

DEVELOPMENT AGREEMENT
(Govt. Code Sections 65864-65869.5)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 23rd day of May, 1995, between FISHING VILLAGE ASSOCIATES, a California limited partnership ("Owner"), and THE COUNTY OF SAN MATEO, a charter county organized and existing under the laws of the State of California ("County").

RECITALS

This Agreement is predicated upon the following facts (with any capitalized and undefined terms to have the meanings given to them in Paragraph 1 of this Agreement):

A. To strengthen the public planning process, encourage private participation and comprehensive planning and reduce economic risks of development, the legislature of the State of California adopted Government Code Sections 65864-65869.5 which authorize County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

B. Under Section 65865, County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in Ordinance No. 3607 as adopted at the meeting of the County Board of Supervisors held on November 1, 1994.

C. Owner holds a fee simple interest in the following described parcels of real property, referred to collectively herein as the "Real Property":

Parcels A, B and C as shown on the map attached hereto and marked Exhibit A (the "Parcel Map"), the legal description of which is attached hereto and marked Exhibit A-1.

D. Owner has received various permits (described in Paragraph G below) for the construction of a mixed-use development on Parcels A, B and C known as Pillar Point Harbor Village, consisting of an 84-room hotel, seven two-bedroom and four one-bedroom family suites, a 280-seat restaurant, 60-seat bar, a covered pedestrian shopping lane with 15-25 specialty retail shops (approximately 40,000 square feet) and subsurface and ground level parking for 450 vehicles, which development is referred to herein as the "Project." A more detailed description of the Project including elevations and dimensions of the proposed buildings is set forth in the Development Plan.

E. County adopted its Local Coastal Program on August 5, 1980 which was certified by the Coastal Commission on November 5, 1980. The Local Coastal Program, as amended, is referred to herein as the "LCP." Under California Public Resources Code Sections 30108.5, 30108.6, 30500, 30512 and 30513, the LCP includes both (i) the certified Land Use Plan with the LCP Policies and Land Use Plan Map and (ii) the zoning ordinances and other regulations adopted by County to implement them.

F. County has, for some time, desired to facilitate the development of that portion of County commonly known as "Princeton-by-the-Sea" (of which the Real Property is a part) as a commercial center primarily oriented toward meeting the service and recreational needs of coastside visitors, boat users and coastside residents. County believes that development of the Project as set forth in the Development Plan as well as the development of Parcel 1 will further the development concentration and Recreation/Visitor Serving Facilities Component policies of the LCP.

At the time the Project Approvals were granted, County found that the Project would provide positive economic and employment benefits for County including the creation of between

130 and 160 jobs with a direct payroll estimated at over \$3,500,000.00 per year, and estimated revenues from hotel and sales taxes of \$1,000,000.00 per year and \$240,000.00 per year in property taxes. The multiplier effect of indirect jobs and taxes will provide additional economic benefits to local businesses and craft trades. In addition, the Project will result in improved roads and intersections and provide social opportunities for San Mateo County community groups, as more fully discussed in the CEQA Findings, Statements of Overriding Consideration and Approval Findings adopted by the Board of Supervisors when it approved the Project.

G. On December 12, 1989, the Board of Supervisors certified the Project EIR and approved a Coastal Development Permit, Use Permit and Minor Subdivision for the Project with the exception of the 75-foot lighthouse (collectively, the "Project Approvals"). The Coastal Development Permit was appealed to the California Coastal Commission by the Concerned Citizens of the Coastside ("CCC") and was approved by said Commission on March 14, 1990. CCC then commenced litigation against the Coastal Commission, County and Owner which litigation, among other issues, challenged the adequacy of the Project EIR and the compliance of the Project with the LCP. The Sixth District Court of Appeal of the State of California ultimately ruled in favor of the Coastal Commission, County and Owner, and held that the Project EIR complied with the requirements of the California Environmental Quality Act and the Project complied with the requirements of the LCP. That decision, and those determinations, became final and nonappealable on February 11, 1993. In response to the Remittitur from the Court of Appeal, the Superior Court withdrew the Peremptory Writs of Mandamus it had directed to County and the Coastal Commission and entered Final Judgment in favor of County, the Coastal Commission and Owner on August 24, 1993.

