)RDING REQUESTED BY:

tot.y R. Robbins, City Clerk

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WHEN RECORDED MAIL TO:

City Clerk
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019
(650) 726-8270

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County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder
Recorded By CITY OF HALF MOON BAY

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August 31, 1999

DEVELOPMENT AGREEMENT

TITLE OF DOCUMENT

BETWEEN THE CITY OF HALF MOON BAY

AND

WAVECREST VILLAGE, LLC

FOR THE WAVECREST VILLAGE PROJECT

Recording Requested by,
and when Recorded Mail To:

City Clerk
City of Half Moon Bay
501 Main Street

Half Moon Bay, CA 94019

Space above this line for Recorder's Use

DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF HALF MOON BAY

AND

WAVECREST VILLAGE, LLC

FOR THE WAVECREST VILLAGE PROJECT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into in the City of Half Moon Bay on this 19th day of August, 1999, by and between the CITY OF HALF MOON BAY, a municipal corporation ("City") and WAVECREST VILLAGE, LLC, a California limited liability company ("Developers").

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce economic risks of development, the State of California adopted Government Code Sections 65864-65869.5 (the "Development Agreement Statutes") which authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property. To encourage the development of affordable housing for lower and very low income households, the State of California has also adopted, among other statutes, Government Code Section 65590 and Sections 65915-65918 (the "Density Bonus Statutes") which require the City to provided density bonuses and other incentives to developers providing such housing.

B. This Agreement is executed pursuant to and in accordance with the Development Agreement Statutes, the Density Bonus Statutes, the terms and conditions of the Project agreements and the Project Approvals (as defined in Section 4 below), and the City's inherent rights, powers and authority to implement, interpret, administer and perform contracts, agreements, permits and approvals. The Ordinance (as defined below) is adopted, in part, to satisfy the requirement of Government Code Section 65915(a) to adopt an ordinance specifying the method of providing developer incentives for very low and low income housing.

C. City is a municipal corporation with land use power and authority over lands within the City limits. City has adopted a General Plan dated 1993, ("General Plan"), and a Local Coastal Plan dated 1993 ("LCP"). City is desirous of facilitating the objectives expressed in the General Plan, the Density Bonus Statutes and the LCP to the end that the community economy is strengthened, environmental and

land use analyses are conducted pursuant to law, private parties receive an appropriate rate of return on their property interests, sensitive ecological habitats and view corridors are retained for use and enjoyment by the community, affordable housing is provided and the public interest is served. City desires to enter into this Agreement to provide economic, recreational, and environmental benefits and for a variety of other public purposes. Pursuant to Government Code Section 65869, the City, by virtue of possessing a certified LCP, is authorized to approve this Agreement. "City" as used in this Agreement shall mean the City of Half Moon Bay, a general law city organized and existing under the laws of the State of California, and its current and future boards, commissions, councils, officers, agents and consultants.

D. Developers own (or are in the process of acquiring from its members) that certain real property consisting of approximately two hundred and eight (208) gross acres of primarily undeveloped land, located in the City of Half Moon Bay, County of San Mateo, California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property"). The Property is designated in the General Plan as Planned Unit Development ("PUD").

E. The Property is located within the Half Moon Bay Community Development Project Area (the "Project Area"), designated pursuant to the amended Preliminary Plan adopted by the Half Moon Bay Planning Commission on March 9, 1993.

F. On the Property, Developers propose a development project ("Project") consisting of two hundred and twenty-five (225) market rate residential units and forty-six (46) affordable residential units, of which at least twenty-eight (28) of the

market and/or affordable units must be either senior housing or housing for which retirees, part-time executives or housing for which public employees in Half Moon Bay are given priority; and (b) certain retail, commercial, office and/or other uses, all as more particularly described in and shown on the Specific Plan attached hereto as Exhibit B and incorporated herein by this reference ("Specific Plan"), and the General Site Plan attached hereto as Exhibit C and incorporated herein by this reference ("General Site Plan"). The two hundred twenty five (225) market rate residential units consist of one hundred eighty (180) base density residential units and density bonus of forty-five units pursuant to the Density Bonus Statutes.

Developers will actively target senior citizens and/or retired or part-time executives ("Low-Impact Purchaser") rather than exclusively commuter families as part of the overall marketing of such units for sale. Developers shall develop and implement marketing strategies which shall include distribution into Half Moon Bay and surrounding communities of marketing and advertising materials aimed at the senior citizen and/or retired or part-time executive sector of the market and which will include offering special design options such as separation of master and other bedrooms, ground floor bedrooms, handrails and ramps, two-car garages, garage spaces capable of accommodating recreational vehicle parking, and high speed telecommunications connection capability. The floor plans submitted for architectural review shall demonstrate how the options discussed hereinabove may be ordered by prospective purchasers. Developers also agree to provide a referral fee in the amount of $1,000 for each market rate residential unit to any person who refers a Low Impact Purchaser to the Project, provided that the Low Impact Purchaser actually purchases a market rate residential unit within the Project. Said referral fee shall be paid only to the one person identified in writing by the Low Impact Purchaser as the actual and sole source of the referral and shall be paid by Developers upon close of escrow of the initial sale of the market rate residential unit. In the

event of any dispute regarding the person entitled to such referral fee, the Developers shall have the option of delivering such fee to the City and the City shall be solely responsible for resolving such dispute and the Developers shall have no further obligation. Developers shall also include passive recreational amenities in the northern residential development.

G. Upon receipt of all Project Approvals (as defined in Section 4 below), and a final subdivision map for any phase of the Project which includes at least seventy-nine (79) market-rate residential units, Developers shall dedicate the following properties to the City, all as more specifically described in Exhibit D hereto and incorporated herein by this reference ("Dedication Properties"): (i) 61 acres of open space, including the coastal bluffs and view corridor (designated as Parcel I on the Phase I-A vesting tentative map), (ii) the ten (10) acre ball field (designated as Parcel F on the Phase 1-A vesting tentative map), which may include all or a portion of the present Smith Field, (iii) the six-acre community garden, including a gravel parking area (designated as a part of Parcel I on the Phase 1-A vesting tentative map) and (iv) the riparian reserve (designated as Parcel B on the Phase 1-A vesting tentative map). Not later than thirty days after approval of this Agreement by the City Council, Developers shall execute a commercially reasonable license agreement authorizing the City or any entity it approves to enter on to and use the existing Smith Field baseball and softball fields, provided that the right to such use may be suspended during construction of the replacement ballfields and related facilities required herein. Said license agreement shall remain in existence until the replacements ballfields required herein are dedicated to the City.

Developers shall provide those certain improvements on the Dedication Properties as described in Exhibit E attached hereto and incorporated herein by this reference ("Dedication Properties Improvements"), in accordance with the standards

and schedule provided in Exhibit E. The Dedication Properties shall be restricted to those uses specifically provided for in recorded deeds or covenants agreements which run with the land in the form attached hereto as Exhibit F and incorporated herein by this reference ("Restrictive Covenants"). Pursuant to the deeds to the City for the Dedication Properties or in separate easement agreements, the City shall grant such easements to Developers as are or may become necessary or desirable from time to time for the development, subdivision, construction, maintenance and use of the Project and for access thereto to the extent that said easements do not unreasonably interfere with the anticipated uses of the Dedication Properties.

