DEFENSE AND INDEMNIFICATION AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND APPLICANT

This Agreement is made and entered into between the County of San Diego (County), a political subdivision of the State of California, and _____ (Applicant).

WHEREAS, Applicant requests that the County process the application described in Attachment A to this Agreement(hereafter referred to as the "Project");

WHEREAS, the Project is a land use development project or other land use decision for which a defense and indemnification agreement is required under San Diego County Code section 86.201; and

~~WHEREAS, in consideration of Applicant's request for County to process an application for the Project, and County's agreement to process a complete application for the Project; and~~

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement since Applicant will benefit from the County's processing of the application.

NOW, THEREFORE, in consideration of Applicant's request for County to process an application for the Project and other consideration the receipt and sufficiency of which is hereby acknowledged, County and Applicant agree as follows:

1. Applicant shall defend and indemnify the County, its agents, officers and employees (collectively "County Parties") from any claim, action, liability or proceeding against the County Parties to attack, set aside, void or annul the Project or any of the proceedings, acts or determinations taken, done or made as a result of County's processing and/or approval of the Project. Applicant's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act or ~~compliance~~ with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Applicant's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation costs, all costs of any judgments or awards against the County, and/or ~~any~~all settlement costs, which arise out of County's processing and/or approval of the Project.

2. The County shall notify the Applicant promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the County and Applicant, and the prompt payment of the attorneys' fees and costs of such counsel. In the event of a disagreement between the County and Applicant over litigation issues, County shall have the authority to control the litigation and make litigation decisions, including but not limited to, settlement or other disposition of the matter. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonable attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefor. At its sole discretion, the County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the Applicant of any obligation imposed by this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of the County Parties, except that Applicant's obligation to indemnify shall not apply where the court finds there is gross negligence or willful misconduct by the County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals and/or actions by the County regarding the Project remain valid or are invalidated by any court.

4. The Board of Supervisors may require security from Applicant to address the risks associated with the Project pursuant to section 86.202 of the San Diego County Code. When the Board of Supervisors requires security from the Applicant, Applicant shall provide security in the form and amount, and at the time, specified by the Board.

5. Failure to promptly defend or indemnify County, and/or provide security when required by the Board of Supervisors, is a material breach which shall entitle County to all remedies available under law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify, and/or provide security when required by the Board of Supervisors, shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Project, and a waiver by Applicant of any right to proceed

with the Project or any portion thereof.

6. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonably withheld.

7. All notices required under this Agreement shall be in writing and delivered by ~~either~~ the United States Postal Service, any commercially available letter or package delivery service, or ~~by fax,~~ electronic mail (email) provided that a copy of the email is retained that shows the date and time of transmission. The notices shall be addressed to the following:

County:	Applicant (print):
Director of Planning and Development Services County of San Diego 5510 Overland Ave., Suite 110 San Diego, CA 92123 Email:	_____ _____ _____ _____ Email:

8. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, and has full and complete authority to do so. Each party expressly waives any defense to this Agreement based on any lack of authority to enter into and be bound by the terms of this Agreement.

9. This Agreement shall constitute the complete understanding of the parties with respect to the matters set

[Remainder of this page left blank intentionally]

forth herein. Neither party is relying on any other representation, oral or written. This Agreement may not be changed except by a written amendment signed by both parties.

IN WITNESS HEREOF, the parties do hereby agree to the terms of this Agreement.

COUNTY	APPLICANT
By:_____	By:_____
Mark Wardlaw, Director of Planning and Development Services	Name(print):_____
	Title: _____
Date: _____	Date:_____

Attachment A

Project Description: