RELEASE AND INDEMNITY AGREEMENT

Cilker Apartments, LLC v. Western National Construction, et al.
Santa Clara County Superior Court, Case No. 113CV25828

One Pearl Place Apartments
One Pearl Place, San Jose, California

In exchange for access to the One Pearl Place Apartments during inspections and testing during the weeks of August 11 and August 25, 2014, the party signing below hereby voluntarily and knowingly expressly releases, discharges, waives and relinquishes any and all actions and assumes the risk for personal injury, property damage or wrongful death occurring to him/herself arising as a result of attending site inspections and testing or any activities associated with, arising out of (broadly interpreted), or incidental to the activities, wherever or however the same may occur and for whatever period the site inspections and testing may occur on site, and each undersigned does for him/herself, his/her heirs, his/her company or principal, executors, administrators and assigns hereby releases, waives, discharges, and relinquishes any action, aforesaid, which may hereafter arise for him/herself, his/her company or principal, and for his/her estate, and agrees that under no circumstances will he/she or his/her heirs, company, principals, or assigns prosecute or present any claim for personal injury, property damage or wrongful death against CILKER APARTMENTS, LLC, or any of its officers, directors, agents, parents, subsidiaries, holding companies, servants or employees, or its management company or managers, or any person in its employ, including consultants, contractors, attorneys, and others (hereinafter collectively “CILKER”), for any of such causes of action, whether or not the same shall arise by the negligence of any of such released persons, entities or otherwise.

In addition to the aforementioned Release, the party signing below shall, to the extent of his/her active or passive negligence or other fault, indemnify, defend, protect and hold harmless CILKER from and against any and all claims, demands, debts, causes of action, liabilities, losses, damages, costs, expenses (including actual attorneys’ fees), awards, court costs, penalties, fines or judgments (collectively, “Claims”) which arise out of his/her active or passive negligence or other fault while present on the property for participation in the testing/investigation during the weeks of August 11 and August 25, 2014. Should Claims also arise out of the active or passive negligence or other fault of person(s) associated with CILKER or any other person or entity, the defense and indemnification duty pursuant to this Agreement shall be apportioned at conclusion of the Claim against CILKER according to the respective percentage of fault of between the party signing below, Indemnitor, and CILKER. This indemnity and hold harmless agreement shall not apply to any such Claims arising from the sole negligence or willful misconduct of Cilker.

The person signing this Agreement expressly states that he/she is the authorized representative of his/her employer set forth in the signature block below (if any). To the extent that any injury or damage arises by reason of the active or passive negligence or other fault of the undersigned, the employer listed below (if any) agrees to bear the signing person’s share of liability proportioned in relation to all others legally responsible for such injury or damage as required by this Agreement.

A copy of this signed Agreement may be used as if it were the original signed Agreement.
THEREFORE, IT IS THE INTENTION OF THE UNDERSIGNED PARTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS CILKER IN THE EVENT ANY CLAIM IS BROUGHT AS A RESULT OF HIS/HER ATTENDANCE DURING SITE INSPECTIONS AND TESTING, INCLUDING COSTS AND ATTORNEY’S AND CONSULTANT’S FEES ARISING FROM THE SAME. THIS INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL NOT APPLY TO ANY SUCH CLAIMS ARISING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CILKER.

I HAVE READ THE FOREGOING "RELEASE AND INDEMNITY AGREEMENT" AND BOTH I AND MY EMPLOYER (IF LISTED BELOW) AGREE TO BE BOUND TO EACH AND EVERY OF ITS TERMS AND CONDITIONS:

________________________________________
SIGNATURE

________________________________________
FULL PRINT NAME (print)

________________________________________
DATE

________________________________________
COMPANY / EMPLOYER TITLE

________________________________________
TITLE