H. The Board of Supervisors has found this Agreement, the Development Plan and the Project consistent with County's General Plan, LCP and other Laws and Regulations and has determined that this Agreement is fair, just and reasonable. When County granted the Project Approvals, and when the Coastal Commission approved the Coastal Development Permit on appeal, each determined that the Project is consistent with the LCP and the California Coastal Act.

I. The Planning Commission of County held a duly noticed hearing on this Agreement on March 22, 1995.

J. On May 23, 1995, the Board of Supervisors adopted Ordinance No. _____ approving this Agreement with Owner and the ordinance thereafter took effect on the Effective Date.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. In this Agreement, unless the context otherwise requires:

A. "Board of Supervisors" is the Board of Supervisors of the County of San Mateo.

B. "Development Plan" means the plans entitled "Pillar Point Harbor Village" dated May 15, 1990, prepared by Stanton & Associates Architects, consisting of eleven (11) sheets, which are on file with County.

C. "Effective Date" means the effective date of the ordinance adopting this Agreement which is _____, 1995.

D. "Laws and Regulations" means any and all laws, ordinances, rules, regulations and official policies of County, governing permitted uses, governing density and intensity of use, and governing design, improvement and construction standards and

specifications applicable to the development of the Real Property including, without limitation thereto, County's General Plan, LCP, Zoning Ordinance, Subdivision Ordinance, Building Code, Fire Code, Electrical Code and Plumbing Code.

E. "Mortgagee" means any mortgagee under a mortgage or beneficiary under a deed of trust encumbering all or any portion of the Real Property.

F. "Permits" means any and all permits and/or approvals required by County for the performance of some act or the operation of some facility in a particular manner.

G. "Project" means the contemplated development of Parcels A, B and C as described in Recital D to this Agreement. "Modified Project" shall have the meaning set forth in Paragraph 8.

H. "Owner" means the entity executing this Agreement as the "Owner", together with any successors or assigns thereof having an equitable or legal interest in the Real Property, or any part thereof, with respect to such part.

I. "Zoning Ordinance" means the zoning ordinance of County, as it exists on the Effective Date which is set forth as Division VI, Part 1 of County's Ordinance Code.

2. Interest of Owner. Owner represents that it has a legal, fee simple interest in the Real Property.

3. Consistency With Laws and Regulations. County hereby confirms that the proposed build out and use of the Project as described in the Development Plan is consistent with (i) the General Plan and LCP of County, (ii) the Zoning Ordinance, and (iii) all other Laws and Regulations, as each of the items

specified in clauses (i), (ii) and (iii) above exist on the Effective Date.

4. Owner to Seek Financing; Mortgagee Protection. Owner agrees to exercise its reasonable best efforts to obtain the necessary financing to construct the Project. County understands and acknowledges that said efforts may be directed to obtaining construction financing from institutional lenders, seeking a joint venture partner, or selling the Project to a party who has the desire and capability of constructing the Project.

County acknowledges that any party or parties providing financing for the Project may require certain Agreement interpretations and/or clarifications and agrees upon request, from time to time, to meet with Owner and representatives of those providing financing to negotiate in good faith any such request for interpretation or clarification.

Any Mortgagee of the Real Property shall be entitled to the following rights and privileges:

A. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Real Property, or any portion thereof, made in good faith and for value.

B. Any Mortgagee who has submitted a request in writing to County in the manner specified herein for giving notice, shall be entitled to receive written notification from County of any default by Owner in the performance of Owner's obligations under this Agreement.

