

WHEN RECORDED, RETURN TO:

Community Development Department
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

SPACE ABOVE FOR RECORDER

(Free recording is requested pursuant to Government Code section 27383 -benefits city and is official city business)

**ASSUMPTION OF RISK AND RELEASE
REGARDING RECEIPT OF SURFACE WATERS, GROUND WATER AND
SEWER LINE BACK-UPS**

THIS ASSUMPTION OF RISK AND RELEASE REGARDING RECEIPT OF SURFACE WATERS, GROUND WATER AND SEWER LINE BACK-UPS is made this _____ day of _____, 20 _____, by _____ and _____ (hereinafter "Property Owner") in favor of the City of Hermosa Beach (hereinafter "City"), a California municipal corporation.

R E C I T A L S

A. Property Owner is the owner in fee title of property located in the City of Hermosa Beach legally described as Lot _____, Block _____ of _____ Tract, or Assessor's Parcel No.: _____ (Book _____, Page _____, Parcel _____), together with all improvements, household furnishings and effects, and personal property located therein and thereon, more commonly known as _____, Hermosa Beach, California (hereinafter "the property").

B. Property owner desires to build/rebuild/remodel/rehabilitate a residential structure on the property (hereinafter the "construction") and has applied for a building permit for said work.

C. Property owner's construction plans call for:

- ___ the garage or other living space to be located below the street grade;
- ___ no curbs or gutters along the street frontage of the property;
- ___ the back of the driveway is not a minimum of 6" above the flow line.

D. If the property is located west of Hermosa Avenue, Property Owner acknowledges that this is an area with high ground water and more prone to flooding during periods of heavy rainfall than other areas in the City. Also, this area is prone to the effects of tidal surges, which can cause direct ocean inundation of the property or blockage of storm drain

drain outlets. As a result, subterranean construction on the property is likely to be flooded even when storm drain facilities are properly maintained and operating to capacity. Wherever in the City the Property is located, during periods of heavy rainfall, it is likely that surface waters along the public street fronting the property will enter the property due to construction of the residential structure in accordance with the plans as above described. Further, the risk of inundation of subterranean construction with sewage due to failure of a back-flow device and with ground water due to failure of dewatering system is greater when constructing below grade.

E. Potential inundation of the property can be avoided by changing the method of construction. Property Owner does not want to change the method of construction to protect against the risk of flooding by surface water, sewage and ground water, but instead, desires to assume all risk relating to and arising from the issuance of a building permit for said construction with respect to flooding by surface waters, sewage and ground water, including in particular the risk that the City's issuance of the building permit is negligent in that both the property owner and the City are aware of the potential for such flooding if the structure is built as planned.

F. As an accommodation to Property Owner, City is willing to allow the construction as proposed, and Property Owner desires to limit the City's potential liability arising from any claim that the City acted negligently or improperly in issuing a building permit to Property Owner under the above-described circumstances.

G. City will not issue a building permit for the proposed below grade construction absent execution of this waiver.

NOW, THEREFORE, as inducement for City to grant a building permit, Property Owner agrees as follows:

1. Assumption of Risk.

Property Owner hereby assumes all risk of damages to the property, and loss or impairment of the use and enjoyment thereof, including improvements, household furnishings and effects and personal property located therein and thereon, and including all risk of personal injury, and including loss of any and all expenditures in any manner arising out of or attributable to the City issuing a building permit for the proposed construction, notwithstanding that the property will be susceptible to flooding by surface waters, sewage and ground water by virtue of Property Owner's chosen method of construction.

Property Owners' Initials _____

2. Release.

Property Owner hereby releases and discharges City, its officers, employees and agents, past and present, from any and all claims, losses, damages or liabilities of or to the property of the undersigned Property Owner (whether for damages to (a) the property, (b) improvements, household furnishings and effects and personal property located therein or thereon, or (c) personal injury), including but not limited to attorney's fees and costs of suit, arising out of or attributable to the City issuing the building permit for the proposed

construction, notwithstanding that the property will be susceptible to flooding by surface waters, sewage and ground water by virtue of Property Owner's chosen method of construction.

