

## Development Agreement

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on May 19, 2015, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County"), BIG WAVE GROUP, a IRC § 501(c)3 non-profit entity, and BIG WAVE, LLC, a California Limited Liability Company (collectively "Developer"), pursuant to the authority of California Government Code Sections 65864, *et seq.*

### RECITALS

A. California Government Code Sections 65864, *et seq.*, authorize the County to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property.

B. On October 18, 2005, Developer initially submitted an application to develop certain real property owned by Developer, which application includes a request for a Coastal Development Permit, Use Permit, Tentative Subdivision Map and Grading Permit to develop housing for Developmentally Disabled Adults ("Wellness Center") and an Office Park on property it owns identified as Assessor Parcel Nos. 047-311-060 and 047-312-040.

C. County approved various land use approvals in connection with the development of the Project on March 15, 2011. The approvals included the following: (1) a Use Permit, pursuant to Sections 6288.2 and 6500(d)3 of the County Zoning Regulations, for the sanitarium component of the Wellness Center and its accessory uses, as well as uses within the Airport Overlay (AO) Zoning District, consisting of 10,000 sq. ft. of commercial public storage use, 6,000 sq. ft. of communications and backup power uses, and 4,000 sq. ft. of miscellaneous Wellness Center storage use; (2) a Major Subdivision, pursuant to the County Subdivision Regulations, to subdivide the northern parcel of the project site into ten lots as described in Alternative C of the EIR and a Minor Subdivision to subdivide the southern parcel of the project site into three lots; (3) a Coastal Development Permit CDP), pursuant to Section 6328.4 of the County Zoning Regulations, for eight Office Park buildings (four 2-story and four 3-story buildings) containing 225,000 sq. ft. of mixed-office uses and a 640-space parking lot as described in Alternative C of the EIR, two Wellness Center buildings (one single-story building and one 3-story building) containing a maximum of 57 dwelling units to provide affordable housing for a maximum of 50 developmentally disabled adults and 20 staff persons and a 50-space parking lot, a 10,000 sq. ft. commercial public storage use, wetland habitat restoration and creation and other landscaping, associated fencing and grading, use of an existing agricultural well for domestic purposes, and establishment of a mutual water service company and a community wastewater treatment and recycling system; (4) a Design Review Permit, pursuant to Section 6565.3 of the County Zoning Regulations, for proposed structures and associated grading; and (5) a Grading Permit, pursuant to Section 8600 of the San Mateo County Ordinance Code, to perform 26,050 cubic yards of balanced cut and fill (collectively, together with any approvals or permits now or hereafter issued with respect to the Project, the "Project Approvals").

D. Pursuant to the California Environmental Quality Act ("CEQA") the County prepared an Environmental Impact Report ("EIR") for the Project. The EIR was certified by the Board of

Supervisors on March 15, 2011. Pursuant to CEQA, a mitigation/monitoring program for the Project was approved by the Board of Supervisors.

E. On appeal, the CDP required for the project was denied by the California Coastal Commission. Further, legal actions were filed by the Montara Water and Sanitary District, the Granada Sanitary District, the Committee for Green Foothills, and the Developer regarding the approvals and denials in San Mateo County Superior Court. The parties involved in those actions have entered into extensive settlement discussions to resolve the dispute. Now the Developer has proposed the North Parcel Alternative ("NPA") which is the subject of this Development Agreement.

F. The NPA was submitted to the County of San Mateo on March 13, 2013. It was submitted to other parties to the CEQA litigation on May 22, 2013. The NPA is a substantially smaller project from the one approved in 2011, and there are no new significant adverse environmental impacts that would result from the approval of the NPA. Under the NPA, the Developer is moving most of the development to the northern parcel. The southern parcel would be divided into 2 parcels. One parcel would contain space for boat parking and storage and other future structures and uses, in accordance with the Conditions of Approval dated May 27, 2015. The second parcel would be offered for sale to either an entity seeking mitigation credit or desirous of dedicating open space. In any event, the future use of that site will be for open space uses. The northern parcel would now site the previously designed Wellness Center consisting of 57 bedrooms for 50 developmentally disabled adults and 20 staff persons and accessory administrative uses. The building space dedicated to business uses on the northern parcel has been reduced from 225,000 sq. ft. to 176,000 sq. ft.

G. On May 19, 2015, County approved an EIR Addendum (including an Addendum and Final Addendum) to the Big Wave Wellness Center and Office Park EIR under CEQA and County approved the NPA. Such approvals include the following: (1) a Use Permit, pursuant to Section 6500 of the County Zoning Regulations, for modern sanitarium component of the Wellness Center, outdoor parking uses in the Airport Overlay (AO) Zoning District, and an Outdoor Boat Storage Use; (2) a Major Subdivision, pursuant to the County Subdivision Regulations, of the north parcel into seven lots and the creation of up to 108 business condominium units, each approximately 1,500 sq. ft. in size; (3) a Minor Subdivision, pursuant to the County Subdivision Regulations, of the south parcel into two lots; (4) a Coastal Development Permit, pursuant to Section 6328.4 of the Zoning Regulations, appealable to the California Coastal Commission, for the proposed subdivisions, uses, and improvements; (5) a Design Review Permit, pursuant to Section 6565.3 of the Zoning Regulations, for proposed structures and associated grading; and (6) a Grading Permit, pursuant to Section 8600 of the San Mateo County Ordinance Code, to perform 735 cubic yards (cy) of cut for utility trenching and to place 16,400 cy of imported gravel. (Collectively, together with any approvals or permits now or hereafter issued with respect to the Project, these actions are referred to as the "Project Approvals.")

