

**HOLD HARMLESS AGREEMENT REGARDING
THE RISK OF FLOODING TO REAL PROPERTY**

(New Construction or Substantial Improvements in Special Flood Hazard Area)

RECITALS

- A. The undersigned have filed for a building permit to construct a new structure or to substantially improve an existing structure (the "New Construction") located at _____, APN _____ (the "Property"). The New Construction is described in the undersigned's construction plans submitted to the City of Sacramento and incorporated herein by this reference.
- B. The New Construction may be subject to flooding hazards due to its location in a 100-year floodplain, as described in a Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA).
- C. Despite the potential for flood-related property damage, and with full knowledge of the potential for flood-related property damage, the undersigned intend to construct the New Construction.
- D. Section 15.108.040 of the Sacramento City Code requires the undersigned to execute this Agreement acknowledging and assuming the risk that the New Construction may be subject to flood-related property damage.

AGREEMENT

In consideration of the issuance of a building permit for the New Construction, the undersigned agree as follows:

1. Recitals Incorporated. The foregoing Recitals are incorporated by this reference as if fully set forth at this place.
2. Flood-Related Property Damage. For purposes of this Agreement, the term "flood-related property damage" shall mean any damage to real or personal property of any kind, including but not limited to vehicles, due to flooding resulting from water flowing in or from the channels or tributaries of the Sacramento River, American River, Dry Creek, Arcade Creek, Morrison Creek or Natomas East Main Drainage Canal levee systems.
3. Acknowledgment and Assumption of Risk. The undersigned understand and acknowledge and expressly assume the risk that the New Construction may be subject to flood-related property damage, and the undersigned hereby elect to voluntarily proceed with the New Construction with full knowledge that this may be hazardous to the undersigned, the New Construction and the Property. The undersigned voluntarily assume full responsibility for any risk of flood-related property damage arising from the undersigned proceeding with the New Construction.

4. Waiver of Property Damage Claims. The undersigned unconditionally waive any and all flood-related property damage claims asserting liability on the part of the City, or its officers, agents or employees premised on the issuance of a permit for the New Construction, whether or not the issuance of this permit is due to the negligence of the City or its officers, agents or employees.

5. Notice. In the event the undersigned convey the Property or New Construction to a third party, or grant a possessory interest in the New Construction to a third party, the undersigned expressly agree to include the following notice provision in the purchase agreement or lease (Note: the blanks shown below should not be filled in now, but must be filled in with the applicable references in the actual notice provision that is included in the purchase agreement):

[Transferee/Lessee] expressly acknowledges and assumes the risk that the property located at _____, APN _____, may be subject to flooding due to its location in a 100-year floodplain.

[Transferee/Lessee] unconditionally waives any and all flood-related property damage claims asserting liability on the part of the City of Sacramento or its officers, agents or employees premised on the issuance of a permit for construction of the New Construction, whether or not the issuance of this permit is due to the negligence of the City or its officers, agents or employees. As used herein, the term "flood-related property damage" means any damage to real or personal property of any kind, including but not limited to vehicles, due to flooding resulting from water flowing in or from the channels or tributaries of the Sacramento River, American River, Dry Creek, Arcade Creek, Morrison Creek or Natomas East Main Drainage Canal levee systems. As used herein, the term "New Construction" means the "New Construction" identified in the "Hold Harmless Agreement Regarding the Risk of Flooding to Real Property" dated _____ and recorded at _____ in the Office of the Sacramento County Recorder.

Notwithstanding the foregoing, the above notice shall not be required if, as a result of future flood control improvements and subsequent remapping by FEMA to remove the Property that includes the New Construction from the 100-year floodplain, the Property no longer is located in a 100-year floodplain designated on a FIRM at the time the Property or New Construction is conveyed.

6. Hold Harmless. The undersigned agree to defend, hold harmless and indemnify the City and its officers, employees and agents from and against any and all flood-related property damage claims premised on the issuance of a building permit for the New Construction.

The undersigned intend that the City be indemnified to the fullest extent permitted by law and, specifically, that any negligence on the part of the City shall not bar indemnity, unless such negligence is found to have been the sole cause of the damage.

The term "claims," as used in this Agreement, includes all direct or class actions or subrogation or inverse condemnation lawsuits brought by any person, entity or governmental agency in connection with the City's issuance of a building permit for the New Construction.

Notwithstanding the foregoing, the above obligation to defend, hold harmless and indemnify the City, its officers, employees and agents from and against any and all flood - related property damage claims premised on the issuance of a building permit for the New Construction shall not apply to any flood-related property damage that occurs when the Property no longer is located in a 100-year floodplain designated on a FIRM, as a result of future flood control improvements and remapping by FEMA to remove the Property that includes the New Construction from the 100-year floodplain.

7. Release From Indemnification. The undersigned shall be released from any obligation to indemnify the City as set forth in Section 6, above, if, at such time as the City seeks to enforce the provisions of Section 6, the undersigned demonstrate that they have conveyed all of the undersigned's' interests in the New Construction to a third party and have fully complied with the provisions of Section 5, above.

8. Severability. The undersigned expressly intend that if any provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect.

9. Attorney's Fees. The undersigned agree that if any legal action is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

10. Insurance. The undersigned acknowledge that the City highly recommends obtaining flood insurance for the New Construction and the Property.

11. Succession; Recording. The undersigned expressly agree and intend that the obligations contained herein are covenants that benefit and run with the Property and the New Construction, in accordance with Section 1468 of the Civil Code, and the burden thereof shall be binding upon their respective constituents, heirs, assignees and successors in interest. The City may record this Agreement in the Office of the Sacramento County Recorder.

Dated: _____

SIGNATURE

Title of Signatory (if Signing for an Entity)

Name of Entity (if applicable)

Print Name

Address

SIGNATURE

Title of Signatory (if Signing for an Entity)

Name of Entity (if applicable)

Print Name

Address
