

INDEMNIFICATION AND DEFENSE AGREEMENT

THIS INDEMNIFICATION AND DEFENSE AGREEMENT ("Agreement") is entered into this 6th day of February, 2018, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, (hereinafter "COUNTY") and Bahram Shawn Shiralian, an individual (hereinafter "APPLICANT"), who maintains his principal place of business at 2491 West Shaw Avenue, Suite 123, Fresno, California 93711, each a "Party" and together the "Parties" to this Agreement.

RECITALS

WHEREAS, APPLICANT has applied to COUNTY for certain Land Use Approvals, defined below; and

WHEREAS, litigation challenging the granting or issuance of land use approvals by governmental bodies is proliferating, and such litigation exposes COUNTY to potential liability for damages, costs, and attorney's fees; and

WHEREAS, in such litigation, the person or entity receiving land use approvals is named as a real party in interest and is the party that primarily and directly benefits from the granting or issuance of the land use approvals; and

WHEREAS, COUNTY's Board of Supervisors is an objective decision-making body and, therefore, has no special interest in the approval or denial of land use applications, or the outcome of litigation arising from such grant or denial, except as to those which promote important public policy; and

WHEREAS, COUNTY could incur great expense in the active defense of such litigation and, if unsuccessful, may also be required to pay the attorney's fees and costs of a challenger, if the court determines that the challenger is the prevailing party; and

WHEREAS, fairness and sound fiscal policy require that the person or entity receiving the benefits of a land use approval should also bear the burden of the liability for potential injuries and the expense of such litigation; and

WHEREAS, APPLICANT and COUNTY mutually desire to enter into this Agreement, by which APPLICANT shall indemnify, (at COUNTY's request) defend, save and hold harmless the "Indemnified Parties" (as defined herein) as required herein, in order that the Indemnified Parties shall

1 bear no fiscal or financial burden whatsoever resulting from any litigation challenging COUNTY's grant
2 or issuance of certain Land Use Approvals, defined below, to APPLICANT.

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

6 1. **EFFECTIVE DATE**

7 The Effective Date of this Agreement shall be October 17, 2017.

8 2. **INCORPORATION OF RECITALS**

9 The Recitals set forth above are incorporated herein by this reference and are made a part
10 of this Agreement as if set forth in their entirety.

11 3. **DEFINITIONS**

12 a) "APPLICANT" means the person or entity to whom the Land Use Approval has
13 been, or will be, granted or issued, and his, her, or its heirs, assigns or successors in interest.

14 b) "Business Day" means the business day of the Party required to perform an
15 obligation herein, provided however, a business day of Party who is an individual shall mean Monday
16 through Friday, inclusive. Any reference in this Agreement to a major requirement of the "Escrow Agent"
17 (as defined herein) under the "Escrow Agreement" (as defined herein) shall mean the business days of the
18 Escrow Agent to perform a major requirement thereunder. If this Agreement specifies a day or date by
19 which a certain action is to be taken or notice to be given, then the action to be taken or notice to be given
20 must be completed by 5:00 p.m. (Pacific time) on such date.

21 c) "Cash Security" means and include the then-current amount of the cash,
22 irrevocably delivered by the APPLICANT to the Escrow Agent and held on deposit by the Escrow Agent
23 under the Escrow Agreement, or any portion thereof, including any increases of the cash as a result of
24 interest income earned on the cash, all as held on deposit by the Escrow Agent for the sole benefit of
25 COUNTY thereunder, less any COUNTY drawings of the cash under the Escrow Agreement.

26 d) "COUNTY" means the County of Fresno, a political subdivision of the State of
27 California.
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1 e) "COUNTY Business Day" means Monday through Friday, inclusive, but
2 excluding any day which is recognized as a legal holiday by COUNTY.

3 f) "Day" means a calendar day unless specified to the contrary in this Agreement
4 or the Escrow Agreement, as applicable.

5 g) "Director" means the Director of COUNTY's Department of Public Works and
6 Planning.

7 h) "Escrow Agent" means a financial institution, appointed jointly by APPLICANT
8 and COUNTY (or otherwise, if necessary, by a court of competent jurisdiction), that receives the Cash
9 Security from APPLICANT, and is authorized under the Escrow Agreement to hold the Cash Security,
10 and to disburse the Cash Security to COUNTY upon COUNTY's drawing thereunder.