H. The Cabrillo Unified School District ("School District") has executed a purchase agreement to acquire an approximately twenty-five (25) acre portion of the Property from the Developers or its members for construction of a junior high school campus (the portion which may be so acquired is referred to herein as the "School Parcel"). Notwithstanding the preceding sentence, nothing in this Agreement shall be construed as including the School District or any other potential purchaser of the School Parcel as a party to this Agreement. The School Parcel is more particularly shown and described on Exhibit G attached hereto and incorporated herein by this reference. The parties anticipate that the City and School District will enter into a joint use agreement related to the sports facilities constructed on the School Parcel. In the event that the School Parcel is not purchased for and developed with a junior high school campus, the School Parcel may alternatively be used for any of the uses approved in the Specific Plan for other portions of the Property, provided that the total number of residential units shall not exceed 271 dwelling units.

I. City understands that unless Developers obtain this Agreement from City, Developers will not agree to make the dedications and improvements with

respect to the Dedication Properties as described in Recital E above. Developers understand that City will not execute this Agreement unless Developers agree to make the dedications and improvements with respect to the Dedication Properties as described in Recital E above.

J. The Coastside Boys and Girls Club is purchasing an approximately 3-acre portion of the property from the Developers or its members for construction of a Boys and Girls Club.

K. The parties recognize that the City has limited control or authority over other governmental entities, agencies, districts, commissions and boards ("Public Agencies") which may have or may claim to have jurisdiction by law over the development, construction and use, or dedication of the Property. Accordingly, the obligations set forth herein shall be construed in accordance with the permitting requirements of all such Public Agencies. Notwithstanding the foregoing, the City agrees to cooperate fully with Developers and any such Public Agencies in obtaining any permits, licenses, approvals, or land use entitlements necessary or desirable for the development, subdivision, construction and use of the Project or implementation of this Agreement.

L. The City Council of the City of Half Moon Bay ("Council") has determined that this Agreement is consistent with its General Plan and all of its elements, and the LCP. The Council further finds that the Agreement is consistent with the PUD zoning requirements of the City.

M. The North Wavecrest Redevelopment Plan was the subject of a final master environmental impact report ("FEIR") under the California Environmental

Quality Act ("CEQA") (set forth in Public Resources Code, Sections 21000 *et seq.*) which was published in May 1995 and certified by the Council. The Project was thereafter the subject of a Subsequent Master Environmental Impact Report ("Subsequent EIR") under CEQA, which was certified by the Council on July 7, 1999, by Resolution No. C-55-99. Developers shall implement all mitigation measures designated to be Developers' responsibility, as set forth in the FEIR and the Subsequent EIR and the mitigation and monitoring plans incorporated therein to the extent that they pertain to the Project and are specifically incorporated as conditions in the Project Approvals.

N. On July 20, 1999, the Council adopted Ordinance No. C-7-99 ("Ordinance") approving this Agreement. The Ordinance took effect on August 19, 1999.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. General Provisions.

(a) Definitions. Capitalized terms used in this Agreement shall have the meanings given to them in this Agreement.

(b) Incorporation of Recitals. Recitals A through N set forth above, and all defined terms set forth in the Recitals and in the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if set forth herein in full.

(c) Incorporation of Exhibits. The Exhibits to this Agreement are:

Exhibit A: Description of Property

Exhibit B: Specific Plan

Exhibit C: General Site Plan

Exhibit D: Dedication Properties

Exhibit E: Dedication Properties Improvements

Exhibit F: Restrictive Covenants

Exhibit G: School Parcel

Exhibit H: Vesting Tentative Maps

Exhibit I: Project Approvals

Exhibit J: Subsequent Approvals

Exhibit K: Construction Schedule for Public and Off-Site Improvements

Exhibit L: Phasing Plan

Exhibit M: Public and Off-Site Improvements

Exhibit N: Schedule of Fees

Exhibit O: Existing Assessments

Exhibit P: Compliance Certificate

All Exhibits are incorporated herein by this reference as though fully set forth herein.

(d) Interest of Developers. Developers or its members have fee simple title to the Property.

(e) Effective Date and Recording. This Agreement shall be effective upon the later of (i) thirty (30) days after the date of adoption of the Ordinance by

the Council, or (ii) the date on which this Agreement is executed by all parties hereto ("Effective Date"). All parties shall execute this Agreement within ten (10) days after adoption of the Ordinance. Not later than ten (10) days after the Effective Date, the Clerk of the City shall record this Agreement in the Office of the County Recorder of San Mateo County, California ("County Recorder's Office").

(f) Term; Termination. The term of this Agreement shall commence upon the Effective Date and shall terminate on the fifteenth (15th) anniversary thereof ("Term"), unless the Term is otherwise extended pursuant to this Agreement or by the mutual written consent of the parties. This Agreement may be terminated or superseded by the mutual written consent of the parties at any time in accordance with the applicable provisions of state and local law. In the event that the implementation of the terms of this Agreement is suspended by any court order or other legal process, the Term of this Agreement shall be extended by the period of such delay or suspension.

2. Development of the Property. The Developers shall be entitled to develop the Property in accordance with the Specific Plan, General Site Plan, Project Approvals (defined in Section 4 below), and Vesting Tentative Maps (defined in Section 3 below). The Property shall be used for the purposes as described in the Project definition set forth in Recital F, as more particularly described in the Specific Plan, General Site Plan, Project Approvals, and Vesting Tentative Maps. The permitted uses of the Property, density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, provisions for affordable housing, provisions for public improvements, design, configuration, improvement criteria, construction standards and specifications for proposed buildings and other structures, infrastructure and improvements,

parking requirements, and the other terms, conditions, restrictions and requirements for the development, subdivision, construction and use of the Property shall be as set forth in the Specific Plan, General Site Plan, Project Approvals, Vesting Tentative Maps and the Subsequent Approvals. In addition to those vesting tentative maps concurrently being approved as part of the Project Approvals, future vesting tentative maps shall be approved as set forth in this Agreement.

3. Vesting Tentative Maps. Vesting tentative maps and all applicable conditions of approval ("Vesting Tentative Maps") in the form of Exhibit H attached hereto and incorporated herein by this reference shall be filed in the future by Developers for approval and approved by the City in accordance with this Agreement and the Phasing Plan. The Vesting Tentative Maps (or phases thereof as provided below) may be filed at such time as Developers have provided City with proof of water capacity availability, which proof may be made upon a showing by Developers that they have an agreement to purchase or acquire water connections sufficient for the development provided for in such Vesting Tentative Maps or applicable phase thereof. All conditions of approval for the Vesting Tentative Maps shall be limited to those contained in Exhibit H, and no changes, additions, modifications or amendments shall be made to the conditions of approval at, prior to or after the time that the Vesting Tentative Maps are approved, unless mutually agreed to in writing by all parties to this Agreement. Developers may file the Vesting Tentative Maps in phases for portions of the Property. Further, Developers may file phased final subdivision maps which cover portions of the Property included within any vesting tentative maps approved as part of the Project Approvals or any Vesting Tentative Maps.

Notwithstanding and in no way limiting any of the foregoing, the Vesting Tentative Maps which are not part of the Project Approvals are included as

Subsequent Approvals, defined below in Section 5. It is acknowledged by Developers and City that the Vesting Tentative Maps satisfy the requirements of the City's Subdivision Ordinance codified at Title 17 of the Half Moon Bay Municipal Code ("Subdivision Ordinance"), and no further items, submittals or information shall be required in connection with the Vesting Tentative Maps.

4. Project Approvals. "Project Approvals" as used in this Agreement shall mean this Agreement and those certain permits, land use approvals, vesting tentative maps, agreements, and certifications to be made, approved, or issued by the City concurrently with this Agreement, as more specifically described in Exhibit I to this Agreement.

5. Subsequent Approvals. In addition to the Project Approvals, this Agreement will be implemented by those certain permits, land use approvals, subdivision maps (including the Vesting Tentative Maps), agreements, and certifications to be made, approved, or issued by the City from and after the Effective Date of this Agreement, as more specifically described in Exhibit J to this Agreement and incorporated herein by this reference ("Subsequent Approvals").

6. Duration of Approvals. Notwithstanding any ordinance, resolution, regulation, law, code, policy, or rule of the City to the contrary, any Project Approvals or Subsequent Approvals granted, approved, issued or authorized in connection with the Project shall be effective for the greater of the period specified therein, the period specified by law or the Term of this Agreement, including without limitation, any subdivision maps (including the Vesting Tentative Maps), which, pursuant to the provisions of Government Code Section 66452.6, shall be effective for the Term of this Agreement.

7. Consistency with Existing Land Use Regulations. The City hereby agrees and confirms that the Project and the proposed development, subdivision, construction and use of the Property as described in the Specific Plan, General Site Plan, and the Project Approvals are consistent with (a) the General Plan; (b) the LCP; (c) the Specific Plan; (d) the City's zoning ordinance codified at Title 18 of the Half Moon Bay Municipal Code ("Zoning Ordinance"); (e) all rules, regulations, ordinances, resolutions, or policies of the City; and (f) all other Laws and Regulations (as hereinafter defined), as each of the items specified in clauses (a), (b), (c), (d), (e), and (f) of this Section 7 exist on the Effective Date. "Laws and Regulations" as used in this Agreement shall mean any and all local, municipal, regional, state or federal statutes, laws, codes, ordinances, orders, delineations, determinations, regulations, rules, resolutions or requirements relating to any matter concerning the Property or Project, including without limitation the Density Bonus Statutes and Development Agreement Statutes.

8. Regulations and Fees Applicable to the Project.

(a) Effective Standards. Pursuant to California Government Code Sections 65865.2 and 65866, the rules, regulations, and official policies applicable to: (i) the development, subdivision, construction and use of the Project, including without limitation the permitted uses, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, provisions for affordable housing, provisions for public improvements, design, configuration, improvement criteria, construction standards and specifications, and the schedule or timing of development fees and exactions, and (ii) the City's consideration of Developers' applications for the Subsequent Approvals or any other permits, approvals, agreements or other items necessary or desirable for

the development, subdivision, construction or use of the Project, are, and shall at all times during the Term of this Agreement be, those rules, regulations, plans, ordinances, resolutions and policies of the City in effect on the Effective Date (the "Effective Standards").

(b) Vested Components. The (i) permitted use of the Property; (ii) density or intensity of use of the Property; (iii) terms and conditions of development that apply to the Property as set forth in the Specific Plan and General Site Plan; (iv) public improvement requirements attached hereto as Exhibit M which shall include but not be limited to the Dedication Properties (Exhibit D) and the Dedication Property Improvements (Exhibit E) and incorporated herein by this reference ("Public Improvements"); and (v) terms and conditions of the Project Approvals, are hereby declared "vested" and are referred to and defined herein as the "Vested Components." None of the Vested Components or any terms, conditions, or parts thereof may be amended, revised, supplemented or changed during the Term of this Agreement without the written consent of Developers and the City, except as expressly permitted herein. The Vested Components shall be effective against, and shall not be amended by, any subsequent rule, regulation, plan, ordinance, resolution, policy or action adopted by the City, or through the initiative or referendum process or other private action.

(c) Supplemental Regulation. This Agreement shall not prevent the City in subsequent actions applicable to the Project from applying new rules, regulations or policies provided such new rules, regulations and policies are not Conflicting Rules (as hereinafter defined). "Conflicting Rules" as used in this Agreement shall mean rules, regulations, policies or other public or private actions applicable to the Property or the Project or any portion thereof enacted after the

apply for and receive Subsequent Approvals in accordance with the Effective Standards described in Section 8(a) hereof.

(d) Federal and State Law Changes and Actions of Public Agencies. Nothing in this Agreement shall preclude the application to the Property or the Project of changes in federal or state laws. To the extent that changes in federal or state laws require the City to impose or adopt any new policies, rules, regulations, or fees applicable to the Property or the Project or the development, subdivision, construction or use thereof, such new policies, rules, regulations, or fees shall be adopted on a citywide basis in a nondiscriminatory manner. To the extent that any changes in federal or state laws, or any actions, permitting requirements or approval conditions of any Public Agencies prevent, preclude or interfere with compliance with one or more provisions of this Agreement, or the development, subdivision, construction and use of the Property and Project in conformance with the Specific Plan, General Site Plan, Project Approvals, Subsequent Approvals and Vesting Tentative Maps, the parties agree that the Project shall be modified and the provisions of this Agreement shall, by the mutual written agreement of the parties, be modified, extended or suspended as may be required to comply with such federal or state laws, or respond to such actions of Public Agencies, but in a manner most consistent with the spirit and intent of this Agreement preserving the approved densities and primary components of the Project. Each party agrees to extend to the other prompt and reasonable cooperation in so modifying this Agreement, the Specific Plan, General Site Plan, Project Approvals, Subsequent Approvals or Vesting Tentative Maps including, without limitation, modifications that would relocate residential units to alternate development areas, shift densities, change unit types, reconfigure internal roadways and Project entrances, and utilize portions of open space for any necessary wetlands mitigation. The parties acknowledge that the

Effective Date which are in conflict with or inconsistent with (i) the Effective Standards and Vested Components applicable to the Project on the Effective Date; (ii) the Project Approvals; (iii) the Subsequent Approvals; (iv) the Vesting Tentative Maps; (v) the terms and conditions of this Agreement; (vi) the spirit and intent of this Agreement; or (vii) which materially interfere with the development, subdivision, construction and use of the Project as contemplated herein. Conflicting Rules shall include, without limitation, (a) any plan, ordinance, resolution, policy, regulation or action of the City that has any of the following effects: (1) limiting or reducing the density or intensity of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number of permitted parcels, buildings, units, or other improvements, (2) limiting the timing or phasing of the Project in any manner, (3) limiting the location of building sites, grading, or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement or, (4) applying to the Property, Project or the development, subdivision, construction or use thereof any plan, ordinance, resolution, policy, regulation or action otherwise allowed by this Agreement which is not uniformly applied in an equitable manner to all substantially similar types of development projects or project sites in the City; and (b) any moratorium, ordinance, growth control action, resolution, initiative, referendum, measure, or other land use regulation or limitation affecting building permits, utility connections or service capacities, or other land use approvals or entitlements, or the rate, timing, or sequencing thereof. Conflicting Rules shall be deemed to be inconsistent with and in conflict with this Agreement, and shall not be imposed upon or applied to the Property or the Project or the development, subdivision, construction or use thereof, unless Developers in their sole discretion elect to have Conflicting Rules apply to the Project. In the event of the subsequent enactment of any Conflicting Rules, Developers shall continue to be entitled to proceed under the Project Approvals and

provisions of this Section 8(d) are in accordance with Government Code Section 65869.5.

