

RECORDING REQUESTED BY:
COUNTY OF TULARE
AND WHEN RECORDED MAIL TO:

TULARE COUNTY
ENVIRONMENTAL HEALTH
5957 South Mooney Blvd.
Visalia, CA 93277-9394

Exempt from Recording Fees per Gov't. Code § 6103

This Space for Recorder's Use Only

**COVENANT FOR INDEMNIFICATION AND COST RECOVERY FOR
DEVELOPMENT AND ENVIRONMENTAL ENTITLEMENTS**

THIS COVENANT (" C o v e n a n t ") is entered into on _____
(Date), by _____
(Applicant(s)/Authorized Representative), referred to herein as the "**APPLICANT.**" Throughout this
Covenant the COUNTY OF TULARE, California, is referred to as the "**COUNTY.**" **COUNTY** and
APPLICANT are each a "Party" and are jointly referred to herein as the "Parties" to this Covenant.

R E C I T A L S

WHEREAS, APPLICANT has requested that the **COUNTY** process the project identified as
_____ (Application Type), _____ (Case Number),
submitted by _____
_____ (Applicant(s) names and addresses),
which will result in an entitlement consisting of _____
_____ (description of project/entitlement), on a
_____-acre parcel identified by its Assessor's Parcel Number(s) below (the "Site"), (collectively
referred to as the "PROJECT").

Assessor's Parcel Number(s): _____

Legal Description:

(check box if legal description attached as separate document or documents)

WHEREAS, APPLICANT desires to indemnify **COUNTY** from all liability or loss connected with
the approval or conditional approval of the PROJECT and environmental clearances as provided in this
Covenant.

WHEREAS, APPLICANT desires to reimburse **COUNTY** for all costs incurred by **COUNTY** for
any reason relating to any ballot measures, legal actions, or administrative proceedings challenging or
related to the PROJECT.

NOW, THEREFORE, APPLICANT covenants and agrees as follows:

1. Parties to Covenant

The term **COUNTY** shall include County of Tulare, the Tulare County Planning Commission, the Tulare County Zoning Administrator, the Tulare County Board of Supervisors and/or any Tulare County agencies, departments, commissions, agents, officers, or employees. The term **APPLICANT** shall include all parties applying for discretionary land use approvals for or related to the PROJECT, including but not limited to, the owner or owners of the Site and their successor(s)-in-interest.

2. Definition of Challenge to Project

“Challenge” shall mean any ballot initiative, administrative appeal, writ of mandamus, other legal proceeding, or any other legal or administrative attempt by a third party to modify, reverse or negate a final approval of the PROJECT by **COUNTY**. Challenges shall include appeals to the County Board of Supervisors from decisions of the County Planning Commission or County staff that would otherwise be considered final decisions pursuant to applicable ordinances, regulations and/or statutes.

3. Costs Incurred Separately from Land Use Application Fees in County Zoning Ordinance

This Covenant pertains to costs incurred separate and apart from land use application costs and fees set by Tulare County Ordinance No. 352, otherwise known as “the County Zoning Ordinance.” The costs and fees subject to this Covenant are any legal fees, legal costs, expert fees, or other costs incurred by **COUNTY** that in any way pertain or relate to a Challenge.

4. COUNTY’s Determination to Oppose Challenge

This Covenant recognizes that **COUNTY** maintains the right to determine, independently of **APPLICANT**, if it is appropriate to oppose a Challenge. **APPLICANT** agrees to indemnify, defend and reimburse **COUNTY** pursuant to the terms herein if **COUNTY** determines that defense of the PROJECT against a Challenge is appropriate.

5. Joint Defense of COUNTY and APPLICANT

If **COUNTY** determines that it is necessary and appropriate to defend the PROJECT against a Challenge, then **APPLICANT** shall cooperate with **COUNTY** in said defense.

6. Reimbursement to COUNTY

Upon request by **COUNTY**, **APPLICANT** shall reimburse **COUNTY** for the monies expended by **COUNTY** in defense of any Challenge to the PROJECT, including, but not limited, to court costs, attorney fees, expert consultant or witness fees, staff time and implementation costs related to any mitigation and/or monitoring plan that applies, relates or pertains to the PROJECT.