11 i) "Escrow Agreement" means an agreement by and among APPLICANT,
12 COUNTY, and the Escrow Agent, which is the arrangement by which APPLICANT irrevocably deposits
13 the Cash Security with the Escrow Agent, for the sole benefit of COUNTY, to enable APPLICANT to
14 secure its faithful performance of its obligations under this Agreement.

15 j) "Final Disposition" means a dismissal with prejudice of a Legal Action or a final
16 judgment in a Legal Action.

17 k) "Land Use Approval" shall include any benefit arising from any of the following:
18 the grant of an amendment to COUNTY's general plan or a rezoning; the issuance of a variance, a
19 conditional use permit, a review and approval permit issued by the Director (also known as a "director's
20 review and approval"), or other discretionary land use permit; the approval of a parcel, tentative, or final
21 subdivision map; and any other document prepared pursuant to the Surface Mining and Reclamation Act
22 ("SMARA"), or the California Environmental Quality Act ("CEQA"). "Land Use Approval" does not
23 include a ministerial permit.

24 l) "Legal Action" means a lawsuit, petition, claim, action, cause of action, or other
25 legal proceeding initiated in a court, including an appeal(s) and/or writ(s) to a court of higher jurisdiction,
26 which seeks to attack, set aside, void, remand to a lower jurisdiction, or annul the any Land Use Approval
27 or Project.

1 m) "Project" means the use of the land authorized by the following Land Use
2 Approvals: Unclassified Conditional Use Permit No. 3528 described in Exhibit "A" to this Agreement,
3 and the Mitigated Negative Declaration prepared for Initial Study Application No. 7104, which is on file
4 with COUNTY's Department of Public Works and Planning.

5 4. **APPLICANT's INDEMNIFICATION, DEFENSE AND HOLD HARMLESS**
6 **OBLIGATIONS**

7 a) APPLICANT hereby agrees to save, indemnify, hold harmless and, at
8 COUNTY's request, defend COUNTY, its officers, agents, and employees, the Fresno County Board of
9 Supervisors, each member of the Fresno County Board of Supervisors, the Fresno County Planning
10 Commission, and each member of the Fresno County Planning Commission (each an "Indemnified Party,"
11 and collectively, the "Indemnified Parties"), from and against any and all demands, liabilities, causes of
12 action, claims, losses, expenses, costs (including but not limited to court costs, attorney's fees and costs,
13 and fees and costs of any experts or consultants engaged by such attorney), or damages of any nature or
14 kind whatsoever asserted against, or occurring or resulting to, any of the Indemnified Parties, including,
15 but not limited to, attorney's fees and costs of the persons, organizations or entities bringing any Legal
16 Action, or their respective officers, agents, and employees, arising, from resulting from, or in connection
17 with any COUNTY action in granting, issuing, or approving a Land Use Approval for the Project.

18 b) When defending any or all of the Indemnified Parties as required herein,
19 APPLICANT shall be solely responsible to retain the attorney(s) who will defend the Indemnified Parties
20 and shall be solely responsible to pay all attorney's fees and costs (including but not limited to court costs,
21 and fees and costs of any experts or consultants engaged by such attorney) related to the defense in any
22 Legal Action brought against any or all of the Indemnified Parties, except for any fees and costs directly
23 incurred by COUNTY in its own defense of the Legal Action, as provided in Section 9 of this Agreement.
24 Prior to entering into the fee agreement with the attorney(s) to be retained to represent the Indemnified
25 Parties, APPLICANT shall inform such attorney(s) to be retained of APPLICANT's foregoing payment
26 obligations under this Section 4(b). Within five (5) COUNTY Business Days after the execution of this
27 Agreement, APPLICANT shall deliver a copy of the fee agreement between the APPLICANT and the
28

1 attorney retained to represent the Indemnified Parties to the COUNTY at the address set forth in Section
2 13 of this Agreement.

3 c) APPLICANT understands and acknowledges that there shall be no limit
4 whatsoever on the amount of attorneys' fees and costs (including but not limited to court costs, and fees
5 and costs of any experts or consultants engaged by such attorney) he may be required to pay to satisfy his
6 obligations under this Agreement.

7 d) APPLICANT's obligations under this Agreement shall apply whether or not
8 there is concurrent, active, or passive negligence, or other liability, on the part of the Indemnified Parties,
9 or any of them. APPLICANT's obligations under this Agreement shall be effective regardless of whether
10 any or all Land Use Approval issued by COUNTY regarding the Project remain valid or are invalidated,
11 or are modified, in whole or in part by any court.

12 **5. CASH SECURITY**

13 a) As security to COUNTY for APPLICANT'S faithful performance of all of his
14 obligations to defend, indemnify, and hold harmless the Indemnified Parties as required herein,
15 APPLICANT shall, and shall cause an Escrow Agent, not later than thirty (30) business days subsequent
16 to the execution of this Agreement by the Parties, enter into an Escrow Agreement among APPLICANT,
17 COUNTY, and the Escrow Agent. The Cash Security for the Escrow Agreement shall be in the minimum
18 amount of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00). The amount of the Cash
19 Security is not a limitation on APPLICANT's obligations to defend, indemnify, and hold harmless the
20 Indemnified Parties as required herein.

21 b) The Escrow Agreement shall be in a form and substance acceptable to COUNTY.
22 The Escrow Agent shall be acceptable to COUNTY. Without limiting the generality of the foregoing
23 requirements of the Escrow Agreement and Escrow Agent, APPLICANT shall, and shall cause the
24 Escrow Agent, to enter into an Escrow Agreement among APPLICANT, COUNTY and the Escrow Agent
25 in compliance with the following major requirements of the Escrow Agreement, which major
26 requirements are not an exhaustive list of requirements for the Escrow Agreement:

27 i) Upon APPLICANT's, COUNTY's, and the Escrow Agent's execution of the
28 Escrow Agreement, APPLICANT shall irrevocably deliver to the Escrow Agent the amount of

1 One Hundred Fifty Thousand Dollars (\$150,000.00), as the Cash Security for the exclusive
2 purposes of the Escrow Agreement. The Escrow Agent shall receive, and upon receipt
3 immediately deposit, and hold the Cash Security only in a savings deposit account of the Escrow
4 Agent for the exclusive purposes of the Escrow Agreement. The Escrow Agent shall cause the
5 Cash Security, while on deposit with the Escrow Agent under the Escrow Agreement, to be
6 interest-bearing, at a rate available to members of the public, and fully insured by the Federal
7 Deposit Insurance Corporation (FDIC) up to the lesser of (i) the amount of the Cash Security
8 while on deposit with the Escrow Agent under the Escrow Agreement; or (ii) the then-current
9 maximum FDIC insurance coverage available for an FDIC-insured deposit account. The Cash
10 Security shall be maintained by the Escrow Agent as a separate deposit account with its own
11 ownership classification as being for the sole benefit of COUNTY, which deposit account shall
12 be distinct from any and all other accounts or funds of the Applicant that might be maintained or
13 held by the Escrow Agent or its parent or affiliates, to ensure that the FDIC insurance coverage
14 available for an FDIC-insured deposit account shall apply completely to the Cash Security. The
15 County shall not have any liability, either directly or indirectly, in respect of any loss of any
16 principal of, or any earnings on, the Cash Security.

17 ii) The APPLICANT shall promise, covenant, and warrant to COUNTY and the
18 Escrow Agent that the Cash Security is not and shall not at any time be subject to any attachments,
19 seizures, garnishments, pledges, liens, encumbrances, levies, security interests, claims of any
20 creditors, or writs, or court orders, judgments or decrees, all of which shall be of every nature
21 whatsoever; and if any such conditions occur, APPLICANT shall immediately remove, cure, or
22 satisfy such conditions with funds or resources other than the Cash Security and promptly give
23 COUNTY and the Escrow Agent notice thereof.