(e) Subsequent Approvals. The City shall grant, issue, approve or authorize all Subsequent Approvals specifically contemplated in this Agreement or as may become desirable or necessary due to subsequently enacted or enforced ordinances, resolutions, regulations, laws, codes, rules or policies of the City (excluding Conflicting Rules), for the development, subdivision, construction and use of the Project on terms consistent with the Specific Plan, General Site Plan, Project Approvals, Vesting Tentative Maps and this Agreement, and shall not impose thereon any new terms, conditions, obligations, restrictions, requirements, time limits or time specifications not specifically stated in or applicable to the Specific Plan, General Site Plan, Project Approvals, Vesting Tentative Maps or this Agreement, except as required by changes in federal or state laws as set forth in Section 8(d).

(f) Fees. The only fees that shall be imposed upon the development, subdivision, construction and use of the Project shall be those categories of fees set forth in the schedule of fees attached hereto as Exhibit N and incorporated herein by this reference ("Schedule of Fees"). Said fees shall be due and payable as set forth in this Agreement or, in the absence of any such provision, as set forth in the relevant ordinances or resolutions adopting or implementing the fees. Each of the fees specified as being determined by formula or in some other manner other than as a set fee shall continue to be determined in exactly that same other manner during the Term of this Agreement. A fee specified as a dollar amount in the Schedule of Fees may be adjusted on the anniversary of the Effective Date by any citywide increase of such fee but Developer shall be subject only to so much of such increase that is no greater than the percentage change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index - All Urban Consumers/San Francisco, Oakland and San Jose (1982-89 = 100). Plan check and inspection fees

related to public and private improvements shall be the greater of the following: (i) the fees in effect on the date of the execution of this Agreement, adjusted on the anniversary of the Effective Date by the percentage change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index - All Urban Consumers/San Francisco, Oakland and San Jose (1982-89 = 100); or (ii) those in the Uniform Building Code ("UBC") which are in effect at the time of application for building permits; or (iii) the actual costs of such plan checking and inspection, as reasonably determined by the City and uniformly applied. No new regulatory fees or impact fees may be imposed on all or any portion of the Project or the development, subdivision, construction or use thereof, unless either (1) they are required by, or reasonably necessary to implement, a state or federal law obligation imposed on the City as set forth in Section 8(d), or (2) (i) they apply on a City-wide basis and are not limited to the Property or any portion thereof, (ii) the amount of additional fees charged against the entire Project in the aggregate does not exceed $400,000, has been determined in accordance with all applicable laws and is based upon evidence that said amount is necessary to mitigate public safety and governmental service demands caused in part by the development against which the charge is imposed; and, (iii) the Developers shall be entitled to a credit for the fees paid and the value of the work performed prior to enactment of such regulatory fee requirements where such fees are related to or pertain to the same subject matter. Any new regulatory fees or impact fees permitted pursuant to clauses (1) or (2) above shall only be imposed against the Project at the time building permits are actually issued with the amount of such fees proportionately allocated on a per unit or square footage basis.

(g) Assessments and Liens. The City agrees that no new assessments, liens, bonds, special taxes, or other such impositions will be levied on the Property by the City unless they are requested or approved by Developers. The Developers shall be notified in advance in writing of such proposed assessments, liens, bonds, special

taxes or other impositions. The only assessments existing against the Property as of the Effective Date are those described in Exhibit O attached hereto and incorporated herein by this reference ("Existing Assessments"). In the event City elects to impose an assessment district (1972 Landscaping and Lighting District) on the Property to pay for the cost of maintaining the east-west trail within the 61 acre open space area, the six-acre garden area, common landscape and recreational facilities (excluding the ballfields) within the development area and maintaining and operating the street lights within the development area, Developers shall waive all rights to protest said formation and shall cast their votes in favor of said formation provided that the maximum annual assessment against the entire Project does not exceed $35,000 plus the operation cost of the streetlights (which is currently $11.20 per street light per month.) The provisions of this subsection (g) shall not apply to nor shall they prohibit the City from imposing any such new assessments, liens, bonds, special taxes, or other such impositions upon, any lot or parcel which is a portion of the Property but which is established by virtue of a duly filed final subdivision map and which is improved with a residential or commercial structure as provided for in the Specific Plan which has been sold or transferred to a third party other than the members of Developers, or Developer's affiliates or any of such member's affiliates as the term "affiliate" is defined by §150 of the California Corporations Code where such sale or transfer to any such members of Developers, or Developer's affiliates or any such member's affiliates is not for the purpose of such person or entity's use or occupancy of the improvement.

(h) Public Improvements. Developers shall provide the public improvements necessary for development of the Property as expressly shown on Exhibit M attached hereto and incorporated herein by this reference ("Public and Off-Site Improvements") pursuant to the schedule set forth in Exhibit K. No other

Public and Off-Site Improvements shall be imposed as a condition of development, subdivision, construction and use of the Property.

(i) Off-Site Improvements. Off-site infrastructure requirements for the development, subdivision, construction and use of the Property in accordance with the Vested Components shall be those described in Exhibit M. The Public and Off-Site Improvements shall be constructed pursuant to the schedule set forth in Exhibit K. No other off-site infrastructure requirements shall be imposed as a condition of development, subdivision, construction and use of the Property. Developers shall contribute $300,000 to the City to be used for site work improvements on a City corporation yard. Said funds shall be payable in $100,000 increments as each of the following events occur: (1) upon City issuance of a certificate of occupancy for the 150th market rate residential unit, (2) upon verification from CCWD or its successor that water connection permits are available for all of the residential units within the development; or (3) upon City issuance of a certificate of occupancy for office space in excess of 100,000 square feet.

(j) Assessment District Financing. The City agrees to cooperate in forming a Mello Roos District or other assessment district if Developers should desire to form such a district to finance any portion of the Project or Public and Off-Site Improvements.

(k) Boys and Girls Club Facility Off-Site Improvements and Construction of Enhanced Ballfield Facilities. City is currently reviewing an application which, if approved, could result in the construction of a Boys and Girls Club facility ("the Facility") within the Project Area on property currently owned by the Developers or its members ("the Facility Site"). The construction of the Facility

within the Project will require the approval of the City and closing a purchase agreement with Developers. Construction of the Facility at the Facility Site will also require construction of certain off-site street and utility improvements required to access the Facility Site from Highway 1, and required to serve the utility needs of the Facility.

The Facility Off-Site Improvements (as defined below) would customarily be installed in a subsequent phase of the Project by either the Developers or their successors in interest. To facilitate construction and earlier operation of the Boys and Girls Club, the City, by separate agreement has agreed to partially fund certain public roadway improvements and appurtenances required to construct the Facility at the Facility Site ("Facility Off-Site Improvements"). The City's funding obligation shall not exceed 1.2 million dollars payable from Park Fees presently held by the City.

The City and Developers agree that construction cost estimates for the ballfields are approximately $1,200,000 to replace the current facilities and $3,500,000 to construct the facilities shown in Exhibit E ("Enhanced Ballfield Facilities"). In lieu of the Developers reimbursing the City for the 1.2 million dollar contribution to the Facility Off-Site Improvements, Developers agree to construct Enhanced Ballfield Facilities on the timeframe set forth in Exhibit K and to be solely responsible for the costs of constructing the Enhanced Ballfield Facilities provided the City funds such 1.2 million dollar contribution and the additional 1.0 million dollars described below on a timely basis and in accordance with this Agreement. In the event that Developers fail to comply with the construction schedule for the Enhanced Ballfield Facilities set forth in Exhibit K and said failure is not caused by the City, or Force Majeure events, the City may suspend issuance of building permits for the Project and Developers shall be required to reimburse the City the $1,200,000

contribution for the Facility Off-Site Improvements plus interest calculated at the LAIF rate from the date of disbursement by the City.

