

Indemnity Agreement

**INDEMNIFICATION AGREEMENT BETWEEN
CONTRA COSTA COUNTY AND FT LAND, LLC, RELATING TO THE
DEVELOPMENT COMMONLY KNOWN AS TASSAJARA PARKS**

This Indemnification Agreement ("Agreement") is made and entered into as of May 31, 2021 ("Effective Date"), by and between Contra Costa County, a political subdivision of the State of California, ("County") and FT Land, LLC, a California limited liability company ("Applicant"). The County and the Applicant are sometimes referred to as the "Parties," and each as a "Party."

RECITALS

- A. The Applicant owns approximately 771 acres of real property in the Tassajara Valley area of unincorporated Contra Costa County ("Project Site"). Approximately 155 acres of the Project Site is commonly known as the "Northern Site," while the remaining approximately 616 acres is commonly known as the "Southern Site." The Applicant seeks to construct the residential development known as the "Tassajara Parks Project," and related on- and off-site improvements, as more fully described in the Approvals (as that term is defined below) (collectively, the "Project").
- B. Consistent with Government Code section 65867 and other applicable law, and County Ordinance Code section 26-2.408, the County Planning Commission will hold a public hearing on an application for the Project to consider whether to recommend that the County Board of Supervisors ("Board") certify the Environmental Impact Report for the Tassajara Parks Project (SCH # 2014052089) ("EIR") and approve a Development Agreement and the following related discretionary approvals for the Project (each an "Approval" and, collectively, "Approvals"):
1. Both of the following (together, "General Plan Amendments"): (a) a General Plan amendment to change the land use designation for the Northern Site from Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Single Family Residential High Density (SH); and (b) a General Plan amendment to change the land use designation for the Southern Site from Agricultural Lands (AL) to a combination of Parks and Recreation (PR) and Public/Semi-Public (PS).
 2. A rezoning ordinance to rezone the Northern Site and Southern Site to a Planned Unit (P-1) zoning district ("Rezoning").
 3. A vesting tentative map to subdivide an approximately 30-acre portion of the Northern Site into 125 single-family residential parcels ("Residential Development Area").
 4. Preliminary and final development plans to allow for construction of the Tassajara Parks Project and associated infrastructure, storm drain improvements, utilities, roadway improvements, and pedestrian staging area ("PDP/FDP").
 5. A tree permit ("Tree Permit") to remove 19 trees on the Northern Site, as more particularly described in the Tree Permit.

6. Approval of a change to the urban limit line pursuant to Ordinance Code section 82-1.018(a)(3) to allow urban uses within the Residential Development Area ("ULL Modification").
- C. To comply with the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*, and 14 Cal. Code Regs. , § 15000 *et seq.*; "CEQA"), the Board, when considering the Approvals, will also consider whether to certify the EIR and approved a mitigation monitoring and reporting program ("MMRP") for the Project (SCH #2014052089), and will consider making required findings. At the same time, consistent with Government Code section 65867, Ordinance Code section 82-1.018(a)(3), and other applicable law, the Board will consider approving a preservation agreement ("Preservation Agreement") and a development agreement for the Project ("Development Agreement").
- D. In consideration of the County considering approving the Approvals, the EIR and MMRP, the Preservation Agreement, and the Development Agreement, the Applicant is entering into this Agreement.

AGREEMENT

NOW, THEREFORE, the County and the Applicant agree as follows:

1. **Indemnification.**

- A. The Applicant shall indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless the County and its boards, commissions, officers, employees, and agents from any and all claims, costs, losses, actions, fees, liabilities, expenses, and damages of any kind whatsoever (collectively, "Liabilities") arising from or related to any acts, proceedings, or determinations taken, done, or made as a result of the County's approval of the Project, including, but not limited to, any Liabilities that arise from or are related to any of the above referenced Approvals, the EIR, the MMRP, the Project findings and conditions of approval, the approval of the Development Agreement, or the approval of the Preservation Agreement. The foregoing indemnification obligation is in addition to the indemnification obligations set forth in Article VI of the Development Agreement, which relate to the Developer's activities under the Development Agreement. If this Section 1(A) or any other provision of this Agreement conflicts with Article VI in the Development Agreement, this Agreement shall prevail.
- B. The Applicant's obligations under this Agreement extend to any action to attack, set aside, void, or annul the Project, any of the Approval, the certification of the EIR, the approval of the MMRP, the approval of the Development Agreement, the approval of the Project Findings and Conditions of Approval, or the approval of the Preservation Agreement, and include, but are not limited to, any lawsuit or challenge: (i) alleging failure to comply with any state or federal environmental laws, including, but not limited to, CEQA; (ii) to the ULL Modification; (iii) to the Preservation Agreement; (iv) to the Development Agreement; (v) to any Project finding or any condition of approval; or (vi) alleging failure to comply with the requirements of any other applicable federal, state, or local laws, regulations or ordinances, including, but not limited to, general plan and zoning requirements.