24 iii) Upon COUNTY's presentation of its instructions for drawing upon the Cash
25 Security to the Escrow Agent, under the Escrow Agreement, the Escrow Agent shall, solely by
26 examining the face of COUNTY's drawing instructions for compliance with the requirements in
27 the Escrow Agreement for making drawings, pay COUNTY according to the terms of such
28 COUNTY drawing in immediately available United States currency up to the then-current amount

1 of the Cash Security within three (3) business days of such presentation to the Escrow Agent.
2 The County's place of presentation of its written instructions for drawing upon the Escrow Funds
3 to the Escrow Agent shall be at a location or locations reasonably accessible to COUNTY, one of
4 which location shall be in the City of Fresno. Partial and multiple drawings, or a single drawing,
5 by COUNTY upon the Cash Security, up to the then-current amount of the Cash Security, shall
6 be permitted under the Escrow Agreement. Within one (1) COUNTY business day after
7 COUNTY's receipt of any drawing, COUNTY shall give written notice thereof to APPLICANT.

8 iv) APPLICANT shall promise, covenant, and warrant to COUNTY and the Escrow
9 Agent that that if COUNTY attempts to draw upon, or draws upon, the Cash Security,
10 APPLICANT (including APPLICANT's successors or assigns, or anyone claiming through
11 APPLICANT, or any other persons, firms, or entities acting at the direction, or under the
12 authority, of APPLICANT) shall not in any way whatsoever defeat, interfere with, obstruct, or
13 cause delay to said right of COUNTY to do so, including, but not limited to, demanding the
14 Escrow Agent not to honor or pay COUNTY on any draw upon the Cash Security, or taking any
15 legal action against COUNTY and/or the Escrow Agent to stay, enjoin, or prevent COUNTY
16 from drawing upon the Cash Security.

17 v) The Escrow Agreement shall have requirements regarding APPLICANT's
18 obligations for indemnifying and defending COUNTY and the Escrow Agent, the Escrow Agent's
19 compensation which shall be payable solely by APPLICANT, and COUNTY's right to receive
20 and have access to reports of all account activities, including without limitation interest income
21 on, and disbursements of, the Cash Security, all of which requirements shall be acceptable to
22 COUNTY.

23 vi) COUNTY shall have the right, based upon its determination, to give the Escrow
24 Agent and APPLICANT notice that (i) all of the Cash Security has, according to the terms and
25 conditions of the Escrow Agreement, been paid to COUNTY, or (ii) the Cash Security no longer
26 is needed by COUNTY, and in the event that there is, to COUNTY's knowledge, any remaining
27 Cash Security at the time of such notice, COUNTY's notice shall state that COUNTY releases its
28 interest under the Escrow Agreement in such remaining Cash Security.

1 c) If APPLICANT has not completed the performance of all of his obligations under
2 this Agreement, as determined by COUNTY, the termination of an Escrow Agreement, shall not, by itself,
3 be a limitation on APPLICANT's obligations to maintain the Cash Security under an Escrow Agreement,
4 as required herein. APPLICANT shall cause the Cash Security to be maintained by the Escrow Agent
5 under an Escrow Agreement, as provided herein, or under any replacement Escrow Agreement to be
6 maintained by any new Escrow Agent, as provided herein, without interruption in coverage, so that
7 APPLICANT's performance of his obligations under this Agreement to defend, indemnify, and hold
8 harmless the Indemnified Parties as required herein is continuously secured by a Cash Security either by
9 an Escrow Agreement or a replacement Escrow Agreement during the term of this Agreement. The
10 requirements, above, for an Escrow Agreement shall apply to any replacement Escrow Agreement, and
11 the requirements, above, for the Escrow Agent shall apply to any new Escrow Agent. In the event that
12 there should be a need for a replacement Escrow Agreement, the determination whether a proposed
13 replacement Escrow Agreement is acceptable to COUNTY, COUNTY may consider whether the
14 proposed replacement Escrow Agreement complies substantially with the form and substance of the then-
15 current Escrow Agreement.

16 **6. DEFAULT**

17 For purposes of this Agreement, the occurrence of any one or more of the following
18 events shall constitute an "Event of Default" by APPLICANT under this Agreement:

19 a) If a court makes one or more orders that COUNTY pays any attorney's fees and
20 costs (including but not limited to any court costs, and/or fees and/or costs of any experts or consultants
21 engaged by such attorney) of any parties challenging the Project, and/or any other amounts to such parties,
22 and APPLICANT fails to reimburse COUNTY within seven (7) Business Days for such attorney's fees
23 and/or costs, and/or amounts upon COUNTY's written request for payment thereof;

24 b) APPLICANT fails to promptly defend, indemnify, and hold harmless the
25 Indemnified Parties, as required under this Agreement;