H. The purpose of this Agreement is to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to County and private benefits to Developer, including those described in these Recitals. The development of the Project will result in building a significant amount of affordable housing, subject to the Agreement for Affordable Housing at the Wellness Center, approved by the Board of Supervisors on May 19, 2015, for Developmentally Disabled Adults on the San Mateo County Coastside and will provide an Office Park built in an environmentally sustainable manner and to contain industrial/office/storage uses, to help

address the jobs/housing imbalance in the Coastsides.

I. The Board of Supervisors has found, among other things, that this Agreement is consistent with the County General Plan; that this Agreement is compatible with the regulations that prescribe the uses authorized in the Property; that this Agreement conforms with public convenience, general welfare, and good land use practice; that this Agreement will not be detrimental to the health, safety, or general welfare; and that this Agreement will not adversely affect the orderly development of property or the preservation of property values.

J. Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the County including, the following: 1) building a Class 1 multipurpose Coastal Trail and make improvements to Airport Street, according to the schedule described in Section 5.3 of this Agreement and in accordance with the Conditions of Approval dated May 27, 2015; 2) conveying to the County sureties for on-site and off-site improvements, including but not limited to, those related to traffic control-related improvements, prior to the recordation of any subdivision map; and 3) fully funding application and construction costs associated with a bridge widening project over the drainage swale separating the two parcels making up the Project site (i.e., APNs 047-311-060 and 047-312-040), as discussed in Section 5.3 of this Agreement, in the event the bridge widening project receives necessary entitlements and County approvals, thus conferring a public benefit on the County.

K. County desires the timely, efficient, orderly, and proper development of the Project and the Property, and the Board of Supervisors concludes that it is in the public interest to accept the benefits conferred by this Agreement and that it is in the public interest to provide for the vesting of Developer's rights to develop the Project in conformance with the Project Approvals and the terms and conditions contained herein so that such vested rights shall not be disturbed by changes in laws, rules, or regulations, including measures passed by initiative, that occur after the Effective Date (as defined below) of this Agreement, except as provided herein.

L. County and Developer have reached agreement and desire to express herein a development agreement that will facilitate development of the Project subject to conditions set forth in this Agreement and set forth in the Project Approvals, as defined herein.

M. On May 19, 2015, the Board of Supervisors adopted Ordinance No. 04738 approving this Agreement.

NOW, THEREFORE, with reference to the above recitals and in consideration of the mutual promises, obligations and covenants herein contained, County and Developer agree as follows:

#### AGREEMENT

1. Description of Property. The Property which is the subject of this Agreement is described in Exhibit A attached to this Agreement and incorporated herein by reference ("Property").

2. Interest of Developer. The Developer has represented and warrants to the County that it has a legal or equitable interest in the Property and that all parties with a legal interest in the Property are signatories hereto.

3. Relationship of County and Developer. This Agreement is a contract that has been negotiated and voluntarily entered into by County and Developer. The Developer is not an agent of County. The County and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the County and Developer joint venturers or partners with respect to the Project and any other matter.

#### 4. Effective Date and Term.

4.1. Effective Date. The effective date of this Agreement (“Effective Date”) shall be thirty days after the date on which San Mateo County Ordinance No. 04738, the ordinance approving this Agreement, is adopted by County (i.e., May 19, 2015). County and Developer recognize that the approval of this project may be appealed to the California Coastal Commission. Moreover, it is possible that litigation will be filed regarding the project approvals, including under CEQA. Therefore, County and Developer agree that, notwithstanding the foregoing, the Effective Date will not be deemed to occur until (a) all California Coastal Commission administrative procedures and decisions regarding the Project have been rendered; (b) all statutes of limitations for litigation regarding the Project have run; and (c) if any litigation is filed, a final judgment has been entered and all appeal periods have run. If any of these events occur, the County and Developer agree that all rights and obligations of the parties shall be extended for a period of time equal to the time that the occurrence of the Effective Date is tolled pursuant to this Section 4.1, such that Developer can apply for building permits after Coastal Commission jurisdiction and potential or actual litigation has ended which would have prevented Developer from obtaining building permits.

4.2. Term. The term of this Agreement (“Term”) shall commence on the Effective Date and extend for fifteen (15) years thereafter, unless this term is otherwise terminated or modified as set forth in this Agreement.

4.3. Term of the Tentative Map and Other Project Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any tentative map and other Project Approvals described in the Recital above shall automatically be extended for the Term of this Agreement. The terms of other Project Approvals, other than any Coastal Development Permit issued by the California Coastal Commission under Public Resources Code sections 30604(b) and/or 30621, shall be extended for a period of time coterminous with the term of this Agreement, as set forth in section 4.2 of this Agreement. If any Coastal Development Permits issued by the California Coastal Commission pursuant to sections 30604(b) and/or 30621 of the California Public Resources Code expire prior to the expiration date of the other Project Approvals described in this Agreement, the County shall consider and act upon a Coastal Development Permit for the Project consistent with the other Project Approvals and, to the extent allowed by law, subject to the same conditions as those imposed on the Coastal Development Permit originally approved by the County, and approved by the California Coastal Commission on appeal, which shall have the same term as that set forth for the other Project Approvals set forth in this Agreement. The decision as to whether to approve or deny such a Coastal Development Permit shall be subject to the discretion of the applicable County decision making body. To the extent required by applicable law, the issuance of a Coastal Development Permit shall be subject to appeal to the California Coastal Commission. If any Coastal Development Permits issued by the California

Coastal Commission pursuant to the authorities cited in this Section 4.3 are inconsistent with the terms of this Development Agreement, the parties agree to meet and confer in good faith to discuss amendments to this Agreement needed to bring the Agreement into conformity with such Coastal Development Permit issued by the California Coastal Commission.