C. If County timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, County shall provide a copy of that notice

to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

D. Any Mortgagee who comes into possession of the Real Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Real Property, or part thereof, subject to the terms of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Owner arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee or its successors or assigns shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the Real Property, or portion thereof, acquired by such Mortgagee have been paid to County. Further, such foreclosure shall not relieve Owner from any defaults or monetary obligations arising prior to acquisition of title to the Property by such Mortgagee.

5. Time for Construction and Completion of Project.

A. Beginning Construction. Owner, subject to delay caused by events described in Paragraphs 7.F and 15.E (Force Majeure) below, and further subject to securing all required Permits, agrees to begin construction of the Project or the Modified Project within five (5) years after the Effective Date.

B. Completion of Construction. Subject to delay caused by events described in Paragraphs 7.F and 15.E (Force Majeure) below, Owner agrees to complete construction of the Project during the term of this Agreement.

C. Phasing. It is understood and agreed that the Project or the Modified Project may be completed in phases in such

times and manner as Owner shall determine, subject however to the time constraints imposed by Subparagraphs A and B above and provided that construction of the first phase shall include the public improvements described in the Development Plan or in the approved development plan for the Modified Project.

6. Specific Restrictions on Development of the Real Property. Parcels A, B and C shall be used only for the purposes set forth in the Use Permit for the Project or for such purposes as may be approved by County in connection with its approval of a Modified Project. The density or intensity of use, maximum height and size of proposed buildings within the Project and provisions for reservation or dedication of land are all as set forth on the Development Plan and/or the Project Approvals, subject to any modifications that are incorporated in a Modified Project.

7. Effect of Agreement on Land Use Regulations.

A. Regulation. The Laws and Regulations applicable to development of the Project and/or a Modified Project are, and shall at all times during the term of this Agreement be, those in force on the Effective Date, and shall further be subject to changes in County's Building Code, Fire Code, Electrical Code or Plumbing Code occurring from time to time, provided that such changes (i) are found by the Board of Supervisors to be in the best interest of the health and safety of all citizens of County and (ii) are generally applicable to all property in County. Any change in the Laws and Regulations which would conflict in any way or be inconsistent with the foregoing provisions of this Subparagraph A, shall not be applied to the Real Property. However, Owner may elect by delivery of written notice thereof to County to have any Law or Regulation hereinafter enacted by County made applicable to the Real Property.

B. Federal and State Law. Nothing shall preclude the application to the Real Property of changes in federal or state laws. To the extent any changes in federal or state laws prevent

or preclude compliance with one or more provisions of this Agreement or development of the Real Property in conformance with the Development Plan, the parties agree that the provisions of this Agreement and/or the Development Plan shall, by the mutual agreement of the parties, be modified, extended or suspended as may be required to comply with such federal or state laws. Each party agrees to extend to the other prompt and reasonable cooperation in so modifying this Agreement or the Development Plan.

C. Term of Project Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of each of the Project Approvals, other than the Coastal Development Permit issued by the Coastal Commission under Public Resources Code section 30604(b) and 20621, shall be extended for a period of time through the scheduled termination date of this Agreement as set forth in Paragraph 20 below. Should the Coastal Development Permit for the Project issued by the Coastal Commission expire prior to the expiration date of the other Project Approvals set forth in this Paragraph 7.C and Paragraph 20, County shall, in accordance with the provisions of Paragraph 9 below, consider and act upon a Coastal Development Permit for the Project consistent with the other Project Approvals and subject to the same conditions as those imposed on the Coastal Development Permit originally approved by the County, and approved by the Coastal Commission on appeal, which shall have the same term as that set forth for the other Project Approvals in this Paragraph 7.C and Paragraph 20. The decision as to whether to approve or deny such Coastal Development Permit will be subject to the discretion of the County decision making body. To the extent permitted by applicable law, the issuance of a Coastal Development Permit by the County shall be subject to appeal to the Coastal Commission.