26 c) APPLICANT fails to timely pay any amount due or owed by APPLICANT to
27 COUNTY under this Agreement, or any amount due or owed by APPLICANT to the Escrow Agent under
28 an Escrow Agreement;

1 d) APPLICANT fails to, and fails to cause the Escrow Agent to, timely enter into
2 the Escrow Agreement, or fails to, or fails to cause a new Escrow Agent, to timely enter into a replacement
3 Escrow Agreement, as required by Section 5 of this Agreement;

4 e) APPLICANT's breach or default under the Escrow Agreement or replacement
5 Escrow Agreement;

6 f) The breach or default in the performance of any other obligations in this
7 Agreement, or falsity of any representations or warranties, of APPLICANT in this Agreement for a period
8 of thirty (30) days after COUNTY provides written notice to APPLICANT, stating the obligation
9 APPLICANT has failed to perform, or the apparently false representation or warranty of APPLICANT,
10 provided however, if the nature of the breach or default or false representation or warranty is such that
11 APPLICANT cannot reasonably cure the breach or default, or correct the false representation or warranty
12 within thirty (30) calendar days, APPLICANT shall have an additional reasonable time to cure or correct,
13 as applicable, subject to APPLICANT commencing to cure or correct, as applicable, within the thirty (30)
14 day period and diligently pursuing the cure or correction, as applicable, to completion and completing the
15 cure or correction, as applicable, not later sixty (60) days from the date of COUNTY's notice of such
16 failure to perform or apparently false representation or warranty. Notwithstanding anything to the
17 contrary in this Agreement, this subsection 6(f) shall not apply to any of APPLICANT's obligations under
18 Sections 4 and/or 5 of this Agreement; or

19 g) Bankruptcy, liquidation, arrangement, insolvency, receivership or
20 conservatorship proceedings, or other proceedings for relief under any bankruptcy or similar law or laws
21 for the relief of debtors, are instituted by or against APPLICANT, and are not dismissed within ninety
22 (90) days of institution, or there is an assignment by APPLICANT for the benefit of creditors, or any
23 similar action taken by or against APPLICANT, or APPLICANT is insolvent.

24 Upon occurrence of an Event of Default, COUNTY shall have the right to declare that
25 APPLICANT is in material breach of this Agreement, and (unless COUNTY is otherwise relieved herein
26 of the necessity of providing such notice to APPLICANT, in which case COUNTY shall be entitled to
27 immediately proceed in enforcing its remedies herein) deliver written notice thereof to APPLICANT. In
28 such event, if the Event of Default is not cured by APPLICANT within fifteen (15) COUNTY Business

1 Days of the delivery of COUNTY's written notice, COUNTY thereupon shall be entitled under the
2 Escrow Agreement to immediately draw upon the Cash Security, or from time to time immediately make
3 partial draws upon the Cash Security, which partial draws shall permanently reduce the total amount of
4 the Cash Security pursuant to Section 5 herein. Notwithstanding anything to the contrary herein, in the
5 event that there is an Event of Default under subsection 6(a) and/or subsection 6(g) of this Agreement, or
6 there are, in COUNTY's determination, any circumstances beyond COUNTY's control that would
7 frustrate COUNTY's ability to provide any notice to APPLICANT that is necessary for an Event of
8 Default and/or any notice to APPLICANT that APPLICANT is in material breach of this Agreement, then
9 (i) such notice(s) shall not be required to be provided by COUNTY to APPLICANT, (ii) COUNTY shall
10 have the right to immediately declare that an Event of Default has occurred, and COUNTY shall
11 memorialize such declaration, and (iii), COUNTY thereupon shall be entitled to immediately draw upon
12 the Cash Security, or from time to time immediately make partial draws upon the Cash Security, which
13 partial draws shall permanently reduce the total amount of the Cash Security pursuant to Section 5 herein.

