

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT (“Agreement”), made by and between the CITY OF HUNTINGTON BEACH, a municipal corporation (“CITY”), and SLF HB-Magnolia, LLC, a Delaware Limited Liability Company (“PROPERTY OWNER”), relating to the PROPERTY OWNER’S indemnification of the CITY under the terms set forth herein:

WITNESSETH:

WHEREAS, the PROPERTY OWNER has a legal interest in the certain real property consisting of County of Orange Accessor Parcel Numbers (“APNs”) 114-150-36 and 114-481-32 in the CITY (“PROPERTY”); and,

WHEREAS, on PROPERTY OWNER has filed an application for entitlements (*i.e.*, a General Plan amendment, zoning map and text amendments/Specific Plan approval, and Local Coastal Plan (“LCP”) amendment) to allow redevelopment of the PROPERTY with residential and/or visitor-serving uses (“PROJECT”), which will be considered by the Huntington Beach City Council (“CITY COUNCIL”) on January 19, 2021; and,

WHEREAS, judicial challenges of projects requiring discretionary approvals, including, but not limited to, California Environmental Quality Act determinations, are costly and time consuming. Additionally, project opponents often seek an award of attorneys’ fees in such challenges; and,

WHEREAS, since property owners are the primary beneficiaries of the above-described CITY approvals, it is appropriate that such owners bear the expense of defending against any such judicial challenge, and bear the responsibility of any costs, attorneys’ fees and damages which may be awarded to a successful challenger; and,

WHEREAS, in the event a judicial challenge is commenced against the PROJECT, the CITY has requested and the PROPERTY OWNER has agreed to defend, indemnify and hold harmless the CITY, its agents, officers, or employees from any claim, action or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void or annul any approval of the CITY, its advisory agencies, appeal boards, or legislative body concerning the PROJECT or its associated environmental documentation (“LITIGATION”); and,

WHEREAS, this Agreement is entered into by the CITY and PROPERTY OWNER to establish specific terms concerning PROPERTY OWNER’S indemnification obligation for the PROJECT.

NOW, THEREFORE, it is mutually agreed between CITY and PROPERTY OWNER as follows:

1. **Indemnification.** PROPERTY OWNER, at its own expense, shall defend, indemnify and hold harmless the CITY, its agents, officers, and employees from and against any claim, action or proceeding brought against the CITY, its agents, officers, and employees to attack, set aside, void or annul any approval of the PROJECT including any associated costs, damages, and expenses including, but not limited to, costs associated with Public Records Act requests

submitted to the CITY related to the PROJECT and an award of attorneys' fees and costs incurred or arising out of the above-referenced claim, action or proceeding brought against the CITY ("Indemnification Obligation.")

2. **Defense Cooperation.** PROPERTY OWNER and the CITY shall reasonably cooperate in all aspects of the LITIGATION. Nothing contained in this Agreement, however, shall be construed to limit the discretion of CITY, in the interest of the public welfare, to settle, defend, appeal or to decline to settle or to terminate or forego defense or appeal of the LITIGATION.

3. **Representation and Payment for Legal Services Rendered.** CITY shall have the absolute right to approve any and all counsel retained to defend CITY in the LITIGATION. PROPERTY OWNER shall pay the attorneys' fees and costs of the legal firm retained by PROPERTY OWNER to represent the CITY in the LITIGATION. Failure by PROPERTY OWNER to pay such attorneys' fees and costs may be treated as an abandonment of the PROJECT and as a default of PROPERTY OWNER's obligations under this Agreement. However, the CITY, at its sole discretion, may agree to be jointly represented with the PROPERTY OWNER.

4. **Litigation Deposit.** Within ten (10) business days of PROPERTY OWNER receiving notification from CITY that any claim, action or proceeding covered by Section 6.1 of Development Agreement No. 19-001 has been filed, OWNER shall make a monetary deposit in an interest bearing account with CITY in an amount to be mutually agreed upon by the Parties at that time after discussing the budget required to defend such claim, action or proceeding and/or settlement thereof. If OWNER fails to make the deposit as required by this Section 4, CITY shall have the right to rescind (i) any Development Approvals as defined in Section 1.1.6 of Development Agreement No. 19-001 issued or granted by CITY and (ii) said Development Agreement.

5. **Notices.** For all purposes herein, notices shall be effective when personally delivered, delivered by commercial overnight delivery service, or sent by certified or registered mail, return receipt requested, to the appropriate address set forth below:

CITY:
City of Huntington Beach
City Attorney's Office
2000 Main Street
Huntington Beach, CA

PROPERTY OWNER:
Rutan & Tucker, LLP
Attn: John Ramirez
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

6. **Default and Termination.** This Agreement is not subject to termination, except by mutual agreement or as otherwise provided herein. In the event of a default of PROPERTY OWNER's obligations under this Agreement, CITY shall provide written notification to PROPERTY OWNER of such alleged default and PROPERTY OWNER shall have thirty (30) days after receipt of written notification to cure any such alleged default. If PROPERTY OWNER fails to cure such alleged default within the specified time period or otherwise reach agreement with the CITY on a resolution of the alleged default, CITY may, in its sole discretion, do any of the following or combination thereof:

- a. Deem PROPERTY OWNER's default of PROPERTY OWNER's obligations as abandonment of the PROJECT and as a breach of this Agreement;
- b. Rescind any PROJECT approvals previously granted;
- c. Settle the LITIGATION.

In the event of a default, PROPERTY OWNER shall remain responsible for any costs and attorney's fees awarded by the Court or as a result of settlement and other expenses incurred by the CITY related to the LITIGATION or settlement.

7. ***CITY Review of the PROJECT.*** Nothing in this Agreement shall be construed to limit, direct, impede or influence the CITY's review and consideration of the PROJECT.

8. ***Complete Agreement/Governing Law.*** This Agreement represents the complete understanding between the parties with respect to matters set forth herein. This Agreement shall be construed in accordance with the laws of the State of California.

9. ***Successors and Assigns.*** The obligations specific herein shall be made, and are binding on the successors in interest of the PROPERTY OWNER, whether the succession is by agreement, by operation of law or by any other means.

10. ***Amendment and Waiver.*** No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by all parties.

11. ***Severability.*** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. ***Survival of Indemnification.*** The parties agree that this Agreement shall constitute a separate agreement from any PROJECT approval, and if the PROJECT, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.

13. ***Interpretation.*** The parties have been advised by their respective attorneys, or if not represented by an attorney, represent that they had an opportunity to be so represented in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

14. ***Captions and Headings.*** The captions and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

15. ***Jurisdiction and Venue.*** Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Courts of Riverside County,

State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

16. **Counterparts; Facsimile & Electronic Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. To facilitate execution of this Agreement, the parties may execute and exchange facsimile or electronic counterparts, and facsimile or electronic counterparts shall serve as originals.

17. **Joint and Several Liability.** In the event there is more than one PROPERTY OWNER, the liability of PROPERTY OWNER shall be joint and several, and PROPERTY OWNER each of them shall be jointly and severally liable for performance of all of the obligations of PROPERTY OWNER under this Agreement.

18. **Effective Date.** The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed by their authorized representatives as of the date written.

CITY:
CITY OF HUNTINGTON BEACH,
a municipal corporation

By: _____
Name:
Title:

Dated: _____

PROPERTY OWNER:
SLF HB-Magnolia, LLC

By: 
Name: Brian G. Rupp
Title: Executive Vice President, Real Estate

Dated: January 11, 2021