7. Advance Payment of Anticipated Costs to COUNTY

COUNTY may, at any time, require **APPLICANT** to advance funds and/or reimburse **COUNTY** for costs that can be reasonably anticipated to be incurred or expended by **COUNTY** in defense of any Challenge to the PROJECT, including, but not limited, to court costs, attorney fees, expert consultant or witness fees, staff time and implementation costs related to any mitigation and/or monitoring plan that applies, relates or pertains to the PROJECT. Where funds have not been received as requested by **COUNTY**, **APPLICANT** shall reimburse **COUNTY** within thirty (30) days of receipt of an itemized

written invoice from **COUNTY** for such costs. Failure of **APPLICANT** to timely reimburse **COUNTY** shall be considered a material violation of the conditions of the approval of the PROJECT. Where said funds have not been deposited or reimbursed by **APPLICANT**, all work shall be suspended on the PROJECT. Failure to receive funds from **APPLICANT** within 45 calendar days of the written notice shall cause the PROJECT to be deemed abandoned by **APPLICANT** and any further work by **COUNTY** on the PROJECT will require **APPLICANT** to submit a new land use application.

8. COUNTY Choice of Legal Representation in Defense of Challenge

COUNTY retains the right, in its sole discretion, to determine the legal counsel that will defend the COUNTY against the Challenge relevant to this Covenant. The duty of **APPLICANT** to indemnify **COUNTY** for legal costs incurred in defense of PROJECT against a Challenge shall not obligate **COUNTY** to share legal counsel with **APPLICANT** or allow **APPLICANT** to affect **COUNTY**'s choice of legal counsel. **COUNTY** may, at the discretion of **COUNTY** staff, choose legal counsel outside of the office of the Tulare County Counsel to represent **COUNTY** to defend a Challenge, in which case **APPLICANT** would still be obligated to cover the costs of defense incurred by **COUNTY** for outside counsel in defense of any Challenge.

9. Effects of Final Judgment in Litigation

If litigation pertaining to a Challenge is instituted, and a final judgment is obtained in the litigation that invalidates any action of **COUNTY** in connection with this PROJECT, then **APPLICANT** shall no longer be obligated to **COUNTY** by the terms of this Covenant. Neither **APPLICANT** nor **COUNTY** shall be obligated to appeal any final court decision pertaining to a Challenge. However, **COUNTY** may tender the defense of any such appellate litigation to **APPLICANT**, in which case **APPLICANT** shall bear all costs of such litigation, including attorney fees, expert witness fees, and court costs in connection therewith.

10. Indemnification by APPLICANT

The indemnity and hold harmless protection created by this Covenant for the benefit of **COUNTY** and to the burden of **APPLICANT** applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the PROJECT, any **COUNTY** approvals pertaining to the PROJECT, and any Challenges thereto, regardless of whether **COUNTY** prepared, supplied, or approved plans or specifications for the PROJECT. The indemnity and hold harmless protection created by this Covenant does not extend to damages and claims for damages caused by **COUNTY** with respect to public improvements and facilities completed after **COUNTY** has accepted responsibility for such public improvements and facilities.

APPLICANT shall defend, indemnify, and hold harmless **COUNTY**, its officials, officers, employees, representatives, agents and attorneys, from and against all claims, proceedings, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, **COUNTY**'s act or acts leading up to and including approval of any environmental document or mitigation plan granting approvals relating to the PROJECT. **APPLICANT**'s obligation to defend, indemnify and hold **COUNTY** harmless specifically includes, but is not limited to, any action or Challenge by any third party against **COUNTY** which seeks to set aside, void or annul the legality or adequacy of any environmental document or mitigation plan approved by **COUNTY** or any approval related to the PROJECT.

APPLICANT's obligation to defend, indemnify and hold **COUNTY**, its officials, officers and employees, representatives, agents and attorneys harmless shall include, but not be limited to, the

cost of preparation of any administrative record on behalf of **COUNTY**, staff time, copying costs, attorney fees, expert witness fees, court costs, any judgment or award against **COUNTY** for damages, losses, litigation costs, or attorney fees arising out of any action or Challenge contesting the adequacy of any approval of the environmental document or mitigation plan, or any approval related to the PROJECT, and the costs of any settlement representing damages, litigation costs and attorney fees to be paid to other parties arising out of a suit or Challenge to the adequacy of the approval of the environmental document or mitigation plan or any document or any other approval related to the PROJECT, if the settlement, award, or judgment so provides.