14 The occurrence of an Event of Default shall entitle COUNTY to all any and all remedies
15 available under this Agreement and under the law, including but not limited to, specific performance and
16 damages. Moreover, and without limiting COUNTY's remedies hereinabove, APPLICANT's failure to
17 promptly defend, indemnify, and hold harmless the Indemnified Parties, and/or enter into, and cause the
18 Escrow Agent to enter into, the Escrow Agreement among APPLICANT, COUNTY, and the Escrow
19 Agent, and irrevocably deliver the Cash Security to the Escrow Agent thereunder, and/or enter into, and
20 cause any new Escrow Agent to enter into, any replacement Escrow Agreement among APPLICANT,
21 COUNTY, and the new Escrow Agent and irrevocably deliver the Cash Security to the new Escrow Agent
22 thereunder, as required under this Agreement, shall constitute grounds upon which the COUNTY
23 decision-making body may rescind the issuance of the Land Use approval(s) associated with the Project
24 in accordance with COUNTY's adopted ordinances and procedures, and a waiver by Applicant of any
25 right to proceed with the Project or any portion thereof.

26 **7. TERMINATION OF ESCROW AGREEMENT**

27 If one or more Legal Actions is initiated which challenges COUNTY's issuance of the
28 Land Use Approvals, then following the Final Disposition of all Legal Actions, on or after the passage of

1 two hundred (200) days from the Final Disposition of the last Legal Action to reach Final Disposition,
2 including any available appeals and/or writs to a court(s) of higher or supervisory jurisdiction,
3 APPLICANT may submit a written request to the Director to terminate the Escrow Agreement, provided
4 that there is not any occurrence of an Event of Default by APPLICANT, and if the Director determines
5 that APPLICANT has satisfied his obligations under this Agreement to defend, indemnify, and hold
6 harmless the Indemnified Parties as required herein, the Director, within forty-five (45) COUNTY
7 Business Days after receiving such a written request, shall give written notice of COUNTY's
8 determination as to the Cash Security to APPLICANT and the Escrow Agent pursuant to Subsection
9 5.b.vi, above.

10 **8. NOTIFICATIONS AND COOPERATION BY COUNTY**

11 COUNTY shall notify APPLICANT in writing within ten (10) COUNTY Business Days
12 of its receipt of any demand, claim, action, proceeding, or litigation in which any of the Indemnified
13 Parties is to be indemnified, defended, and held harmless by APPLICANT as required herein. If
14 COUNTY requests that APPLICANT defend any of the Indemnified Parties, it shall notify APPLICANT
15 in writing within ten (10) COUNTY Business Days of its receipt of any such demand, claim, action,
16 proceeding, or litigation. In the event COUNTY provides such notice later than such ten (10) COUNTY
17 Business Days, COUNTY's rights under this Agreement shall not be defeated, but, shall be preserved as
18 of such date. COUNTY shall cooperate fully in such defense.

19 **9. COUNTY PARTICIPATION IN DEFENSE**

20 Nothing contained herein shall prohibit COUNTY, in its sole discretion, from
21 participating in the defense of any Legal Action. If COUNTY elects to also so defend, it shall do so in
22 good faith and COUNTY shall bear its attorney's fees and costs. In no event shall COUNTY's
23 participation in the defense of any Legal Action affect the obligations imposed upon APPLICANT in
24 Section 4 of this Agreement.

25 **10. REIMBURSEMENT OF COST OF ADMINISTRATIVE RECORD**

26 COUNTY acknowledges that it will make reasonable efforts to look to any party which
27 has initiated a Legal Action challenging the Project for payment of costs associated with preparation of
28 administrative record as provided by law. However, if a party which has initiated a Legal Action

1 challenging the Project refuses to pay on or before the date judgment is entered by the superior court,
2 APPLICANT agrees to reimburse COUNTY for its actual cost incurred, including, but not limited to,
3 COUNTY staff and attorney time expended, for certifying and/or preparing the administrative record in
4 connection with any litigation/ proceedings related to the subject matter of this Agreement.

5 **11. RELEASE AND COVENANT NOT TO SUE**

6 In consideration for the agreements contained herein, APPLICANT for himself, and his
7 successors, assigns, heirs, executors, administrators and representatives, and any other person or entity
8 claiming (now or in the future) to be acting through or on behalf of APPLICANT (each a "Releasor," and
9 collectively, the "Releasors"), hereby fully and finally release and forever discharge the Releasees
10 (hereinafter defined) from any and all demands, liabilities, causes of action, claims, losses, expenses, costs
11 (including but not limited to court costs, attorney's fees and costs, and fees and costs of any experts or
12 consultants engaged by such attorney), or damages of any nature or kind whatsoever whether known or
13 unknown related in any way to the Land Use Approval and covenants not to sue the Releasees. Each
14 Indemnified Party is a "Releasee" and the Indemnified Parties are collectively the "Releasees" under this
15 Agreement. APPLICANT acknowledges and affirms that it is familiar with Section 1542 of the California
16 Civil Code, which provides that:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
18 **THE CREDITOR DOES NOT KNOW OR SUSPECT EXISTS IN HIS OR**
19 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED
HIS OR HER SETTLEMENT WITH THE DEBTOR.