8. Changes in Project. No substantial change, modification, revision or alteration may be made in the approved Development Plan without review and approval of County. A change, modification,

revision or alteration in the approved Development Plan that affects the duration or the term of this Agreement, the permitted uses of the Real Property, the density or intensity of use, the maximum height and size of proposed buildings, or provisions for reservation or dedication of land for public purposes shall not be effective unless and until the parties amend this Agreement as provided in Paragraph 12 below. Further, if the Project is modified other than by minor changes described in subparagraph 12(ii) below, the Project as so modified shall not be entitled to the benefits of Paragraph 7 unless the Project, as so modified, constitutes a Modified Project. The Project, as so modified, shall constitute a Modified Project only if it satisfies the following criteria:

A. Continues to be a mixed-use development containing the following elements:

(1) A hotel (which may be operated in whole or in part on a time-share basis but which shall be consistent with the visitor service purposes of the Coastside Commercial Recreation District);

(2) A major restaurant (at least 100 but not more than 280 seats);

(3) A retail component consisting of a variety of specialty shops;

(4) Subsurface and ground level parking, with the ground level parking to remain concentrated on Parcel B.

B. The square footage within the footprint of the Modified Project does not exceed the square footage within the footprint of the Project;

C. The amount of floor area within the Modified Project does not exceed the amount of floor area within the Project by more than three percent (3%);

D. Conforms to the scale and harmony policies of the LCP at least to the same extent as the Project;

E. Satisfies the purposes of Section 6265 of the Zoning Ordinance in effect as of the Effective Date at least to the same extent as the Project;

F. Continues to be as protective of coastal views as the Project; and

G. Provides for public access improvements at least as extensive as provided for in the Project.

Whether or not the Project, as modified, constitutes a Modified Project shall be determined in the first instance by the Planning Director, and his decision may be appealed by any aggrieved person to the Planning Commission and, ultimately, to the Board of Supervisors. Owner understands that a Modified Project may be subject to the requirement of obtaining a new (or amended) coastal development permit and/or use permit as well as additional environmental review.

9. Cooperation/Implementation.

A. Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgement or affidavit, if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.

B. Processing. Upon satisfactory completion by Owner of all required preliminary actions and payments of appropriate processing fees, if any, County shall, subject to all legal requirements, diligently process and expeditiously grant any Permits necessary for the Project and diligently process any

Permits necessary for a Modified Project, in accordance with this Agreement including, but not limited to, the following:

(1) the processing of applications for and issuing of all discretionary Permits requiring the exercise of judgment and deliberation by County (the "Future Permits");

(2) the holding of any required public hearings;

(3) the processing of applications for and issuing of all ministerial Permits requiring the determination of conformance with the Laws and Regulations, including, without limitation, site plans, development plans, land use plans, grading plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, building permits, lot line adjustments, encroachment permits, occupancy certificates and approvals and entitlements and related matters as necessary for the completion of the development of the Project ("Ministerial Permits").

C. Processing During Third Party Litigation. The filing of any third party lawsuit(s) against County or Owner relating to this Agreement or to other development issues affecting the Real Property shall not delay or stop the development, processing or construction of the Project, approval of the Future Permits, or issuance of the Ministerial Permits, unless the third party obtains a court order preventing the activity.

10. Other Governmental Bodies. To the extent that County, its Board of Supervisors, Planning Commission or any other County agency constitutes and sits as any other board or agency, it shall not take any action that conflicts with County's obligations under this Agreement.

11. Periodic Review of Compliance with Agreement. The Planning Director shall review this Agreement at least once during every twelve (12) month period from and after the Effective Date as provided in Section 6516 of County's Ordinance No. 3607. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Owner shall be given at least thirty (30) days written notice in advance of each such annual review. Notice of such annual review shall include a statement that such review may result in amendment or termination of this Agreement. County shall deliver to Owner a copy of all staff reports and related exhibits concerning Owner's compliance with the terms of this Agreement at least thirty (30) days prior to each such annual review. The determination of the Planning Director that Owner has in good faith complied with the terms of this Agreement shall be final. Any termination or modification of this Agreement shall be effected pursuant to the procedures set forth in Paragraph 15 respecting defaults hereunder.