## 5. Use of the Property.

5.1. Right to Develop Pursuant to Existing Rules and Regulations. Subject to Section 7.1 of this Agreement, the County rules and regulations applicable to Developer's development of the Project on the Property shall be those in effect on the Effective Date, and any amendments to any of them as shall, from time to time, be adopted.

5.2. Permitted Uses. The permitted uses of the Property, the maximum density and intensity of use, the maximum height, bulk and size of proposed buildings on the Property, provisions for reservation or dedication of land for public purposes and location and maintenance of on-site and off-site improvements, location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals, and any amendments to this Agreement or the Project Approvals, and the "Applicable Rules" (as defined in this Agreement).

The Project consists of five components: 1) the "Wellness Center" component on the north parcel, 2) the "Office Park" component on the north parcel, 3) the Boat Storage use on the south parcel, 4) Coastal Access Public Parking on the south parcel, and 5) Wetland and Buffer Zone Areas over both the north and south parcels. Each component is described as follows:

5.2.1. WELLNESS CENTER ON THE NORTH PARCEL. The "Wellness Center" component consists of the following:

5.2.1.1. The Wellness Center, a modern sanitarium use subject to the County-approved Use Permit, which includes affordable housing consisting of 57 bedrooms to accommodate 50 DD adults and 20 aides.

5.2.1.2. Ancillary Uses: These uses include a fitness center, commercial kitchen, laundry facilities, and administrative offices, among other ancillary uses, as described in the EIR Addendum.

5.2.1.3. Subdivision: The Wellness Center will be located on one lot (Lot 7) of the north parcel. Lot 7, which is 6.61 acres in size, includes three buildings. Building 1 consists of 23,250 sq. ft., Building 2 consists 21,170 sq. ft., and Building 3 consists of 47,000 sq. ft. (approximate sizes). This lot includes affordable housing consisting of 57 bedrooms to accommodate 50 DD adults and 20 aides. Lot 7 includes approximately 20,500 sq. ft. of business use that is not considered part of Wellness Center operations. Lot 1 will accommodate parking and common space, and Lots 2-6 will contain business buildings.

5.2.1.4. Project-Related Business Operations to Generate Income for Wellness Center Residents: The DD adults will be employed by the Wellness Center and will also

provide services to the Office Park, with the Wellness Center funded through association fees in accordance with the Conditions of Approval dated May 27, 2015 and shared development costs. Business operations will be managed by Big Wave Group, Inc., a non-profit corporation, and include: Big Wave (BW) Catering/Food Services; BW Boat Storage; BW Energy; BW Farming; BW Water; BW Transportation; BW Recycling; BW Communications (radio telecom link); and BW Maintenance.

## 5.2.2 OFFICE PARK ON THE NORTH PARCEL

5.2.2.1. Office Park Component. The “Office Park” component of this Project consists of the following:

5.2.2.2. Uses: The “Office Park” refers to 176,000 sq. ft. of private business uses which are not operated by Big Wave Group, located on the north parcel. Business space is made up of General Office, Research and Development, Light Manufacturing, and Indoor Storage uses. Developer shall ensure that no more than the total authorized building square footage of 176,000 square feet of such uses is constructed. Such development both in size and intensity shall comply with County Parking Regulations at all times, such that the establishment/construction of uses or building square footage requiring parking in excess of the approved parking of 420 parking spaces for the Office Park is prohibited, even if total square footage does not exceed the total authorized building square footage.

5.2.2.3. Subdivision: The north parcel on which the Office Park is to be located will be subdivided into 7 lots. Lot 1 will be parking and common space, Lots 2 through 6 will be business buildings and Lot 7 will be the Wellness Center, as described above. Buildings 1 and 2 on Lot 7 contain a total of 20,500 sq. ft. of business use. Total area (approximated) of business uses by lot is outlined as follows: 33,500 sq. ft. on Lot 2; 32,000 sq. ft. on Lot 3; 30,000 sq. ft. on Lot 4; 30,000 sq. ft. on Lot 5; and 30,000 sq. ft. on Lot 6.

5.2.3 BOAT STORAGE USE ON THE SOUTH PARCEL. The “Boat Storage Use” component consists of the following:

5.2.3.1. Uses: The Boat Storage Lot will provide 21 boat storage spaces, 14 vehicle parking spaces associated with boat use and storage, and a 190 square-foot precast concrete restroom building. Driveways would allow for boats with trailers to be backed into the spaces. Locked security fencing would be constructed around the lot perimeter, with combination access for the boat owners. There would be no specific hours of operation, as the site would be accessible as needed by owners. The site would not be staffed full-time. This area may be developed with other priority uses and associated structures, in accordance with Conditions of Approval dated May 27, 2015.

5.2.3.2. Subdivision of the South Parcel: The South Parcel will be subdivided into two lots. Both parcels would contain coastal access public parking. In addition, a 1.12-acre Boat Storage Lot and associated private parking (as described in Section 5.2.3.1) and an archeological site would be located on Lot 1 of the South Parcel. Approximately 3 acres of Lot 2 of the South Parcel would be undeveloped.

