

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of _____, 20__, between the CITY OF GLENDORA (“City”), and _____ (“Subdivider”).

RECITALS

WHEREAS, Subdivider is the owner of certain real property located at _____ in the City of Glendora (“Property”).

WHEREAS, the Property is covered by [Tract/Parcel Map No. _____] which was approved by the City pursuant to the Subdivision Map Act (“Map Act”).

WHEREAS, pursuant to the Map Act and the Glendora Municipal Code, Subdivider has applied to the City for a final map for the Property based on [Tract/Parcel Map No. _____].

WHEREAS, pursuant to Government Code Section 66474.9(b), the City is requiring, as a condition of a final map application, that Subdivider defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and any agency or instrumentality thereof, its elected and appointed boards, commissions, officials, officers, employees and agents (collectively, “Indemnitees”) from and against any and all claims, actions or proceedings to attack, set aside, void or annul an approval of City, any advisory agency, appeal board or City Council concerning the subdivision known as [Tract/Parcel Map No. _____], which claims, actions or proceedings are brought within the time period provided for in Government Code Section 66499.37.

WHEREAS, in addition, Subdivider has voluntarily agreed to provide similar indemnification for any and all claims, actions or proceedings arising out of or in any way relating to the environmental review conducted under the California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereinafter “CEQA”) in conjunction with an approval granted by City, its boards, commissions or employees concerning the subdivision known as [Tract/Parcel Map No. _____], which claims, actions or proceedings are brought within the time periods provided for in Public Resources Code Section 21167.

NOW, THEREFORE, in consideration of City granting approval of the final map for [Tract/Parcel Map No. _____] and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section I. RECITALS. The Recitals set forth above are acknowledged as true and correct by the Parties.

Section II. INDEMNITY.

A. Subdivider shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless, the Indemnitees from and against any and all claims, actions or proceedings to attack, set aside, void or annul an approval of City, any advisory agency, appeal board of the City Council concerning the subdivision known as [Tract/Parcel Map No. _____], which claims, actions or proceedings are brought within the time period provided for in Government Code Section 66499.37.

B. In addition, Subdivider shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless, the Indemnitees from and against any and all claims, actions or proceedings arising out of or in any way relating to the environmental review conducted under CEQA in conjunction with an approval granted by City, its boards, commissions or employees concerning the subdivision known as [Tract/Parcel Map No. _____], which claims, actions or proceedings are brought within the time periods provided for in Public Resources Code Section 21167.

C. To the extent that the obligation in preceding Paragraphs A or B may be unenforceable because it violates any law or public policy, then Subdivider will contribute the maximum portion that it is permitted to pay in satisfaction of all claims, actions or proceedings incurred by the Indemnitees which are within the scope of this Agreement.

D. City agrees that the indemnity provided in this Agreement is limited to claims, actions or proceedings brought by third parties and is not intended to cover any claim, action or proceedings brought by Subdivider.

Section III. SUCCESSORS AND ASSIGNS. The representations, warranties, indemnities, covenants and agreements provided herein shall become effective upon execution of this Agreement and shall be binding upon Subdivider's successors and assigns.

Section IV. REIMBURSEMENT OF EXPENSES. In the event the Indemnitees sustain any expenses which are reimbursable pursuant to this Agreement, Subdivider agrees to reimburse the Indemnitees for such expenses within a reasonable time, but in no event exceeding sixty (60) days after receiving written notice from said Indemnitees of having incurred such expenses.

Section V. NOTICE OF CLAIM AGAINST INDEMNITEES. City shall give Subdivider prompt written notice of any claim, action or proceeding regarding the subject matter of this Agreement, and shall cooperate fully in the defense of the claim, action or proceeding. If City fails to promptly notify Subdivider of any claim, action or proceeding against the Indemnitees, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify or hold harmless the City.

Section VI. PARTICIPATION BY CITY. Nothing contained in this Agreement prohibits City from participating in the defense of any claim, action or proceeding, if both of the following occur: (1) City bears its own attorney's fees and costs, and (2) City defends the action in good faith.

Section VII. SETTLEMENT. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved in writing by Subdivider. If City refuses to consent to any lawful settlement or compromise acceptable to Subdivider, Subdivider shall not thereafter be responsible to defend, indemnify or hold harmless City.

Section VIII. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California and, to the extent that federal law may preempt the applicability of state laws, federal law.

Section IX. AMENDMENTS. This Agreement may not be changed or amended orally but only by an instrument in writing signed by the Party against whom enforcement by the change or amendment is sought.

Section X. SEVERABILITY. Should any non-material provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

Section XI. ATTORNEYS' FEES. If litigation is reasonably required to enforce or interpret the provisions of this Agreement, the prevailing Party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

Section XII. NOTICES. Any notices or other correspondence between the Parties shall be sent to the following unless either Party gives the other notice of a change of address:

To City: City Clerk
City of Glendora
116 E. Foothill Boulevard
Glendora, California 91741

With copy to: D. Wayne Leech, City Attorney
Moseley & Leech
11001 E. Valley Mall, Suite 200
El Monte, California 91731

To Subdivider: _____

