

**ATTACHMENT F –
DEFENSE AND INDEMNIFICATION
AGREEMENT**

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DEFENSE AND INDEMNIFICATION AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO AND APPLICANT

This Agreement is made and entered into between the County of San Diego (County), a political subdivision of the State of California, and Sunroad Otay Partners, L.P. (Applicant).

WHEREAS, Applicant requests that the County process the application described in Attachment A to this Agreement (hereafter referred to as the “Project”);

WHEREAS, the Project is a land use development project or other land use decision for which a defense and indemnification agreement is required under San Diego County Code Section 86.201; and

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement since Applicant will benefit from the County's processing of the application.

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

1. Applicant shall defend and indemnify the County, its agents, officers and employees (collectively “County Parties”) from any claim, action, liability or proceeding against the County Parties to attack, set aside, void or annul the Project or any of the proceedings, acts or determinations taken, done or made as a result of County's processing and/or approval of the Project. Applicant’s obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Applicant’s obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and reasonable attorneys’ fees, all litigation-related costs, including County staff costs incurred in support of the litigation, all costs of any judgments or awards against the County, and/or settlement costs, which arise out of County's processing and/or approval of the Project.

2. The County shall notify the Applicant promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the County and Applicant, and the prompt payment of the attorneys’ fees and costs of such counsel. In the event of a disagreement between the

County and Applicant over litigation issues, each party shall have the authority to control the litigation and make litigation decisions with respect to that party's participation in the litigation. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonable attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefor. At its sole discretion, the County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the Applicant of any obligation imposed by this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of the County Parties, except that Applicant's obligation to indemnify shall not apply where the court finds there is gross negligence or willful misconduct by the County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals and/or actions by the County regarding the Project remain valid or are invalidated by any court. Applicant's obligations under this Agreement shall terminate upon County's receipt of Applicant's election in writing to withdraw from further pursuit of the Project, except that Applicant shall continue to be responsible for any defense or indemnity obligations existing prior to Applicant's written election to withdraw from further pursuit of the Project or that are not resolved by Applicant's written election to withdraw from further pursuit of the Project. For purposes of clarity, Applicant's defense and indemnity obligation for attorneys' fees and costs, court fees and judgments, damages and all other items subject to Paragraph 1 of this Agreement that are incurred, even if not paid, or are a result of actions prior to Applicant's written election to withdraw (e.g. attorney fees and costs of dismissing a lawsuit), shall continue after Applicant's written election to withdraw.

4. The Board of Supervisors may require security from Applicant to address the risks associated with the Project pursuant to Section 86.202 of the San Diego County Code. When the Board of Supervisors requires security from the Applicant, Applicant shall provide security in the form and amount, and at the time, specified by the Board.

5. Failure to promptly defend or indemnify County, and/or provide security when required by the Board of Supervisors, is a material breach which shall entitle County to all remedies available under law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify, and/or provide security when required by the Board of Supervisors, shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Project, and a waiver by Applicant of any right to proceed with the Project or any portion thereof.

6. Applicant shall be and remain obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonably withheld.

7. All notices required under this Agreement shall be in writing and delivered by the United States Postal Service, any commercially available letter or package delivery service, or electronic mail (email) provided that a copy of the email is retained that shows the date and time of transmission. The notices shall be addressed to the following:

COUNTY:

Deputy Chief Administrator Officer (Land Use & Environmental Group)
County of San Diego
5510 Overland Ave., Suite 110
San Deigo CA. 92123

| (E) Dahvia.lynch@sdcounty.ca.gov

APPLICANT (PRINT):

Sunroad Otay Partners, L.P.
Dan Feldman
8620 Spectrum Center Blvd.
Suite 1100
San Diego, CA 92123

(E) dfeldman@sunroadenterprises.com

8. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, and has full and complete authority to do so. 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.

9. 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. This Agreement may not be changed except by a written amendment signed by both parties.

IN WITNESS HEREOF, the parties do hereby agree to the terms of this Agreement.

COUNTY:

By: _____

Dahvia Lynch, Deputy Chief Administrator
Officer (Land Use & Environmental Group)

Date: _____

APPLICANT:

Sunroad Otay Partners, L.P.,

A California Limited Partnership:

By: *Sunroad GP, INC., a California Corporation, its General Partner*

By:  _____

Its Authorized Agent:

Name: *Day Feldman* _____

Title: *PRESIDENT* _____

Date: *6-19-24* _____

Attachment A

Project Description:

Otay Majestic is located on approximately 253 acres. The project applicant is requesting the construction of up to 2,850,000 square feet of industrial warehouses (Parcels 1 to 12) and roads spread out over five phases. The Project would include approximately 51.3 acres of permanently conserved biological open space at the northeastern corner of the site (Parcel D) northeast of Lone Star Road, and a combination of conserved open space and manufactured slope on 13.1 acres (Parcels A, B, and C) southwest of the future intersection of Lone Star Road and Zinser Road. Compared to the prior 2018 entitlement, natural open space conservation on the site would increase by approximately 8.0 acres. The Project's internal street pattern would match the existing grid pattern within the Otay Subregional Plan Area.