5.2.4 COASTAL ACCESS PUBLIC PARKING LOT ON THE SOUTH PARCEL. The “Coastal Access Public Parking Lot” component consists of the following:

5.2.4.1. Uses: A total of 92 spaces of coastal access public parking will be provided on Lots 1 and 2 of the south parcel. If fewer than the full number of authorized private parking spaces for business uses (i.e., 420 spaces) are built, Developer may proportionally reduce the number of coastal access public parking spaces that must be built, such that the number of coastal access public parking spaces built is equal to at least twenty percent (20%) of all private parking spaces built for the project.

5.2.4.2. Subdivision: A total of 92 coastal access public parking spaces would be located on Lots 1 and 2 of the south parcel.

5.2.5 WETLANDS AND BUFFER ZONES. The “Wetlands and Buffer Zones” component consists of the following:

5.2.5.1. Creation/restoration of approximately 7 acres of wetland habitat within areas of delineated wetlands and required 150-foot buffer zone on the north and south parcels. Developer must restore wetlands within 100 feet of the wetland boundary and may farm 50-feet of the buffer zone area located more than 100 feet of the wetland boundary, subject to restrictions as outlined in the conditions of approval. Developer will complete restoration activities within the time lines set forth in Section 5.3, below.

5.3. Timing of Construction and Protection of Undeveloped Lands. The project will be constructed in accordance with the following timeline and other Planning conditions:

5.3.1. Within one year of the final approval of the Coastal Development Permit for the project, the property owners shall:

5.3.1.1 Initiate implementation of the approved wetland restoration plan by establishing the nursery and seed stock of the plants that will be used for restoration; obtaining a grading and conducting the rough grading required to carry out the restoration plan and conducting said grading; planting areas disturbed by rough grading with the plant species called for by the restoration plan; and installing a barrier outside of the buffer zone following the completion of rough grading to prevent disturbance of the restoration area.

5.3.1.2. Fence the cultural site area located on the Wellness Center Property, in accordance with a plan and design for such a fence that shall be submitted for the review and approval of the Community Development Director and that shall minimize the visual impact of the fence by limiting its height and extent to the minimum necessary to avoid impacts to the cultural site, and by using materials that minimize view blockage and provide a natural appearance.

5.3.2. Within 2 years of the final approval of the Coastal Development Permit for the project, the property owners shall:

5.3.2.1. Construct the Class 1 trail adjacent to Airport Street in accordance with a construction plan submitted for the review and approval of the Directors of the County's Parks, Public Works, and Planning and Building Departments, as well as all other off-street improvements required by the Department of Public Works for recordation of the final map of the subdivision.

5.3.3. Within 3 years of the final approval of the Coastal Development Permit for the project, the property owners shall:

5.3.3.1. Complete the planting and irrigation required to implement the approved wetland restoration plan and initiate the 10-year monitoring program contained in the approved restoration plan.

5.3.3.2. Install the K-rail on the west side section of Airport Street that crosses the drainage separating the north and south parcels, unless the existing bridge is widened to accommodate a Class 1 trail across this drainage.

5.3.4. Within 5 years of the final approval of the Coastal Development Permit for the project, the property owners shall:

5.3.4.1. Construct Building 3 of the Wellness Center (25 bedrooms), the access and infrastructure improvements required to provide ingress and egress to the Wellness Center, the Wellness Center courtyards, and the 42 parking spaces that will serve the Wellness Center, which shall be located immediately adjacent to Building 3 and signed and reserved for Wellness Center residents, staff, and visitors.

5.3.4.2. Install at least 8 coastal access parking spaces on the south parcel, which shall be signed and reserved for use by the general public for the purpose of coastal access.

5.3.4.3. Install the portion of the approved landscaping plans that is adjacent to Airport Street over both parcels, and that is located within the footprint of the improvements described above.

5.3.4.4. Install the additional flexible sound barrier(s) if required by the County per Condition No. 4 a.b (Mitigation Measure NOISE-1).

5.3.4.5. Construct business uses on Lot 7 or the approved Office Park Building on Lot 2 of the north parcel, to the extent necessary to support Wellness Center operations. The building permit for this component of the project shall include construction of County-required parking spaces; County-required coastal access public parking spaces (a minimum of 20% of private parking spaces) to be provided on the south parcel; associated parking lot landscaping; accessways/driveways; adjoining courtyards; water, wastewater, and drainage and stormwater treatment systems; and comply with all the conditions of approval and requirements of the Development Agreement. Only as much parking as is required by the County for development approved under building permit(s) shall be constructed at one time. If required by the County, the additional flexible sound barrier(s), per Condition No. 4 a.b. (Mitigation Measure NOISE-1) will be installed during Wellness Center Construction. In no event will any construction for business uses take place prior to construction of the Wellness Center, Building 3.

5.3.4.5. Developer shall implement shuttle services to assist with the transportation needs of Wellness Center residents.

5.3.5. Within 12 years of the final approval of the Coastal Development Permit for the project, the property owners shall:

5.3.5.1 Wellness Center Buildings 1 and 2 shall be constructed within 12 years of the final approval of the Coastal Development Permit for the project, and prior to the construction of Office Park Buildings on Lots 4, 5, and 6. If constructed at different times, Wellness Center Building 2 shall be constructed prior to Wellness Center Building 1.

5.3.6. Construction of all remaining aspects of the project shall be completed within 15 years of the final approval of the Coastal Development Permit for the project. If fewer than the approved number of buildings has been built on the North Parcel at the end of the 15 year development term set forth in this Agreement, rights to develop undeveloped land within the approved development footprint (parking and building footprints) on the North Parcel under the approved permits shall expire at that time.