This release includes, but is not limited to, any claims arising from the City's negligence in issuing the permit. **Property Owner hereby expressly agrees to forego the right to assert any claim or bring any action of any nature whatever against City, its officers, employees and agents for any damages or losses of any kind attributable to surface water, sewage and ground water flooding of the property.**

Property Owners' Initials _____

3. Indemnification.

Property Owner hereby agrees to defend, indemnify and hold harmless City, its officers, employees and agents from claims, actions damages and liabilities asserted by third parties who suffer injuries or damages (whether personal injury or damage to personal property) by virtue of flooding of the property by surface waters, sewage or ground water.

Property Owners' Initials _____

4. Voluntary Agreement.

Property Owner has obtained the advice of legal counsel and has been advised of the nature and legal effect of the execution of this instrument, or expressly declines to secure the advice of legal counsel, nonetheless has read this instrument carefully, understands the contents hereof and knowingly forgoes the opportunity to seek legal counsel. Property Owner executes this instrument voluntarily with knowledge of its significance in consideration for issuance of a building permit to perform certain construction using a method that Property Owner is aware may result in damage from surface waters, sewage or ground water.

Property Owners' Initials _____

5. Binding Effect.

Property Owner agrees and acknowledges this instrument shall be recorded against the title of the property in the official records of the Los Angeles County Recorder.

Property Owners' Initials _____

The property is ___ /is not ___ located west of Hermosa Avenue. If the property is located west of Hermosa Avenue, Property Owner hereby acknowledges for the reasons described in Recital D above that the property is more susceptible to flooding due to its location.

Property Owners' Initials _____

This instrument shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in or to the property or any portion thereof, and shall constitute notice of the hazard of surface water, sewage and ground water flooding that affects

affects the property.

This instrument shall be terminated or modified only upon the express written consent of City.

In the event Property Owner sells, transfers, leases or otherwise conveys any interest or right of possession in the property, Property Owner shall provide any such purchaser, lessee or transferee a copy of this instrument.

I UNDERSTAND THAT BY SIGNING THIS INSTRUMENT, I AM FOREGOING MY LEGAL RIGHTS.

I UNDERSTAND THAT MY CHOICE TO CONSTRUCT A STRUCTURE ON MY PROPERTY IN A WAY THAT MAKES IT VULNERABLE TO FLOODING IS PURELY VOLUNTARY AND THAT I COULD CONSTRUCT THE STRUCTURE IN A DIFFERENT WAY TO PROTECT IT FROM SUCH FLOODING.

I UNDERSTAND THAT THE CITY HAS AGREED TO ISSUE A BUILDING PERMIT BECAUSE I HAVE RELEASED THE CITY FROM ANY LIABILITY FOR PROPERTY DAMAGE, PERSONAL PROPERTY DAMAGE AND PERSONAL INJURY, INCLUDING LIABILITY ARISING FROM ITS OWN NEGLIGENCE IN ISSUING THE PERMIT.

I UNDERSTAND THAT AS A RESULT OF SIGNING THIS INSTRUMENT I DO NOT HAVE THE RIGHT TO SUE THE CITY IN CONNECTION WITH THE BUILDING PERMIT OR THE CONSTRUCTION IT AUTHORIZES, IN THE EVENT MY PROPERTY IS FLOODED.

I UNDERSTAND THAT I AM RESPONSIBLE FOR PROTECTING THE CITY AGAINST PERSONAL INJURIES TO MY GUESTS AND INVITEES AND DAMAGES TO THEIR PERSONAL PROPERTY.

Property Owners' Initials _____

IN WITNESS WHEREOF, Property Owner has executed this assumption of risk and release and indemnity on the date first written above.

Signature of Property Owner

Print Name

Signature of Property Owner

Print Name

Signature(s) must be acknowledged before a Notary Public:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)
On _____ before me, _____
Date Here Insert Name and Title of the Officer
personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____