20 APPLICANT hereby knowingly and voluntarily waives the provisions of Section 1542
21 of the California Civil Code with respect to any cause of action or claim alleged or which could have been
22 alleged in a Legal Action, and acknowledges and agrees that this waiver is an essential and material term
23 which led to this Agreement.

24 As of the Effective Date, Releasors, hereby absolutely, unconditionally and irrevocably,
25 covenant and agree with and in favor of the Releasees that Releasors will not bring, file, charge, claim,
26 sue or cause, assist, or permit to be brought, filed, charged or claimed any action, cause of action, or
27 proceeding (at law, in equity, in any regulatory proceeding or otherwise) against the Releasees on the
28 basis of any matter released, surrendered, or discharged by the Releasors pursuant to this Agreement. If

1 any Releasor violates the foregoing covenant, such Releasors, jointly and severally agrees to pay, in
2 addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable
3 attorney's fees and costs incurred by any Releasee as a result of such violation.

4 APPLICANT acknowledges and agrees that this release applies to all causes of action
5 and claims that APPLICANT may have against COUNTY arising out of a Land Use Approval for injuries,
6 damages, or losses to APPLICANT's person and property, real or personal, whether those injuries,
7 damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent. APPLICANT
8 acknowledges and warrants to COUNTY that APPLICANT's execution of this release is free and
9 voluntary, and that this release was separately bargained for and a key element of this Agreement of which
10 such release is a part.

11 This release pertains to a disputed claim and does not constitute an admission of liability
12 by COUNTY for the Land Use Approval.

13 The provisions of this Section 11 shall survive the termination of this Agreement.

14 **12. SEVERABILITY**

15 If any provision of this Agreement is determined to be invalid in a final judgment by a
16 court of competent jurisdiction, each and every other provision hereof shall remain in full force and effect.

17 **13. NOTICES**

18 All notices, consents, approvals, requests, correspondence, documents, reports, demands
19 and other communications (collectively, "Notice") which the Parties are required or desire to serve upon
20 or deliver to one another shall be in writing and shall be sent by any of the following methods: (a) personal
21 delivery, in which case notice is effective upon delivery; (b) certified or registered United States mail,
22 return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is
23 confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or
24 charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by
25 the delivery service addressed in the appropriate manner for the method of service, as set forth below:

26 ///

27 ///

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1 **COUNTY:**

2 County of Fresno

3 **ATTENTION:** Director of Public Works and Planning

4 2220 Tulare Street, Sixth Floor

5 Fresno, CA 93721

6 Copies of notices to COUNTY shall also be given to:

7 Office of the Fresno County Counsel

8 **ATTENTION:** Deputy County Counsel Assigned to Land Use Matters

9 2220 Tulare Street, Suite 500

10 Fresno, California 93721

11 **APPLICANT:**

12 Bahram Shawn Shiralian

13 2491 West Shaw Avenue, Suite 123

14 Fresno, California 93711

15 Copies of notices to APPLICANT shall also be given to:

16 H. Ty Kharazi, Esq.

17 Yarra, Kharazi, Clason & Aniotzbehere

18 2000 Fresno Street, Suite 300

19 Fresno, California 93721

20 For all claims arising out of or related to this Agreement, nothing in this Section 13
21 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
22 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
23 beginning with section 810).

24 **14. MODIFICATION**

25 This Agreement may not be altered, amended, or modified in any respect, except by a
26 writing duly executed by the Parties.

27 **15. NON-ASSIGNMENT**

28 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or
obligations under this Agreement without the prior written consent of the other party.

1 **16. AUTHORIZATION TO EXECUTE**

2 Each Party represents, covenants, and warrants to the other Party that such Party is duly
3 authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement,

1 and that the individual signing this Agreement on behalf of such Party has been duly authorized to execute
2 this Agreement on behalf of such Party, and will, by signing this Agreement on such Party's behalf, legally
3 bind such Party to the terms and conditions of this Agreement. Each Party further represents, covenants,
4 and warrants to the other Party that no other person or entity is required to give its approval or consent to
5 this Agreement in order for such Party to authorize, enter into, and perform its obligations under this
6 Agreement, or that if such approval or consent to this Agreement is required, that such approval or consent
7 has been obtained.

8 **17. AUTHORITY OF DIRECTOR**

9 The Director is hereby authorized by COUNTY to give any Notices on behalf of
10 COUNTY, make any determinations or declarations on behalf of COUNTY including with respect to
11 any Event of Default or material breach of this Agreement, or to take any action, or enforce any right,
12 on behalf of COUNTY under this Agreement, including any action relating to the Cash Security and/or
13 the Escrow Agreement (including any replacement Escrow Agreement and/or new Escrow Agent), and
14 any other actions necessary or appropriate in the administration or enforcement of this Agreement,
15 and/or the Escrow Agreement, on behalf of COUNTY.

16 **18. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES;**
17 **TIME IS OF ESSENCE**

18 The headings of the sections and paragraphs of this Agreement are for convenience only
19 and shall not be used to interpret this Agreement.

20 This Agreement is the product of negotiation between the Parties, as assisted by their
21 respective attorneys. The language of this Agreement shall be construed as a whole according to its fair
22 meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities
23 are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references
24 in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the
25 State of California, or County of Fresno shall be deemed to include the same statute, regulation, ordinance
26 or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may
27 thereafter govern the same subject.
28

1 It is understood that time is of the essence in APPLICANT's performance of all of his
2 obligations under this Agreement.

3 **19. GOVERNING LAW AND VENUE**

4 This Agreement shall be deemed to have been entered into in Fresno County, and shall
5 be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations
6 of the parties are subject to all laws, orders, rules, and regulations of the authorities having jurisdiction
7 over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement
8 shall be filed and heard in courts having jurisdiction and located in the Fresno County, State of California.

9 **20. NO THIRD PARTY BENEFICIARIES**

10 Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree
11 that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of
12 this Agreement.

13 **21. COUNTERPARTS**

14 This Agreement may be executed in two or more counterparts, each of which shall be
15 deemed to be an original, and all of which taken together shall constitute one and the same instrument.

16 **22. INTEGRATED AGREEMENT**

17 This Agreement contains the sole, complete, and entire agreement and understanding of
18 the Parties concerning the matters contained herein and may not be altered, modified, or changed in any
19 manner except by a writing duly executed by the Parties, stating that such writing is by its express terms
20 an amendment to this Agreement. Except as stated herein, none of the Parties are relying on any
21 representations by any other Party in executing this Agreement.

22
23 [The remainder of this page left intentionally blank.]
24
25
26
27
28

IN WITNESS WHEREOF, APPLICANT and COUNTY hereby execute this Agreement.

APPLICANT:
BAHRAM SHAWN SHIRALIAN, an individual

COUNTY OF FRESNO

By [Signature]

By [Signature]
Sal Quintero, Chairman of the
Board of Supervisors of the
County of Fresno

Print Name: Bahram Shawn Shiralian

Date: 1.5.18

Date: 2-6-18

BERNICE E. SEIDEL,
Clerk to the Board of Supervisors
County of Fresno, State of California

By [Signature]
Date: Feb. 6, 2018

Exhibit A to Indemnification and Defense Agreement

Description of Project: Allow an Interstate Freeway Interchange Commercial Development, including adoption of a Master Plan for said development, comprised of a restaurant, market, automobile fueling station, truck fueling station, laundry facility, shower facility, Liquefied Petroleum Gas (LPG) sales, photovoltaic solar power generation system to provide electricity to the proposed development, and a 149-foot-tall marquee sign on a 10.10-acre parcel in the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District.

Location of Project: The subject parcel is located on the northwest corner of Interstate 5 (I-5) and Nees Avenue, approximately 17 miles west of the nearest city limits of the City of Firebaugh (Sup. Dist. 1) (APN 005-100-47s).