5.3.7. With the exception of the Office Park Building on Lot 2 and associated parking, construction of the Office Park Buildings and associated parking areas shall not commence until all project features required prior to 5 years of the final approval of the Coastal Development Permit for the project have been installed to the satisfaction of the Community Development Director and the Director of Public Works. Once this occurs, Office Buildings may be constructed in the following sequence: Office Park Building on Lot 2 (if not already built), Office Park Building on Lot 3, with the construction of any Office Park Building on Lot 6, Lot 4, and Lot 5 (in that order) to be permitted after the construction of all Wellness Center buildings. The plans for the construction of Office Buildings shall include the installation of the minimum amount of parking required to serve the building proposed for construction and its associated use, which shall be located immediately adjacent to the building(s) to be constructed, as well as the Coastal Access parking to be installed on the south parcel, the number of spaces of which shall be equivalent to 20% of the number of Office Park parking spaces proposed for construction. Notwithstanding the foregoing, Developer may construct multiple buildings, and associated Business Park and Coastal Access parking, simultaneously. In no event will any construction for business uses take place prior to construction of the Wellness Center, Building 3. No fill shall occur on the property outside of immediate areas proposed under a building permit for construction (i.e., building, access, and parking), to allow for agricultural use over areas that will be developed in a later phase.

5.3.8 *Obligations during the term of the Development Agreement:* Within the term of this Agreement, Developer will complete the following components of the Project:

5.3.8.1 *Requirement for Recordation of Final Map:* Prior to the recordation of the subdivision map for the north parcel, Developer shall convey to the County sureties for all onsite and offsite improvements, including, but not limited to, the sureties for the installation of traffic control-related improvements. The Developer understands and agrees that neither the County nor

the Department of Transportation (CalTrans) shall have any responsibility to fund any traffic improvements required pursuant to the Conditions of Approval for this project.

5.3.8.2. *Order of Construction of Project Buildings:* Construction of the Office Park Buildings and associated parking areas shall not commence until private and public parking, Class 1 trail, k-rail, landscaping and sound barrier (if required) features described in Section 5.3 of this Agreement have been installed to the satisfaction of the Community Development Director and the Director of Public Works. Once this occurs, Office Buildings shall be constructed in the following sequence: Office Park Building on Lot 2, Office Park Building on Lot 3, Office Park Building on Lot 6, Office Park Building on Lot 4, and Office Park Building on Lot 5. The plans for the construction of Office Buildings shall include the installation of the minimum amount of parking required to serve the building proposed for construction and its associated use, which shall be located immediately adjacent to the building(s) to be constructed, as well as the Coastal Access parking to be installed on the south parcel, the number of spaces of which shall be equivalent to 20% of the number of Office Park parking spaces proposed for construction. Notwithstanding the foregoing, Developer may construct multiple buildings, and associated Business Park and Coastal Access parking, simultaneously.

5.3.8.3. *Construction of Business Uses on the North Parcel:*

5.3.8.3.1. The County will not issue any building permits for any stand-alone business buildings until a building permit for a Wellness Center building has been issued and construction has commenced.

5.3.8.3.2. Each building permit application shall include provisions for County-required private parking, County-required coastal access public parking spaces to be provided on the south parcel (a minimum of 20% of private parking spaces), County-required accessways/driveways, complete associated parking lot landscaping, construct all adjoining courtyards and associated landscaping, and water, wastewater, drainage and stormwater treatment systems and shall comply with all the conditions of approval for the Project plans and the requirements of this Development Agreement. Once construction is initiated, each building is estimated to be constructed in approximately twelve months and Developer shall be required to make reasonable progress towards completion of construction once it has been initiated, it being understood and agreed that the Developer will complete construction of all Office Park buildings within the term of this Agreement and in compliance with the mitigation measure detailed in the Conditions of Approval dated May 27, 2015. The Director of Community Development shall determine, in his reasonable judgment, whether reasonable progress has been made towards completion of such construction.

5.3.8.4. *Allocation of Parking for Business Uses:* Per Condition of Approval No. 7, Big Wave LLC shall cause the formation and require the continued existence of an association of all property owners on the north parcel for the management of parking spaces on Lot 1. Upon relinquishing ownership of Lot 1, Big Wave LLC shall form an association of all property owners on the north parcel, and shall transfer ownership of Lot 1 to that entity. No more than 420 parking spaces licenses shall be issued to owners of business uses on the north parcel. No more than 462 total parking spaces shall be provided at the north parcel. Parking licenses for business uses shall be issued based on County parking regulations and according to the schedule provided in Table 4 of the staff report dated January 7, 2015. All tenants or business owners of business space at the north parcel shall obtain a building permit for a “change in use” prior to any construction/tenant improvement and

occupancy. The County will verify that applicants for building permits have adequate parking space licenses for the proposed use prior to issuing any building permits and uses that are not supported by adequate parking will not be permitted.

5.3.8.5. *Beach User Parking (Phased with Building Permits)*: A total of 92 spaces of coastal access public parking will be provided on the south parcel. If less than the full amount of business use parking is built than otherwise authorized (420 parking spaces), Developer may proportionally reduce the amount of coastal access public parking that they build, such that public parking spaces built consist of no less than a minimum of 20% of all private parking provided for the project. Required coastal access public parking spaces shall be reserved and clearly marked for such uses, subject to review and approval by the Community Development Director, prior to the occupancy or change in occupancy of any Wellness Center building. Marking and spaces shall be maintained by the Developer for the life of the project. Parking fees shall not be collected for coastal access public parking spaces.