Within ten (10) days after written request from Developers, City shall deposit the one million two hundred thousand dollars ($1,200,000) in an escrow account. Additionally, not later than ten (10) days after written request from Developers and upon authority of said funds, City shall deposit one million dollars ($1,000,000) from Park Fees in said escrow account to partially fund the Enhanced Ballfield Facilities. Funds may be withdrawn from the account upon submission of invoices detailing costs (including design, permit and constructions costs) of the Facility Off-Site Improvements and Enhanced Ballfield Facilities upon approval of such invoices by the Developers and the City Manager, neither of whom shall unreasonably withhold or delay said approvals. In no event shall the amount of funds paid from

said escrow account for the Facility Off-Site Improvements exceed one million two hundred thousand dollars ($1,200,000). City shall cooperate with Developers' construction lender, if any, in the deposit, disbursement, use and pledge of such funds.

The Developers shall be entitled, at their request, to design, budget, bid, and construct the Facility Off-Site Improvements as a private improvement project. In constructing the Facility Off-Site Improvements, the Developers shall comply with any prevailing wage requirements that otherwise would have applied to the City. The parties acknowledge and agree that the Facility Off-Site Improvements shall be designed and constructed consistent with the needs of the remainder of the Project and not solely for the Facility.

Upon request of the Developers, City will cooperate in the formation of an assessment district to be established for the purpose of financing the Facility Off-Site Improvements.

9. Sewer and Water Capacity. The City agrees to make available to Developers and the Project such sanitary sewerage capacity as may reasonably be required for the full development, subdivision, construction and use of the Project. Ongoing sewer and storm drain usage charges payable by the Developers shall be only the ordinary charges imposed pursuant to Half Moon Bay Municipal Code ~~section~~ Chapter 18.36, but in no event shall be higher than the charges therefore set forth in Exhibit N (Schedule of Fees), unless such charges are uniformly raised for all users, and the charges are imposed on an equitable basis and in a nondiscriminatory manner for all such users.

Notwithstanding any of the foregoing, in no event shall any water, sewer or utility moratorium, suspension, lottery, allocation system, or other "freeze" imposed by the City prevent hookup of the Project or the Developers' ability to receive such services.

City agrees to cooperate and use reasonable best efforts to timely assist Developers in obtaining water connections sufficient for the Project as requested by Developers and in compliance with the policies of the LCP. As used herein, "supporting and taking all necessary or useful actions" by the City shall include, without limitation, making all applications, issuing all required Coastal Development Permits, adopting all required ordinances and policies, and entering into required agreements with CCWD or other water authorities. Developers shall reimburse the City for all costs actually incurred by the City in assisting Developers to obtain water connections.

City shall, if requested in writing by Developers, ask the California Coastal Commission, if required, to approve a modification to the priority water policy in City's Local Coastal Plan to designate the Project as a Priority 1 use. Developer shall pay all costs actually incurred by City in carrying out such request for modification, including, but not limited to, filing fees, staff time, and attorney's fees.

If so requested, the parties agree that City shall request and diligently pursue such modification. However, the parties acknowledge that the decision regarding the modification may rest with the California Coastal Commission, and City cannot guarantee a favorable result.

10. Processing Permits and Approvals.

(a) Permit Processing. The City shall fully cooperate and exercise diligence to accommodate the Project by expeditiously and timely processing, but in no event later than the time periods set forth in applicable ordinances, resolutions, regulations, laws, codes, policies, rules, and the terms and conditions of this Agreement, any (i) Subsequent Approvals; (ii) subdivision maps; (iii) coastal development permits; (iv) grading permits; (v) building permits; and (vi) any other such permits or approvals necessary or desirable for the development, subdivision, construction or use of the Project. The City further agrees to cooperate expeditiously with any other Public Agencies in obtaining any permits, licenses, approvals, or land use applications necessary or desirable for the development, subdivision, construction or use of the Project.

(b) Submission Requirements. Upon request from Developers, City shall promptly inform Developers of the necessary submission requirements for each application for the Subsequent Approvals and any other permit, license, approval, or entitlement for land use. The City will also promptly review and comment on applications and will promptly schedule complete applications for any necessary architectural review, Planning Commission, or Council action at the earliest possible date, or such later date as requested by Developer.

11. Development Regulations. In the development, subdivision, construction and use of the Project, Developers shall comply with the Effective Standards. Notwithstanding the preceding sentence, City and Developers agree upon

the following terms and conditions with respect to the development, subdivision, construction and use of the Project:

(a) Affordable Housing Units. Developers shall provide forty-six (46) affordable residential units consisting of eighteen rental and/or for sale units affordable to very low income households (the "Very Low Income Units") and twenty-eight (28) rental and/or for-sale units affordable to moderate income households or seniors (the "Moderate Income Units"). The Very Low Income Units and Moderate Income Units are collectively referred to hereafter as the "Affordable Units." Developers shall provide the Affordable Units in compliance with the Density Bonus Statues and Chapter 18.35 of the Half Moon Bay Municipal Code and pursuant to this Agreement and the schedule set forth in the Phasing Plan (defined below). Developers shall be entitled to construct the Affordable Units as a separate phase or in connection with other market-rate units in the locations set forth in the Specific Plan. The Affordable Units are subject to Measure A and Measure A allocation requirements and are included in the Phasing Plan.

(b) Density Bonus and Other Incentives. Pursuant to the Density Bonus Statutes, City agrees to grant Developers a 25% density bonus for providing the Very Low Income Units thereby increasing the number of market rate residential units from 180 to 225. All 45 market rate residential units provided by such density bonus shall be exempt from Measure A, Chapter 17.06 of the Half Moon Bay Municipal Code and all other Measure A related ordinances, rules and regulations now or hereafter existing. Developers shall be entitled to construct such 45 units at any time and such units shall not be subject to any phasing plan or other time restrictions.

In addition to such density bonus and as a further incentive pursuant to Government Code Sections 65915 and 65590, the portions of the Project designated

for retail, commercial and office uses may be used for any and all retail, commercial and office uses without restrictions or limitations to help reduce the cost of the Affordable Units and make feasible the provision of the Affordable Units within the coastal zone.

Developers shall not be issued building permits for any of the 45 market rate density bonus residential units prior to completion of the following items: (1) subdivision of the property (designated as Parcel D in the Phase 1-A vesting tentative map) which creates the legal parcel or parcels where the 18 Very Low Income Units will be constructed, and (2) recordation of deed restrictions against affected parcels, reasonably approved by the City Attorney, which ensure continued affordability for the Affordable Units in perpetuity. In addition, the City may withhold building permits for any market rate residential units in excess of 145 market rate units (including density bonus units) until Developers: (1) provide a bond, reasonably acceptable to the City Attorney, with the City named as beneficiary in an amount equal to the estimated then present cost for constructing the Very Low Income Units, or (2) provide a copy of an executed purchase and sale agreement with a party who has committed to commence construction of the Very Low Income Units on or before January 1, 2004 (subject to Measure A allocations, water availability and other commercially reasonable conditions), and who has demonstrated to the reasonable satisfaction of the City its financial ability to proceed with said construction, or (3) provide reasonable evidence that Developers have obtained construction financing and will commence construction of the Very Low Income Units on or before January 1, 2004.