The Project proposes 2,427 parking spaces and 832 designated for trailer stalls for a total of 3,259 parking spaces, includes 458 electrical vehicles (EV) designated spaces (conduit will be installed along the parking areas for each building and based on tenant requirements (employee or customers) EV charging stations will be installed). The Project includes outdoor employee patios for each building areas with shade structures and trees.

Grading associated with the Project is necessary for the construction and installation of the infrastructure, slopes, basins, parking, roadways, open spaces, and landscaping. Earthwork for the Project consists of 2,401,945 cubic yards of cut and 2,445,422 cubic yards of fill with approximately 43,477 cubic yards of material being exported. Most of the grading required for the site involves the construction of the buildings, parking areas, biofiltration basin, and internal roadways.

Specific Plan Amendment (SPA)

The Project proposes to amend the East Otay Mesa Business Park Specific Plan to change the property from residential to light industrial uses. Planning & Development Services has conducted a comprehensive evaluation of the Project, environmental analysis in accordance with CEQA, General Plan conformance, Otay Subregional Plan conformance; the East Otay Mesa Business Park Specific Plan conformance, and the County's Zoning Ordinance. The Project was analyzed based on the following factors: how the project will implement the General Plan vision and guiding principles; how the project will implement the Specific Plan vision and purpose; an environmental evaluation in compliance with CEQA; conformance with the Otay Subregional Plan; and compliance with the Zoning Ordinance.

The Specific Plan includes regulatory provisions that establish the policies, procedures, and standards for implementing the plan, including land use regulations and development standards. These criteria are categorized as site planning, landscaping, and architectural standards. Otay Majestic proposed changes to regulatory provisions include:

1. Removal of Mixed-Use Designation (Residential Emphasis) and Mixed-use Village Core and replaced with Light Industrial land uses and design,
2. Removal of Mixed-Use Roads design standards, updated, and establish specific project roadway standards that are applicable to “only” the proposed Project roadways,
3. Amend Table 2.2-1a to remove certain roadways associated with the previous Otay 250 Project and replace with Table 2.21b with specific roadway standards related to the proposed Light Industrial uses,
4. Modify certain development standards,
5. Removal of Mixed-Use Village Core urban design, site planning, landscape and architectural standards related to residential uses,
6. Specific Plan has been updated to reflect changes in the alignment of State Route 11 and 125, as well as the new Port of Entry.
7. Removal of the Public Facilities Financing Plan and Financial Impact Analysis for the Mixed-Use Village Core.

Vesting Tentative Map

The project includes a Vesting Tentative Map (VTM 5651) application for the subdivision of approximately 253-acre site into 12 light industrial lots and related roads, parking areas, and biofiltration basins. The remaining number lots will be used for preserving vernal pools, establishing buffers, and the conserved biological open space. The Vesting Tentative Map also includes a preliminary grading and utility plans, which specifies approximate grading quantities and drainage facilities to serve the entire project. The development lots will vary in size and building construction, as tenants pursue leasing options for the individual buildings. Each building may have one tenant or more depending on operational characteristics and availability of space.

Site Plan

The project includes a Site Plan (STP) application for the proposed phasing of the project as noted below:

- Phase 1 – consists of approximately 721,000 square feet within four buildings on 44.20 acres with 736 parking spaces and 206 trailer stalls.

- Phase 2 – consists of approximately 535,000 square feet within three buildings on 33.52 acres with 538 parking spaces and 149 trailer stalls.
- Phase 3 - consists of approximately 291,000 square feet within one building on 22.41 acres with 295 parking spaces and 78 trailer stalls.
- Phase 4- consists of approximately 534,000 square feet within two buildings on 39.82 acres with 535 parking spaces and 130 trailer stalls.
- Phase 5- consists of approximately 322,000 square feet within two buildings on 21.07 acres with 323 parking spaces and 269 trailer stalls.

Overall, the proposed development will include approximately 161 acres of development for buildings, landscaping, employee outdoor areas, parking, and internal circulation, 28.3 acres of roadways, 51.3 acres for biological open space, and 13 acres of open space.