5.3.8.6. *Affordable Housing at the Wellness Center*: The property owner(s) shall maintain the rental rates for all bedrooms of the Wellness Center as affordable, such that the bedrooms are affordable to those of Extremely Low Income, Very Low Income, and Low Income, with the exception that residents may use up to 100% of their Social Security income for housing costs, which allows for residents who have no other income other than Social Security payments to use up to the full amount of their payment toward rental costs at the Wellness Center.

5.3.8.7. *Wellness Center Parking*: The Wellness Center shall be issued 42 irrevocable parking licenses.

5.3.8.8 *Other Benefits to County*: a) The applicant shall work with San Mateo County and others to address safety concerns regarding the neighboring propane tank property; b) The applicant shall work with the County to improve the function of the Prospect Way/Capistrano Road intersection; c) The applicant shall work with the County to direct bike and foot traffic to Marine Blvd. and improve vehicular access along Cypress Avenue as required by project conditions.

Notwithstanding the foregoing, Developer may perform multiple phases simultaneously.

## 6. Applicable Rules, Regulations, and Official Policies.

6.1. *Rules Regarding Permitted Uses*. For the term of this Agreement and except as otherwise provided in this Agreement, the County's ordinances, resolutions, rules, regulations, and official policies, including, without limitation, the Project Approvals, governing the permitted uses of the Property, governing density, design, improvement and construction standards and specifications applicable to the Property, including but not limited to, all public improvements, shall be those in force and effect on the Effective Date of this Agreement (the "Applicable Rules").

6.2. *Uniform Codes Applicable*. The Project shall be constructed in accordance with the provisions of the California Building, Mechanical, Plumbing, Fire, and Electrical Codes and applicable provisions of Title 24 of the California Code of Regulations, relating to Building Standards, in effect in County at the time a completed application is submitted for the appropriate building, grading, or other construction permits for the Project. The Project shall be built to the LEED Gold or Platinum standards

in effect at in County at the time a completed application is submitted for the appropriate building, grading, or other construction permits for the Project.

## 7. Subsequently Enacted Rules and Regulations.

7.1. New Rules and Regulations. During the term of this Agreement, the County may, in subsequent actions applicable to the Property, apply new or amended ordinances, resolutions, rules, regulations and official policies of the County which were not in force and effect on the Effective Date of this Agreement and which are not in conflict with the Applicable Rules, provided that (1) such new or modified ordinances, resolutions, rules, regulations or official policies do not affect the permitted uses of the Property, the maximum density and intensity of use, the maximum height, bulk and size of proposed buildings, provisions for reservations or dedication of land for public purposes and location and maintenance of onsite and offsite improvements, location of public utilities or any other terms and conditions set forth in this Agreement; and (2) such laws are generally applicable and not specific to or discriminatory against Developer's parcels that are the subject of this Development Agreement.

7.2. Denial or Conditional Approval. Nothing in this Agreement shall prevent the County from denying or conditionally approving any subsequent land use permit or authorization for any subsequent development project application on the basis of any new or modified ordinances, resolutions, rules, regulations, or policies applicable to the Property pursuant to and subject to Section 7.1.

7.3. Federal and State Law. Nothing shall preclude the application to the Project or the 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 Property in conformance with the Project, the parties agree that the provisions of this Agreement shall 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.

## 8. Processing.

8.1. Further Approvals and Permits. On satisfactory completion by Developer of all required preliminary actions and payments of all required processing fees, if any, County shall, subject to all legal requirements, promptly initiate, commence, diligently process, complete at within a reasonable timeframe, all required steps, and expeditiously consider any approvals and permits necessary for the development by Developer of the Property in accordance with this Agreement, including, but not limited to, the following:

8.1.1. The processing of applications for and issuing of all discretionary approvals requiring the exercise of judgment and deliberations by County ("Discretionary Approvals"); and

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

8.2. No Abridgement of Density or Height. County acknowledges that notwithstanding its ability to issue Discretionary Approvals in relation to site and architectural review and design review, County may not refuse such approvals, or require changes in the Project, that would have the effect of restricting or preventing the ability of Developer to construct buildings at the density and heights allowed in the Project Approvals as of the Effective Date of this Agreement.

8.3. Processing During Third Party Litigation. The filing of any third party lawsuit(s) against County or Developer relating to this Agreement or to other development issues affecting the Property shall not delay or stop the development, processing, or construction of the Project, or issuance of Discretionary Approvals or Ministerial Approvals, unless the third party obtains an order that, in the reasonable judgment of the County, prevents the activity.

## 9. Subsequently Enacted or Revised Fees, Assessments, and Taxes.

9.1. New Fees: County shall be entitled to impose and collect fees, dedications, and exactions on new development adopted by the County after the Effective Date provided that the ordinances, resolutions, rules, regulations or policies imposing them are generally applicable and not specific to or discriminatory against Developer's parcels that are the subject of this Development Agreement.

9.2. Revised Application Fees. Any existing application, processing, and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (1) such fees have general applicability and do not discriminate against Developer; (2) the application of such fees to the Property is prospective.

9.3. New Taxes. Any subsequently enacted County taxes of general applicability shall apply to the Project provided that such taxes have general applicability and do not discriminate against Developer.

9.4. Assessments. Nothing in this Agreement shall be construed to relieve the Property from assessments levied against it by County pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefits the Property.

9.5. Right to Contest. Nothing contained in this Agreement shall prevent Developer from paying any such fee, tax, or assessment under protest, or otherwise asserting its legal rights to protest or contest a given fee, tax, or assessment assessed against the Project or the Property.

