INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

Instructions for Applicant

The City now requires that all Applicants* sign the attached Agreement as part of the application process. If and when a project is approved, the Agreement will be completed and executed by the City and a copy will be provided to the Applicant.

At the time of application, the applicant should read the terms of the Agreement. The Applicant MUST complete the gray "Applicant" signature area on page 5 of the Agreement. **An application will not be deemed complete and scheduled for hearing until the signed signature page has been provided.**

Certain applications may also require that the Property Owner sign the Agreement. This determination will be made by the City after reviewing the complete application.

If **APPLICANT is a corporation, City requires the following signature(s):*

*--Chairman of the Board or President or Vice-President **and** Secretary or Chief Financial Officer or Assistant of either. If only one corporate officer exists, please so indicate. **Or***

--Corporate officer named in corporate resolution as authorized to enter into this Agreement (certified copy of resolution provided to City.)

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This INDEMNIFICATION AND HOLD HARMLESS AGREEMENT ("Agreement") is entered into on this ___ day of_____, 2008, by and between _____ ("**Applicant**"), and the CITY OF FULLERTON, a municipal corporation ("City").

R E C I T A L S:

WHEREAS, on or about_____, **Applicant** submitted a complete application to the City for _____ *[type of application]* to _____ *[reason for application]* (hereinafter referred to as "the Project");

WHEREAS, the application was for property located within the City of Fullerton, and described as follows:

> Assessor's Parcel No._____; as depicted on Orange County Assessor Map published_____;
>
> More commonly known as_____, Fullerton 9283_ (hereinafter referred to as the "Property).

WHEREAS, the City approved the Project, including _____ *[project and case numbers]* and adopted a _____ *[environmental document or exemption]* for the Project on _____ (hereinafter referred to as "the Project Approvals");

WHEREAS, the **Applicant** has agreed to execute a valid and enforceable indemnity agreement with the City with respect to the Project Approvals and such execution has been made an agreed-upon condition of approval of the Project; and

WHEREAS, in furtherance of the preceding, the parties have agreed to enter into the following indemnification agreement; and

NOW THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the City and the **Applicant** (individually "Party" and collectively "Parties") hereby agree as follows:

C O V E N A N T S:

A. Duty to Indemnify.

1. In exchange for the City's issuance and/or adoption of the Project Approvals, the **Applicant** agrees to save, keep, indemnify, hold harmless and defend the City of Fullerton (with counsel of City's choice, subject to reasonable approval by the **Applicant**), and its appointed and elected officials, officers, employees, and agents

2. The **Applicant** acknowledges and agrees that the validity of this Agreement is a material condition affecting the validity of the Project Approvals. The **Applicant** agrees that if, prior to issuance of certificates of occupancy relating to any buildings or structures authorized to be constructed or remodeled by the Project Approvals, for any reason this Indemnification Agreement is held to be illegal or unenforceable, or in the event that it fails or refuses to indemnify the City as required by this Agreement, the abovementioned Project Approvals shall be void and of no effect. The **Applicant** further agrees that if this Indemnification Agreement is held to be illegal or unenforceable, or in the event that it fails or refuses to indemnify the City as required by this Agreement, and part of its Project Approvals involve issuance of a Conditional Use Permit, disapproval of this Agreement and/or failure to indemnify and defend the City as provided for herein shall constitute grounds for revocation of any Conditional Use Permit authorized by the Project Approvals. The **Applicant** further agrees that if it fails or refuses to indemnify the City as required by this Agreement, and all work to be performed under the Project Approvals has been completed and approved by City and no conditional use permit, variance or other revocable permit or authorization remains outstanding, City shall be entitled to a prejudgment attachment for any damages, attorneys' fees, costs, or other expenses which it has or will reasonably be expected to incur in any action as to which the **Applicant** has refused to defend and/or indemnify City which is provided for herein, and neither the **Applicant** nor its officers, officials, employees, agents, successors or assigns shall be entitled to object to the issuance of any such prejudgment attachment, and may contest only the amount of such attachment.

B. Governing Law. This Agreement shall be construed and interpreted as to both validity, and performance of the parties, in accordance with the laws of the State of California. This Agreement is to be executed and performed in the County of Orange, State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and **Applicant** covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

C. Waiver. No delay or omission in the exercise of any right or remedy of a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Party's consent or approval of any act by the other Party requiring consent or approval, or any waiver by either Party upon any default, must be in writing. Any waiver of any default shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

D. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

F. Attorneys' Fees. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing Party.

G. Integration. This Agreement represents the entire understanding of the City and the **Applicant** with respect to defense and indemnification relative to the Project Approvals. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may not be altered, amended or modified except in writing by both Parties hereto.

H. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the respective dates set forth below their signatures.

CITY:	**APPLICANT:**
CITY OF FULLERTON	
	[APPLICANT'S FULL NAME]
A municipal corporation of the State of California	
	[*corporation, individual, partnership, etc.]*
By:	By*:
Title:	Title:
Date:	Date:
ATTEST:	APPROVED AS TO FORM:
BEVERLEY WHITE, CITY CLERK	RICHARD D. JONES, CITY ATTORNEY

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*--Chairman of the Board or President or Vice-President **and** Secretary or Chief Financial Officer or Assistant of either. If only one corporate officer exists, please so indicate. **Or***

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