(c) Issuance of Building Permits/Measure A Allocation. In accordance with the applicable provisions of Chapters 17.06 (excluding Sections 17.06.210 through 17.06.285) and 18.04 of the Half Moon Bay Municipal Code, City Council

Resolution No. ____ implementing Chapter 18.04, and the phasing plan attached hereto as Exhibit L adopted pursuant to Half Moon Bay Municipal Code Section 17.06.055 (the "Phasing Plan"), Developers shall receive from the City, and City shall issue Measure A allocations ("Measure A allocations") in accordance with the following schedule: (a) for 1999 --- twenty-five (25) Measure A allocations for market rate residential units; (b) for 2000 --- twenty-five (25) Measure A allocations for market rate residential units; (c) for 2001 --- twenty-five (25) Measure A allocations for market rate residential units; (d) for 2002 --- twenty-five (25) Measure A allocations for market rate residential units; (e) for 2003 --- thirty-five (35) Measure A allocations of which fifteen (15) shall be for market rate residential units, eighteen (18) for the Very Low Income Units and two (2) for the Moderate Income Units; (f) for 2004 --- thirty-five Measure A allocations of which twenty-three (23) shall be for market rate residential units and twelve (12) for the Moderate Income Units; (g) for 2005 --- thirty-five (35) Measure A allocations of which twenty-three (23) shall be for market rate residential units and twelve (12) for the Moderate Income Units, and; (h) for 2006 --- twenty-one (21) Measure A allocations of which nineteen (19) shall be for market rate residential units and two (2) for the Moderate Income Units. Developers shall have the discretion to use any Measure A allocation issued for market rate residential units for Affordable Units in which event a comparable number of future Measure A allocations for Affordable Units shall be available for market rate residential units.

In addition, if there are any Measure A allocations, which have not been awarded as of September 2nd of each year in any calendar year between 1999 and 2006, City shall convert from residential infill to new residential as necessary and make available to Developers all (both new and formerly infill) unallocated Measure A allocations per calendar year for market rate and affordable residential units. The

number of Measure A allocations granted to the Developers pursuant to the preceding sentence shall not exceed fifteen (15) in any calendar year.

In the event that the residential infill category of Measure A allocations is repealed by City Council action or by initiative, Developers shall be entitled to receive an additional fifteen (15) new residential Measure A allocations per year until such time as Developers have been offered Measure A allocations equal to the number of market rate residential units approved in the Specific Plan, provided, that the total permits granted (excluding density bonus allocations) shall not exceed the three percent growth rate set forth in Measure A. All Measure A allocations granted pursuant to the preceding sentence shall be subtracted from the total Measure A allocations for the year in which they are granted.

The parties agree that consistent with Section 17.06.050, the time period for submission of complete building permit application for any residential unit with a Measure A allocation shall be extended by twelve months for a total of 24 months from the date the allocation is issued; provided, however, that pursuant to Section 17.06.050(F) such 24 month period shall be extended or tolled by any time spent by Developers securing any other approvals, permits, subdivision maps, coastal development permits, utility connections, utility capacity, agreements, certifications or entitlements from the City or any other agency, commission, district, board, or public entity. The parties agree that, notwithstanding any language contained herein, Section 17.06.060, shall apply to the residential portion of this Project.

(d) Visual Resource Protection Standards [Chapter 18.37]

The project shall comply with HMBMC Chapter 18.37 related to Visual Resource Protection Standards. The Specific Plan approved concurrently with this Agreement, complies with Chapter 18.37. thus development consistent with the Specific Plan shall be deemed to comply with Chapter 18.37.

12. Periodic Review of Compliance with Agreement.

(a) Annual Review. Pursuant to California Government Code Section 65865.1, each year during the Term of this Agreement, beginning on the anniversary date of the Agreement, the City shall review the extent of good faith compliance by Developers with the terms of this Agreement (such review shall hereinafter be termed "Annual Review"). The Annual Review shall be conducted by the City Planning Director. Developers shall be given at least thirty (30) days written notice in advance of each Annual Review. During the Annual Review, Developers shall be required to demonstrate good faith compliance with the terms of this Agreement. At the conclusion of the Annual Review, the City Planning Director shall make written findings and determinations, on the basis of substantial evidence, whether or not Developers or its successors in interest have complied in good faith with the terms and conditions of this Agreement. The decision of the City Planning Director shall be appealable to the Planning Commission and any appeal shall otherwise be governed by the provisions of the Half Moon Bay Municipal Code, as amended from time to time. If the City Planning Director finds and determines that Developers have not complied with such terms and conditions, the City Planning Director may recommend that the City terminate or modify this Agreement by giving notice of its intention to do so in the manner set forth in California Government Code Sections 65867 and 65868. The reasonable costs incurred by the City in connection with the herein described annual review process shall be borne by developers. The cost shall be based on hourly staff rates at the time of review.

(b) Notice to Developers. In the manner prescribed in Section 20 of this Agreement, the City shall provide to Developers a copy of all public staff reports and documents to be used or relied upon in conducting the Annual Review, at least thirty (30) days prior to any Annual Review. Developers shall have the opportunity to be heard at or before the Annual Review, either orally at a public hearing or in a written statement, or both, at Developers' election.

(c) Automatic Determination of Compliance. In the event City fails to either (i) conduct the Annual Review; or (ii) notify Developers in writing (following the time during which the Annual Review is to be conducted) of the City's determination as to compliance or noncompliance with the terms and conditions of this Agreement, and such failure remains uncured as of December 31st of any calendar year during the Term of this Agreement, such failure shall be automatically deemed an approval by City of Developers' compliance with the terms and conditions of this Agreement.

(d) Compliance Certificate. With respect to each year for which an Annual Review is conducted, and with respect to each year in which the City finds Developers in compliance or is deemed to approve of Developers' compliance with this Agreement pursuant to Section 12(a) herein, the City, upon request of Developers, shall provide Developers with a written notice of compliance, in recordable form in the form attached hereto as Exhibit P and incorporated herein by this reference ("Compliance Certificate"), duly executed and acknowledged by the City, or an authorized representative of the City. Developers shall have the right, in Developers' sole discretion, to record the Compliance Certificate.

13. Default and Remedies.

(a) Cure Period. Subject to extensions of time by mutual consent in writing of the parties and the provisions of Section 14 herein (Force Majeure), breach of, failure, or delay by any party to perform any term or condition of this Agreement shall constitute a default. In the event of any alleged default of any term, condition, or obligation of this Agreement, the party alleging such default shall give the defaulting party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During such thirty (30) day period, the party charged shall not be considered in default for purposes of termination, modification or institution of legal

proceedings. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

(b) Procedure for Default by Developers. If the Developers are alleged to be in default hereunder by the City, then after notice and expiration of the thirty (30) day period without cure, the City, at its option, may (1) institute an action at law or equity, including, without limitation, by specific performance or injunctive relief. against the defaulting party or parties pursuant to this Agreement, and/or (2) give notice of intent to terminate the Agreement ("Termination Notice"), pursuant to California Government Code Section 65868. Following issuance of a Termination Notice, the matter shall be scheduled for consideration and review by the Council within sixty (60) calendar days following the date of delivery of the Termination Notice, in the manner set forth in California Government Code Sections 65867 (the "Default Hearing"). Following consideration of the evidence presented before the Council in the Default Hearing, and a determination, on the basis of substantial evidence, by a majority vote of the Council that a default by Developer(s) has occurred, and after the expiration of any appeal or challenge period, the City may give written notice of termination of this Agreement to the Developer(s).

