of the Vista Soledad (hereinafter "Subdivision"), subject to certain conditions including the construction of certain improvements

B SUBDIVIDER has 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 I, Stage I - The Pinnacles Subdivision

C. SUBDIVIDER has requested approval of said map prior to the construction and completion of improvements, 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

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 I of Stage 1, Village G, Lots 1-8, 40-64, Village I, Lots 1-12, 42-42" shall be commenced on August 15, 1995, and all such work shall be completed within three hundred sixty-five (365) days thereafter.

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 work.

of the public improvements referenced herein, thus by necessity requesting the issuance of building permits prior to the completion of all such improvements, SUBDIVIDER will submit a "Staging Map" to CITY for staff approval delineating SUBDIVIDER's proposed development of Phase I of Stage 1, Village G, Lots 1-8, 40-64, Village I, Lots 1-12, 42-43. Once approved, any such map shall be attached hereto and made a part of this Agreement. Thereafter, the following standards and requirements shall apply to the development and construction of 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 of the residential units to be developed within Phase I, Stage 1, the following work must be substantially complete and inspected
  - 1 All landscaping must be installed as shown on approved landscaping plans
  - 2 All improvements within a release (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 within a release

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 City, in accordance with the provisions of Vesting

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

- (a) SUBDIVIDER shall be responsible for the installation, operational costs, maintenance, repair and eventual removal of a pump located adjacent to the subject development phase deemed necessary to provide wastewater service to the involved residential units. SUBDIVIDER shall also be obligated to obtain all necessary permits, easements and other permissive authorization for installation of said pump, and to respond to any and all service calls from residents of the subject development during the use of the pump. In the event City personnel are required to respond to service calls of any nature concerning said pump, SUBDIVIDER agrees that CITY will be reimbursed for all costs of response. 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 installation, operation, maintenance or removal of said pump. SUBDIVIDER shall also be responsible for compliance with all sewage spill reporting requirements of the Porter-Cologne Water Quality Control Act. Finally, SUBDIVIDER shall be responsible for the preparation of an operations, maintenance, and spill contingency plan for the pump, mutually satisfactory to SUBDIVIDER, the City Engineer and the City Superintendent of Utilities, for submission to the Central Coast Water Quality Control Board prior to the occupancy or use of any unit within the Project.
- (b) SUBDIVIDER shall be responsible for all costs associated with operation and periodic maintenance of off-site storm drain retention ponds.

b Either a cash deposit, a corporate surety bond, or an instrument of credit in an amount equal to at least fifty percent (50%) of the estimated cost of construction of all improvements 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.

If corporate surety bonds are chosen as security under the provisions of this paragraph, such bonds shall be in the form prescribed by Sections 66499 1 and 66499 2, respectively, of the Government Code. An alternative form of security as prescribed by Section 66499 of the Government Code may be substituted for the security required under the foregoing provisions of this paragraph upon City Council approval. The decision of the City Council as to the acceptability of alternative security, or as to the acceptability of the form of alternative security offered by SUBDIVIDER, shall be final and binding on SUBDIVIDER. SUBDIVIDER may be given credit for bonds submitted for work to be performed pursuant to the terms of any Underground Utilities Agreement.

23 **Release of Security** Upon completion of the improvements 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

certificate of occupancy ("TCO") for any unity 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.

24 **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

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

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.

26 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

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.

29 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

30 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

34 DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS. The Declaration of Covenants, Conditions and Restrictions (CC&R's) applicable to the property within the subdivision as approved by the CITY shall be filed in the office of the Recorder of Monterey County. A certificate of recording or other evidence of recording shall be filed with the City Clerk. The CC&R's must be reviewed and approved by the City Manager and Planning Director prior to recordation of the final subdivision map.

The CC&R's prepared for this subdivision shall contain the following provisions:

- 1 Numbers shall be visible for emergency situations and show dark on light or vice versa for easy readability. Numbers should also be visible in large print on curb faces.
- 2 Upon confirmation of the safety and need thereof, front doors of buildings shall have single or double cylinder deadbolts with one inch throws. Viewers shall be placed in front doors and small secondary locks shall be placed on patio doors to prevent forcing of sliding glass doors.
- 3 All buildings shall be insulated according to State of California Energy Standards.
- 4 Each property owner must use the following water conservation techniques and fixtures:

All structures shall incorporate low-flow water use fixtures. Toilets shall use a maximum of 1.5 gallons per flush and showers and faucets shall use a maximum of 2.5 gallons per minute.

All front yards shall incorporate low water use "xeriscape" landscaping as

38 RECORDATION OF FINAL MAP 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 prior to recordation of any final map approved by the City Council SUBDIVIDER agrees that all such requirements, as specified in this Agreement, as well as all pre-requisites to recordation 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 prior to recordation of the Final Map for Vista Soledad

IN WITNESS WHEREOF, the said parties have executed this Agreement this 11th day of October, 1995

CITY

SUBDIVIDER.

CITY OF SOLEDAD, a municipal corporation

SOUTH COUNTY HOMES II, a California Limited Partnership

By B. J. Jimenez Jr.  
Mayor

By Woodman Development Company, Inc.  
General Partner

ATTEST

By John K. Anderson  
John K. Anderson, President

Bue  
City Clerk

By WHS Development Inc.,  
General Partner