If, within ten (10) days following the Planning Director's finding that Owner has failed to comply with the terms of this Agreement at an annual review as provided in this Paragraph 11, Owner requests that the Board of Supervisors review such finding, then the Board of Supervisors shall schedule the topic of Owner's good faith compliance with the terms of this Agreement as an agenda item for a meeting of the Board of Supervisors to be held within thirty (30) days following such written request. County shall give any required notice to the public in the time period required by law prior to such meeting of the Board of Supervisors. If, at such meeting, the Board of Supervisors determines that Owner is then in good faith compliance with the terms of this Agreement, then the Board of Supervisors shall adopt a resolution making such a finding, and such finding shall conclusively determine such issue up to and including the date of such Board of Supervisors meeting. If the Board of Supervisors determines that Owner is not then in

good faith compliance with the terms of this Agreement, then the Board of Supervisors shall take such actions as it finds appropriate to enforce or interpret the parties' rights and obligations under the terms of this Agreement.

12. Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in the manner provided for in California Government Code Sections 65867, 65867.5 and 65868, provided that any such cancellation or amendment shall relate only to those portions of the Real Property as may then be owned by the party or parties executing the documentation to effect such amendment or cancellation as "Owner." Notwithstanding the foregoing, (i) any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, or provisions for reservation or dedication of land for public purposes shall not require a public hearing (unless required by law) before the parties may execute an amendment hereto; and (ii) any minor or non-material modification, change, alteration, deviation or substitution to the Development Plan and/or Project Approvals may be approved solely by the Planning Director, without any amendment to this Agreement, as contemplated by Section 6520 of the Zoning Ordinance.

13. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between County and Owner and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of County and Owner. If and when, from time to time, during the term of this Agreement, County and Owner agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by County and Owner, which, after execution, shall be attached hereto, and may be further clarified from time to time as necessary with future approval by County and Owner. No such operating

memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The County Counsel shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Paragraph 13 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Paragraph 12. The County Counsel may execute any operating memoranda hereunder without action by the Board of Supervisors.

14. Enforcement. This Agreement is enforceable by either party to it notwithstanding any change in the Laws and Regulations of County occurring on or after the Effective Date that would otherwise be applicable to the development of the Project or a Modified Project.

15. Events of Default.

A. Cure Period. Subject to extensions of time by mutual consent of the parties in writing and the provisions of this Paragraph 15, breach of or failure or delay by any party to perform any term or provision of this Agreement within the time periods specified below shall constitute a default. In the event of any alleged default of any terms or conditions of this Agreement, the party alleging such default shall give the defaulting party written notice specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured. The party allegedly in default shall have a period of thirty (30) days in which to cure such default, or if the cure cannot be completed within thirty (30) days, such party shall have a period of thirty (30) days within which to commence such cure and such additional time as may reasonably be necessary to complete such cure.

B. Procedure for Default by Owner. If Owner is alleged to be in default hereunder by County, then after notice and expiration of the cure period described in Subparagraph A above, if Owner has not cured the alleged default, County may institute legal