(c) Default by City. In the event City is alleged by the Developers to be in default under this Agreement, Developers may, after compliance with the requirements of Section 13(a) herein, enforce the terms and conditions of this Agreement by an action at law or equity, including, without limitation, by specific performance or injunctive relief.

(d) Default During Annual Review. Evidence of default may also arise in the course of the regularly scheduled Annual Review as described in Section 12(a) herein. If any party alleges that another party is in default following the completion of the Annual Review, such party may then give the other a written

default notice, in which event the provisions of Section 13(a) shall apply. Notwithstanding anything to the contrary herein, after a sale of any portion of the Property (i) that is the subject of a duly filed final subdivision map or, (ii) to an assignee or transferee who has assumed the obligations of this Agreement with respect to the portion of the Property so transferred, this Agreement shall not be subject to termination with respect to the portion of the Property so transferred by reason of a default occurring on or with respect to the portions of the Property that were not transferred.

14. Force Majeure. In addition to specific provisions elsewhere set forth in this Agreement, any delay, failure, prevention, stoppage or default by any party hereunder shall not be deemed to be a breach or default of this Agreement where such delay, failure, prevention, stoppage or default is due to war, insurrection, strike, walk-out, riot, flood, earthquake, fire, casualty, act of God, governmental restriction imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, judicial decision, appeals by unrelated third parties of permits granted to Developers, litigation, or any similar basis for excused performance that is not within the reasonable control of the party to be excused. An extension of time for any such cause shall be for the period of the enforced delay, or longer as may be mutually agreed upon in writing between the parties.

15. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental body, entity or official) challenging the validity of any provision of this Agreement, or the Project Approvals or Subsequent Approvals, the parties hereby agree to cooperate in defending such action or proceeding. Approval of mutual legal counsel will not be unreasonably withheld by either party. In the event City and Developers are unable to select mutually agreed upon counsel to defend such action

or proceeding, each party may select its own counsel at Developer's expense. City will undertake no action or tactic or make any admission which may impair the terms of this Agreement, the Vested Components, Project Approvals, Subsequent Approvals or the entitlements held by Developers, without the express written approval of Developers or its legal counsel. Developers shall indemnify and hold the City harmless from any claims by or award of attorneys' fees or costs arising out of any third-party action challenging any Project land use approvals.

16. Cooperation to Cure Procedural Deficiencies. If any third party legal or equitable action, or other proceeding is instituted to challenge (a) this Agreement; (b) the Vested Components; (c) the Project Approvals; (d) the Subsequent Approvals; or (e) any of the entitlements held by Developers, and one or more of the items described in clauses (a) through (e) in this Section 16 are set aside or otherwise made ineffective by any judgment in such action, the parties shall cooperate to cure any procedural or substantive deficiencies with respect to such items. Unless Developers elect to terminate this Agreement, Developers shall pay the reasonable actual costs of curing any deficiencies in plans relating to any such items, and the cost of readopting or reenacting any such items, as necessary.

17. Mortgagee Protection. No violation or breach of the covenants, agreements and restrictions contained in this Agreement shall defeat, render invalid, diminish or impair the liens, or rights of the holder of a mortgage (as hereinafter defined) given in good faith and for value which is now or in the future recorded against the Property or Project or any portion thereof; provided, however, that the purchaser at a foreclosure sale or other party taking title to the Property or Project or any portion thereof shall be bound by this Agreement and the covenants, agreements and restrictions set forth herein from and after the date it acquires title to the Property or Project or any portion thereof. Notwithstanding the foregoing sentence,

no holder of a Mortgage shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or to guarantee such construction or completion; provided, however, that a holder of a Mortgage shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses provided for or authorized by this Agreement, or otherwise under applicable Effective Standards. The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering the Property or Project or any portion thereof.

18. Hold Harmless Provisions. Developers shall defend, hold harmless and indemnify the City, its elective and appointive boards and commissions; and its officers, agents and employees ("Indemnitees") as follows: (a) the liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined in subsection 18(b) herein, including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the City reviewed any plans or accepted the work as complete, and including the defense of any suits, actions or other proceedings concerning said liabilities and claims; (b) the actions causing liability are any act or omission (negligent or non-negligent) in connection with construction of the Project and attributable to Developers, its contractor or subcontractors or any officer, agent or employee of one or more of them; (c) the promise and agreement in this Section 18 are not conditioned or dependent on whether or not: (i) the Indemnitees have prepared, supplied, or reviewed any plans(s) or specification(s) in connection with any development; or (ii) have insurance or other indemnification covering any of these matters; or (iii) the alleged damage resulted from the negligent act or omission

of the Indemnitees. Notwithstanding and in no way limiting the foregoing, this Section shall have no application to the Dedication Properties or the Dedication Properties Improvements once the Dedication Properties or the Dedication Properties Improvements are transferred from Developers to City, and Developers shall have no obligation or liability in connection therewith after the date of such transfer.

19. No Joint Venture or Partnership. City and Developers hereby renounce the existence of any form of joint venture or partnership between the City and Developers and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developers joint venturers or partners.

20. Notices. Any notice or communication required hereunder between City or Developers must be in writing, and may be given personally, by facsimile transmission (followed immediately be sending an original copy by first-class mail), or by certified mail, return receipt requested. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or transmitted by facsimile, a notice shall be deemed to have been given when delivered or transmitted to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at the addresses set forth below:

IF TO CITY OF HALF MOON BAY

City Manager
City of Half Moon Bay

P.O. Box 338
Half Moon Bay, CA 94019
Facsimile No. (650) 726-9389

With a copy to:

City Attorney, City of Half Moon Bay
c/o Meyers, Nave, Riback, Silver & Wilson
777 Davis Street, Suite 300
San Leandro, California 94577
Attention: John Truxaw, City Attorney
Facsimile No.: (510) 351-4481

IF TO DEVELOPERS

Wavecrest Village, LLC
2202 Fairway Drive
Half Moon Bay, CA 94019
Attention: William E. Barrett
Facsimile No. (650) 726-5831

With copies to:

Julia M. Baigent, Esq.
13 Woodleaf Avenue
Redwood City, CA 94061
Facsimile No. (650) 364-9131

Russell & Walker
Spear Street Tower
One Market Plaza, Eighteenth Floor
San Francisco, CA 94105
Attention: Bruce J. Russell, Esq.
Facsimile No. (415) 808-4840

21. Transfers and Assignments.

(a) Right to Assign. The Developers or their members collectively shall have the right to sell, assign or transfer all or any portion of the Property. All of Developers' rights, duties and obligations under this Agreement with respect to the portion of the Property so transferred or assigned shall pass to the party acquiring title to the portion of the Property, lot or parcel so transferred. For purposes hereof, all obligations of Developers hereunder shall be deemed discharged and fulfilled with respect to lots or parcels shown on duly filed final subdivision maps, subject to compliance with (i) the conditions imposed in connection with such filing, and (ii) the conditions related to structural and fire safety imposed upon issuance of building permits with respect to structures to be located thereon imposed pursuant to the provisions hereof.