- C. The Applicant's obligations under this Agreement shall include all actual costs and expenses incurred by the County as a result of, or in connection with, any Liabilities described in Sections 1(A) and 1(B), including, but not limited to, the obligation to pay all court costs and attorney's fees, the costs of preparing the administrative record, all litigation-related costs, all costs of any judgments or awards against the County, all fees and costs on appeal, all settlement costs, all mediation costs, all attorney's fee awards to any opposing party, and all costs of the County to comply with any court orders, including any County actions on remand. Notwithstanding anything to the contrary herein, the Applicant shall not be required to pay or perform any settlement for any Liabilities unless the settlement is approved in writing by the Applicant, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary herein, the Board of Supervisors shall retain discretion to approve or disapprove any settlement to which the County is a party.
- D. The County shall notify the Applicant promptly following actual notice of any claim, action, or proceeding involving any Liabilities described in Section 1(A) or 1(B) and shall cooperate fully in the defense. If requested by the County to do so, the Applicant shall defend any legal action or proceeding at the Applicant's sole cost and expense with counsel reasonably approved by the County.
2. **Survival.** The requirements of Section 1 of this Agreement shall survive the expiration or termination of this Agreement, and Section 1 of this Agreement shall survive the expiration or termination of any of the Approvals or the Preservation Agreement Approval.
3. **Notices.** Unless this Agreement expressly provides otherwise, any notice, demand, or communication required hereunder between the County and the Applicant shall be in writing, and may be given either personally, by overnight delivery, or by registered or certified mail (return receipt requested), to the address specified below:

Contra Costa County:

Contra Costa County
Attn: Director of Conservation and Development
30 Muir Road Martinez, CA 94553

With copies to:
Contra Costa County Counsel's Office
651 Pine Street, 9th Floor
Martinez, CA 94553

FT Land, LLC:

FT Land, LLC
Attn: Mike Bonnifield
2300 Clayton Road #500
Concord, CA 94524

With copies to:
Miller Starr Regalia
Attn: Nadia L. Costa or Bryan W. Wenter

1331 N. California Blvd.
Walnut Creek, CA 94596

A Party may change its address listed above by giving the other Party written notice in accordance with this Section 3 at least 10 days before the change in address becomes effective. Unless this Agreement expressly provides otherwise, a notice shall be deemed effective on the day it is given if given personally, on the next business day following the date of deposit for overnight delivery, and three business days following the date of mailing if given by registered or certified mail (return receipt requested).

4. **Authority.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the representative legal entities of the Applicant and the County. 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.
5. **Successors and Assigns.** This Agreement shall apply to, bind, and inure to the benefit of successors in interest of the Parties hereto, including heirs, assigns, executors, administrators, and all other parties, whether they succeed by operation of law or voluntary acts. This Agreement may not be assigned to any other party separate from the Development Agreement. The requirements of Article VIII of the Development Agreement (inclusive of Sections 8.01 through 8.03) shall govern the assignment of this Agreement.
6. **Entire Agreement: No Third Party Beneficiaries.** This Agreement shall constitute the complete understanding of the Parties with respect to the matters set forth herein. Neither Party is relying on any other representation, oral or written. Except to the extent that this Agreement expressly provides otherwise, this Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person or entity that is not a Party to this Agreement.
7. **Amendment.** This Agreement may not be amended or modified except by a written amendment signed by both Parties.
8. **Applicable Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California. In any legal action or other proceeding brought by either Party to enforce or interpret this Agreement, the appropriate venue is the Contra Costa County Superior Court. In any action to interpret or enforce this Agreement, each Party shall bear its own attorney's fees.
9. **Counterparts.** This Agreement, and any and all amendments and supplements to it, may be executed in counterparts, and all counterparts together shall be construed as one document.

[Remainder of page left blank – signatures on next page.]

IN WITNESS HEREOF, the Parties have executed this Agreement as of the Effective Date.

CONTRA COSTA COUNTY

By: 


Director of Conservation and
Development

Approved as to form:
Sharon L. Anderson, County Counsel

By: 

Deputy County Counsel


FT LAND, LLC

By: 

Name: RM Bonnichsen
Its: authorized agent

By: _____
Name: _____
Its: _____

Approved as to form:

By: 

Nadia L. Costa
Attorney for FT Land, LLC