Agreement, the liability of Owner and the remedy of County shall be limited to the termination of this Agreement. Following notice of intent to terminate or modify as provided above, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Sections 65867 and 65868 by the Board of Supervisors within thirty (30) calendar days following the date of delivery of such notice. Following the consideration of the evidence presented in such review before the Board of Supervisors and a determination, on the basis of substantial evidence, by a majority vote of the Board of Supervisors that a default by Owner has occurred, County may (i) give written notice of termination of this Agreement to Owner, and this Agreement shall be deemed terminated as of the date of delivery of such notice, or (ii) propose a modification of this Agreement, which modification shall be adopted as provided in Paragraph 12 if it is acceptable to all parties; provided, however, that, if such termination or modification occurs because of a default of Owner hereunder after this Agreement has been assigned so that it applies to more than one entity as "Owners", then such termination or modification shall relate only to that specific portion of the Real Property as may then be owned by the party that committed a default hereunder and not to any other portion of the Real Property owned by a different entity. Further, termination of this Agreement shall not render invalid any action taken by either party in good faith prior to the date on which the termination becomes effective. This paragraph shall not be interpreted to constitute a waiver of Section 65865.1 of the Government Code, but merely to provide the procedure by which the parties may take the actions set forth in such Section 65865.1.

C. Procedure for Default by County. If County is alleged by Owner to be in default under this Agreement, Owner may, in accordance with the requirements of Paragraph 15.F, enforce the terms of this Agreement by an action at law or in equity, including, without limitation, by specific performance.

D. Annual Review. Evidence of default may also arise in the course of the regularly scheduled annual review of this Agreement pursuant to California Government Code Section 65865.1 as described in Paragraph 11 above. If any party alleges that another party is in default following the completion of the normal scheduled annual review, such party may then give the other a written default notice, in which event the provisions of Subparagraphs A, B and C immediately above shall apply. In addition, the regularly scheduled annual review of this Agreement may, following compliance with the requirements of Paragraph 15.A, serve as the default hearing for any alleged default by Owner as described in Paragraph 15.B above.

E. Force Majeure. In addition to specific provisions elsewhere set forth in this Agreement, any delay or failure of performance by any party hereunder shall not be deemed to be a breach of the terms of this Agreement where such delays or failures are due to war, insurrection, strikes, walkouts, riots, floods, earthquake, fires, casualties, acts of God, moratoria imposed by County, governmental restrictions imposed or mandated by other governmental agencies, appeals of licenses, permits or approvals granted to Owner, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulation, litigation, or similar bases for excused performance. An extension of time for such cause shall be granted in writing for the period of the enforced delay or longer period as may be mutually agreed upon in writing and the term of this Agreement shall be extended by the same time period, provided that in no event shall the term of this Agreement be extended for a period longer than five (5) years

in the aggregate. As soon as practicable after the enactment of any conflicting state or federal laws or regulations the parties shall meet and confer in good faith regarding the possibility of amending this Agreement so as to comply with such laws and regulations.

F. Legal Action. Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the San Mateo County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and County shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and County are unable to agree on a referee within ten (10) days of a written request to do so by either party thereto, either party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Paragraph 15.F shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

16. Assignment. The initial Owner who is a signatory to this Agreement shall have the right to sell, assign or transfer this Agreement, with all of its rights, title and interest therein,

either in its entirety or on a parcel by parcel basis, to any person, firm or corporation to whom Owner sells, assigns or transfers all or any portion of the Real Property at any time during the term of this Agreement. With respect to any voluntary transfer of all or any portion of the Real Property, Owner shall provide County with written notice of its intent to sell, assign, or transfer this Agreement in whole or in part at least thirty (30) days in advance of such action. The agreement in writing by any such assignee to be subject to the provisions of this Agreement applicable to the portion of the Real Property being transferred shall relieve Owner from its obligations under this Agreement with respect to such portion of the Real Property, provided that Owner shall not be relieved of any defaults or monetary obligations arising prior to the date of the assignment of this Agreement to such assignee. If any transferee (other than with respect to an involuntary transfer) of all or any portion of the Real Property fails to execute such written agreement prior to or substantially contemporaneously with the deed to effect such transfer, then, upon the effectiveness of such transfer by recordation of such deed in such Official Records, this Agreement shall be null and void solely as it relates to the transferred portion of the Real Property. Notwithstanding any other provision in this Paragraph 16, no lender whose loan is secured by a lien on all or any portion of the Real Property shall be required to notify County, or to execute any written assumption of this Agreement, in order to exercise its rights under any mortgage or deed of trust creating a lien upon all or any portion of the Real Property.