(b) Release Upon Transfer. Upon sale, transfer or assignment of all or any portion of the Property under Section 21(a) above, Developers shall be released from their obligations with respect to the Property so transferred arising subsequent to the effective date of such transfer if: (i) Developers (or the transferring owner) were not in default under this Agreement at the time of the transfer; (ii) Developers have provided to City notice of such transfer; and (iii) with respect to the sale or transfer of any lot or parcel that is not shown on a duly filed final subdivision map with all subdivision improvements installed or under bonded contract to assure such installation, the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly assumes the obligations of Developers under this Agreement with respect to the Property or portion thereof transferred; provided, however, that Developers shall not be relieved of any obligation with respect to dedication or conveyance of the Dedication Properties. Failure to deliver a written assumption agreement hereunder shall not affect any covenants that run with the land, as provided in Section 30

below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

22. Estoppel Certificate. Within thirty (30) days following any written request by either party, the other party to this Agreement 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, this Agreement is in full force and effect as modified, and stating the date and nature of such modification; (b) there are no current uncured defaults under this Agreement, or specifying the dates and nature of any such defaults; and (c) any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against 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, except as may be represented by the requesting party.

23. General Provisions.

(a) Amendments. Any amendment, modification, suspension or cancellation of this Agreement must be in writing, signed by the appropriate authorities for the City and the Developers, and in a form suitable for recording in the County Recorder's Office. Further, any amendment to this Agreement must comply with the requirements of California Government Code Sections 65867 and 65868, including any subsequent amendments thereto.

(b) Minor Amendments. Notwithstanding the provisions of Section 23(a) herein, (i) any amendment to this Agreement which does not relate to the Term, the permitted uses of the Property, the density or intensity of use, the

maximum height and size of proposed buildings, site plans, parking requirements, provisions for reservation and dedication of land for public purposes, or conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developers, or any conditions or covenants relating to the use of the Property, are considered non-substantive and shall not require notice or a public hearing (unless otherwise required by law or if deemed appropriate by the City Manager) before the parties may execute an amendment hereto.

(c) Right of Amendment. No owner of less than all of the Property (excluding the Dedication Properties) shall have the right: (i) to seek or consent to an amendment of the terms of this Agreement; (ii) to terminate this Agreement; or (iii) enter into an agreement to rescind any provisions hereof in a manner that is binding upon or affects any of the Property other than that owned in fee simple by said owner.

(d) Waivers. Notwithstanding any other provision of this Agreement, any party hereto may specifically and expressly waive in writing any condition or breach of this Agreement by another party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision of this Agreement. Consent by one party to any act by another party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

(e) Severability. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remainder of this Agreement shall remain in full force and effect, unless the invalid

provision is so material as to defeat, in the reasonable opinion of the parties, a material part of the bargain embodied in this Agreement.

(f) Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the parties in accordance with the provisions of this Agreement.

(g) Time. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

(h) Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Developers and City have been independently represented and have contributed substantially and materially to the preparation of this Agreement. The headings of various sections in this Agreement are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof, and shall be of no legal force and effect.

(i) Due Execution. The persons executing this Agreement on behalf of the Developers and the City, respectively, represent and warrant that they have the right, power, legal capacity and authority to execute this Agreement and to bind the party for whom they are signing.

24. Adoption of Agreement. The City and Developers shall take all steps necessary or required for the approval of this Agreement in accordance with the Development Agreement Statutes, and all other applicable Laws and Regulations.

25. No Redevelopment Actions. Notwithstanding the existence of the Half Moon Bay Community Development Agency and the prior inclusion of the Property in the Project Area, the City shall not prepare, submit, adopt or approve any preliminary or final redevelopment plan for the Property or any portion thereof or

take any other action in connection with or in furtherance of any redevelopment reports, surveys, planning, hearings, financing or other activities involving the Property or any portion thereof.

26. CEQA Compliance. The City acknowledges that the subsequent EIR prepared in connection with the Project gave due consideration to the City's entering into this Agreement, and the subsequent EIR (and applicable portions of the FEIR) contain a thorough analysis of the Project, Project alternatives and environmental impacts, and specify the feasible mitigation measures necessary to eliminate or reduce to an acceptable level significant environmental impacts of the Project. The FEIR and subsequent EIR provide an adequate database and environmental analysis for making the decision to approve all aspects of the Project, and the subsequent development, subdivision, construction and use of the Project during the Term of this Agreement. Consequently, no environmental impact report (of any kind) or mitigated negative declaration shall be required by the City for any Subsequent Approvals or any subsequent development, subdivision, construction or use of the Project unless the provisions of CEQA specifically require it. All necessary environmental assessments and reviews for the Project and other improvements to be undertaken pursuant to this Agreement have been or shall be prepared by the City, in compliance with the requirements of CEQA, and all applicable State regulations and local ordinances and regulations enacted pursuant thereto, prior to the Effective Date.

27. Legal Action. Either 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 or enforce by specific performance the obligations and rights of the parties hereto. In

such event, the prevailing party shall be entitled to its attorneys' fees and costs, if any.

28. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

29. No Third Parties Benefitted. No third party who is not a party hereto or a successor or assign of a party hereto, may claim the benefits of any provision hereof; and then the party so benefitted shall have no rights greater than those that would be held by any member of the public affected by such actions or enactments without regard to this Agreement.

30. Covenants Run With The Land. Except as otherwise provided in this Agreement, for the Term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devises, administrators, representatives, lessees, and all other persons or entities acquiring the Property, or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term hereof as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the California Civil Code. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City owned property or property interest, (a) is for the benefit of such properties and is a burden upon such property; (b) runs with such properties; and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any

manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

31. Redevelopment Agency Note Terminated. The parties hereto agree that the Note between the Community Development Agency of the City of Half Moon Bay and Ocean Colony Partners, L.P. entered into on March 22, 1994 and modified on October 24, 1995 is hereby rescinded and that the Community Development Agency and the City of Half Moon Bay have no further obligations pursuant to the Note.

32. Counterparts and Exhibits. This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of ___ pages of text and signatures, a cover sheet, table of contents and notary acknowledgment forms on additional pages, and, in addition, ___ Exhibits. This Agreement and its Exhibits constitute the entire understanding and agreement of the parties. This Agreement and its Exhibits integrate all of the terms and conditions mentioned herein or incidental hereto, and constitute the entire understanding of the parties with respect to the subject matter hereof, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

33. Acceptance of Requirements by Developers. Developers acknowledge and agree that Developers are barred from any action or proceeding or any defense of invalidity or unreasonableness of the terms of this Agreement and related City actions in accordance with this Agreement. Further, Developers agree that during the period that this Agreement is in effect, Developers will not attack or otherwise assail the reasonableness, legality or validity of any terms and conditions of this Agreement. Notwithstanding the foregoing, however, nothing herein contained shall be deemed

to prevent Developers from seeking a declaration of rights hereunder or contesting whether or not a requirement or fee imposed by City may be imposed hereunder or falls within the terms hereof.

Executed this 30 day of August, 1999

Wavecrest Village, LLC, a California limited liability company

By: NORTH WAVECREST PARTNERS, L.P., a California limited partnership, Member

By: WMB Consulting, Inc., A Delaware corporation, Its General Partner

By: _____
William E. Barrett
President

By: CONCAR ENTERPRISES, INC., a California corporation, Member

By: _____
Larry Atkinson
President

By: PEPPER LANE - HALF MOON BAY, LLC, a California limited liability company, Member

By: Pepper Lane Properties, Inc.
A California corporation,
its Managing Member

By: _____
Myra Reinhard
President

Date: 8/30/99

CITY OF HALF MOON BAY

Jerry C. Donovan, Mayor

Approved as to Form:

John Truxaw, City Attorney