## 10. Amendment or Cancellation.

10.1. Modification Because of Conflict with State or Federal Laws. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the County, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such State or Federal laws or regulations. Any such amendment or suspension of the Agreement is subject to approval by the Board of Supervisors, in its discretion. If such modification or suspension is infeasible in Developer's reasonable business judgment, then Developer may elect any one or more of the following in any sequence:

10.1.1. To terminate this Agreement by written notice to County, subject to payment to the County of all fees and charges due and owing;

10.1.2. To challenge the new law preventing compliance with the terms of this Agreement, and extend the Term of this Agreement for the period of time required to make such challenge. If such challenge is successful, this Agreement shall remain unmodified, except for the extension of the Term and shall remain in full force and effect. Nothing herein shall require the County to perform any action that, in its reasonable judgment, would cause it to violate controlling State or Federal authority.

10.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties to this Agreement and in accordance with the procedures of State law.

10.3. Cancellation by Mutual Consent. Except as otherwise permitted in this Agreement, this Agreement may be cancelled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the same procedure used when entering into this Agreement.

## 11. Annual Review.

11.1. Review Date. The annual review date for this Agreement (the "Review Date") shall be one year following the Effective Date and the annual anniversary of said date each year thereafter.

11.2. Annual Review Process. The Community Development Director shall initiate the annual review by giving to Developer written notice within sixty (60) days following the Review Date that the County intends to undertake such review for the annual period ending with the Review Date. Developer shall provide evidence of reasonable compliance with the terms and conditions of this Agreement to the Community Development Director within thirty (30) days following receipt of the Community Development Director's notice. The Community Development Director shall review the evidence submitted by Developer and shall, within thirty (30) days following receipt of Developer's evidence, determine whether the Developer is in good faith compliance with this Agreement. The Community Development Director's determination that Developer has in good faith complied with the terms of this Agreement shall be final.

11.3. Hearing on a Determination that Developer Has Not Complied. If The Community Development Director determines that the Developer has failed to comply with the terms of this Agreement, he shall provide notice of this determination to the Developer. If, within ten (10) days of receiving such notice from the Community Development Director, Developer requests in writing that the Board of Supervisors review the finding, the Board of Supervisors shall schedule the topic of the Developer'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 forty-five (45) days following such written request. The 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 the Developer 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 the Developer 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, including, but not limited to, the modification or termination of this Agreement in accordance with State law. The burden of proof of good faith compliance with the terms of this Agreement shall be on the Developer.

11.4. Fee for Annual Review. The fee for County's annual review shall be paid by Developer, and shall not exceed the costs of reimbursement of County staff time, including but not limited to staff time for review of Traffic Impact Reports and other traffic analysis as called for in the Conditions of Approval, and expenses at the customary rates then in effect. Failure to timely pay the Fee for Annual Review shall be a material breach of this Agreement.

## 12. Default.

12.1. Other Remedies Available. On the occurrence of an event of default, the parties may pursue all other remedies at law or in equity which are not otherwise provided for in this Agreement expressly including the remedy of specific performance of this Agreement.

12.2. Notice and Cure. On the occurrence of an event of default by either party, the non-defaulting party shall serve written notice of such default on the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the non-defaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that if the default cannot be cured within the thirty (30) day period, the non-defaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within the thirty (30) day period and makes reasonable progress toward curing such default. Failure to give notice shall not constitute a waiver of any default.

12.3. Procedure for Default by Developer. If the County alleges that the Developer is in default under this Agreement, then after notice and expiration of the cure period described in paragraph 12.2, above, if the Developer has not cured the alleged default, County may institute legal proceedings against Developer pursuant to this Agreement or give owner written notice of intent to terminate or modify this Agreement pursuant to section 65868 of the California Government Code. 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 sections 65867 and 65868 of the Government Code within thirty (30) days following the date of delivery of such notice. Following 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 Developer has occurred, County may (i) give written notice of termination of this Agreement to Owner, and this Agreement shall thereafter deemed terminated as of the date of delivery of that notice or (ii) propose a modification to the Agreement, which modification shall be adopted as provided in Section 11 of this Agreement if it is acceptable to all parties. 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 California Government Code, but merely to provide the procedure by which the parties may take the actions set forth in such Section 65865.1.

12.4. Procedure for Default by County. If County is alleged by Developer to be in default under this Agreement, Developer may seek to enforce the terms of this Agreement by an action at law or in equity, including, without limitation, by specific performance.

12.5. Estoppel Certificate. Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (1) this Agreement is in full force and effect and a binding obligation of the parties, (2) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (3) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a written request under this Section shall execute and return such certificate within sixty (60) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. County Manager shall be authorized to execute any certificate requested on behalf of County. Failure to execute such an estoppel certificate shall not be deemed a default.

13. Severability. The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal, except that if it is determined in a final judgment by a court of competent jurisdiction that Developer's rights are not vested in the manner and to the extent agreed to in this Agreement, then the Parties shall meet and confer in a good faith attempt to agree on a modification to this Agreement that shall fully achieve the purposes hereof. If such a modification cannot be agreed on, then Developer or County may terminate this Agreement on 90-days' written notice to the other Party.

#### 14. Transfers and Assignments.

14.1. Right to Assign. Developer's rights under this Agreement may be transferred, sold, or assigned in conjunction with the transfer, sale, or assignment of all or a portion of the Property subject to this Agreement at any time during the term of this Agreement; provided that, except as provided in this Agreement, no transfer, sale, or assignment of Developer's rights hereunder shall occur without prior written notice to the County and the written consent of the County Board of Supervisors. Any assignee/transferee shall be bound by the terms of this Agreement.