17. Covenants Run with the Real Property. It is intended and agreed that the provisions of this Agreement shall constitute covenants which shall run with the Real Property, and the benefits and burdens hereof shall bind and inure to all successors in interest to the parties hereto, subject to the provisions of Paragraph 16 hereof. No later than ten (10) days after the Effective Date, the clerk of County shall record a copy of this

Agreement in the appropriate Official Records of the San Mateo County Recorder.

18. Indemnification. Owner shall indemnify and hold harmless County, its officers, agents, employees, and servants from all claims, suits or actions of any kind, name and description brought by any third person, organization or entity to overturn or otherwise challenge the adoption and/or execution of this Agreement by County. The duty of Owner to indemnify and hold harmless shall include the duty to defend.

19. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person (including by reputable courier service) or sent by certified mail postage prepaid. Notices required or permitted to be given to County shall be addressed as follows:

County of San Mateo
County Government Center
590 Hamilton Street
Redwood City, California 94063
Attention: Director of Environmental Services

Notices required or permitted to be given to Owner shall be addressed as follows:

WCI Communities, Inc.
801 Laurel Oak Drive
Naples, Florida 33963
Attn: Peter D. Doragh, Esq.

With a Copy To:

Fishing Village Associates
c/o WCI Communities, Inc.
255 Palowet Drive
Palm Desert, California 92260
Attn: Mr. J. Randolph Cassidy

and:

Norman I. Book, Jr., Esq.
Carr, McClellan, Ingersoll, Thompson & Horn, a
professional corporation
216 Park Road
Burlingame, California 94010

Either party may change its address for notice or add one or more additional persons or entities to receive any notices by giving notice in writing to the other party as provided above.

20. Duration of Agreement. This Agreement shall become effective upon the Effective Date and shall, subject to the provisions of Paragraph 15.E, expire on the tenth anniversary thereof. In the event that the implementation of the terms of this Agreement is suspended by any court order or other legal process, the duration of this Agreement shall be extended by the period of such delay or suspension.

Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect any right or duty arising from County Permits, including, without limitation, the Project Approvals, the Future Permits or the Ministerial Permits.

This Agreement shall terminate with respect to any Parcel and such Parcel shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the Parcel.

21. Estoppel Certificate. Within thirty (30) calendar days following any written request, in accordance with the notice provisions of this Agreement, which either party may make from time to time, the other party shall execute and deliver to the

requesting party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (c) any other information reasonably requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party.

22. Negation of Partnership. The Project constitutes private development, neither County nor Owner is acting as the agent of the other in any respect hereunder, and County and Owner are independent entities with respect to the terms and conditions of this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership in the business of Owner, the affairs of County, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

23. No Third Party Beneficiary. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person who is not a party, unless expressly otherwise provided.

24. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

25. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement and the rights and obligations of the parties hereto.

26. Construction of Agreement. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Owner or County and consistent with the provisions hereof, in order to achieve the objectives and purposes. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

27. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the day and year first above written.

OWNER:

FISHING VILLAGE ASSOCIATES,
a California limited partnership

By: PILLAR POINT PROPERTIES, INC.
a California corporation as sole
general partner

By: Ronald C. Dillon
Ronald C. Dillon
Executive Vice President

COUNTY:

THE COUNTY OF SAN MATEO, a charter county
organized and existing under the laws
of the State of California

By: Ted [Signature]
Its: President, Board of Supervisors

Attest: _____
County Clerk

Certificate of Delivery
(Government Code Section 25103)

certify that a copy of the original document filed in the Office of the
Clerk of the Board of Supervisors of San Mateo County has been
delivered to the President of the Board of Supervisors.

[Signature]
Clerk of the Board of Supervisors