11. Covenant to Run with Land

All obligations created by this Covenant shall bind and burden all successors in interest to the Site, so long as the Site continues to be benefitted or entitled by the PROJECT.

12. Termination

COUNTY at any time may, in its sole discretion and with or without cause, terminate this Covenant at any time by giving written notice as provided below. **APPLICANT** may not terminate this Covenant for any reason.

13. Notices

Except as otherwise required by law, any notice to be given pursuant to this Covenant shall be written and shall be either personally delivered, or sent by first class mail to the following addresses:

COUNTY: TULARE COUNTY ENVIRONMENTAL HEALTH
5957 South Mooney Blvd.
Visalia, CA 93277-9394

APPLICANT 1: _____

APPLICANT 2: _____

Notice personally delivered is effective when delivered. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either Party may change the above address by giving written notice to the other Party pursuant to this paragraph.

14. Entire Agreement

This Covenant represents the complete understanding between the Parties with respect to matters set forth herein.

15. Enforcement Action

If it becomes necessary for **COUNTY** to take any action against **APPLICANT** to enforce or interpret the terms of this Covenant, then **COUNTY** shall be entitled to its reasonable attorneys' fees and costs, including all costs of investigation, and all pre-litigation costs.

16. Severability

If any provision of this Covenant is held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of the Covenant shall continue in full force and effect and shall in no way be impaired or invalidated.

17. Governing Law

Interpretation and performance of this Covenant shall be governed by the laws of California, excluding any statute which directs application of the laws of another jurisdiction. The Parties agree that this Covenant is made in and shall be performed in Tulare County, California.

18. Strict Compliance Not Required

The failure of **COUNTY** to insist on strict compliance with any provision of this Covenant shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by **COUNTY** of either performance or payment shall not be a waiver of any preceding or subsequent breach of the Covenant by **APPLICANT**.

19. APPLICANT's Duty to Record Covenant

Upon its execution, **APPLICANT** shall record this Covenant with the Office of the Tulare County Recorder and provide **COUNTY** with a certified copy of the Covenant. **APPLICANT** shall bear all costs (if any) of recording and provision of the certified copy to **COUNTY**.

20. Authority

APPLICANT expressly warrants their authority to execute this Covenant with respect to the PROJECT and the Site.

APPLICANT, having read and considered the above provisions, indicates agreement thereto by the authorized signature or signatures below.

IN WITNESS WHEREOF, **APPLICANT** has caused this Covenant to be executed on the day and year indicated in the first paragraph of this Covenant.

(SIGNATURE PAGE FOLLOWS)

[If APPLICANT is an individual, use the following signature lines:]

By _____

By _____

Printed Name: _____

Printed Name: _____

APPLICANT 1

APPLICANT 2

[If APPLICANT is general or limited partnership, use the following signature lines:]

By _____

By _____

Printed Name: _____

Printed Name: _____

General Partner
APPLICANT

General Partner
APPLICANT

[If APPLICANT is a corporation, use the following signature lines:]

Note: Pursuant to Corporations Code Section 313 a contract with a corporation must be signed by one person from the following corporate officers; chairperson of the board, the president or any vice-president and must also be signed by a second person from the following corporate officers: the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer unless the contract is accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract by a single designated officer or person.

By _____

By _____

Printed Name: _____

Printed Name: _____

President or Vice-President
APPLICANT 1

President or Vice-President
APPLICANT 2

By _____

By _____

Printed Name: _____

Printed Name: _____

Secretary or Treasurer
APPLICANT 1

Secretary or Treasurer
APPLICANT 2

[If APPLICANT is an LLC, use the following signature lines:]

Note: "Corporations Code Section 17157 requires that contracts with an LLC be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager."

By _____

Printed Name: _____

Manager
APPLICANT 1

By _____

Printed Name: _____

Manager
APPLICANT 2

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