14.2. Release Upon Transfer. Upon the transfer, sale, or assignment of Developer's rights and interests hereunder pursuant to the preceding subparagraph of this Agreement, Developer shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned, arising after the date of Board of Supervisors approval of such transfer, sale, or assignment; provided, however, that if any transferee, purchaser, or assignee approved by the Board of Supervisors expressly assumes the obligations of Developer under this Agreement, Developer shall be released with respect to all such assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions of this Agreement and shall provide all necessary documents, certifications, and other necessary information before Board of Supervisors approval.

14.3. Pre-Approved Transfers. Any transfer of any interest in the Project or the Property by Developer to an entity that is an affiliate of the Developer is permitted.

14.4. Foreclosure. Nothing contained in this Section 14 shall prevent a transfer of the Property, or any portion of the Property, to a lender as a result of a foreclosure or deed in lieu of

foreclosure, and any lender acquiring the Property, or any portion of the Property, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising before acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to County.

15. Agreement Runs with the Land. Except as otherwise provided in this Agreement, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding on, and inure to the benefit of, the parties and their respective heirs, successors, and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion of the Property, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, California Civil Code Section 1468. Each covenant to do, or refrain from doing, some act on the Property under this Agreement, or with respect to any owned property, (1) is for the benefit of such properties and is a burden on such properties, (2) runs with such properties, and (3) is binding on each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden on each party and its property hereunder and each other person succeeding to an interest in such properties

16. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

17. Indemnification. Developer agrees to indemnify and hold harmless County, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs, and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or negligent omissions by the Developer, or any actions or negligent omissions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project.

18. Force Majeure. In addition to any specific provisions of this Agreement, performance of obligations under this Agreement shall be excused and the term of this Agreement shall be similarly extended during any period of delay caused at any time by reason of acts of God such as floods, earthquakes, fires, or similar catastrophes; wars, riots, or similar hostilities; strikes and other labor difficulties beyond the party's control; shortage of materials; the enactment of new laws or restrictions imposed or mandated by other governmental or quasi-governmental entities preventing this Agreement from being implemented; litigation involving this Agreement or the Project Approvals, which delays any activity contemplated under this Agreement; or other causes beyond a party's control. County and Developer shall promptly notify the other party of any delay under this Agreement as soon as possible after the delay has been ascertained.

19. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, by overnight delivery or by facsimile.

Notices required to be given to County shall be addressed as follows:

Steve Monowitz

Community Development Director  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063  
Telephone No: (650) 363-4161, (650) 599-7311  
Facsimile No: (650) 363-4849

With Copy to:  
Office of the San Mateo County Counsel  
Attn: John Nibbelin, Chief Deputy  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Telephone No.: (650) 363-4757  
Facsimile No.: (650) 363-4034

Notices required to be given to Developer shall be addressed as follows:

David J. Byers, Esq.

BYERS / RICHARDSON LAWYERS  
260 West MacArthur Street  
Sonoma, CA 95476-7426  
Telephone No. (650) 759-3375  
Facsimile No. (707) 721-1469

A party may change its address for notices by giving notice in writing to the other party, and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received on the earlier of personal delivery, or if mailed, on the expiration of 48 hours after being deposited in the United States Mail or on the delivery date or attempted delivery date shown on the return receipt, air bill, or facsimile.

20. Agreement Is Entire Understanding. This Agreement is executed in four duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties.

21. Exhibits. The following documents are referred to in this Agreement and are attached to this Agreement and incorporated herein by reference as though set forth in full:

Exhibit A: Legal Description of Property

Exhibit B: Project Approvals

Exhibit C: Topography of Southern Parcel

Exhibit D: Topography of Northern Parcel

Exhibit E: Vesting Tentative Map (Date)

Exhibit F: Grading and Erosion Control Plan

Exhibit G: Landscaping Plan

Exhibit H: "Riparian and Waters/Wetland Ecosystem Restoration Final Basis of Design Report

(also added to Attachment B of the EIR Addendum)

EXHIBIT I: As-Conditioned Phasing Plan

22. Recordation of Development Agreement, Amendment, or Cancellation. Within ten (10) days after the Effective Date of this Agreement, the Developer shall submit a fully-executed original of this Agreement for recording with the County Recorder. If the parties to the Agreement or their successors-in-interest amend or cancel the Agreement or if the County terminates or modifies the Agreement for failure of the Developer to comply in good faith with the terms or conditions of the Agreement, either party may submit for recording the notice of such action with the County Recorder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

County of San Mateo

Big Wave, LLC

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Big Wave Group

\_\_\_\_\_  
By: \_\_\_\_\_

APPROVED AS TO FORM:

Byers / Richardson

\_\_\_\_\_  
By: David J. Byers

\_\_\_\_\_  
County Counsel

NOTARIAL ACKNOWLEDGMENT ATTACHED

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Project Approvals

EXHIBIT C: Topography of Southern Parcel

EXHIBIT D: Topography of Northern Parcel

EXHIBIT E: Vesting Tentative Map, January 10, 2015

EXHIBIT F: Grading and Erosion Control Plan

EXHIBIT G: Landscaping Plan

EXHIBIT H: Riparian and Waters/Wetland Ecosystem Restoration Final Basis of Design Report

(also added to Attachment B of the EIR Addendum)

EXHIBIT I: As-Conditioned Phasing Plan