Summary Title: 567 Maybell: Housing In-Lieu Fee and Development Impact Fee Payment Modification

Title: QUASI-JUDICIAL. 567 Maybell Avenue [15PLN-00248]: Adoption of a Resolution Authorizing the City Manager to Amend an Existing Agreement Securing a Lien for the Deferral of Affordable Housing In-lieu Fees and Development Impact Fees for a Project That Includes the Development of 16 Single-family Homes. The Applicant Proposes Payment of Fees in Installments, Prior to Final Occupancy. Environmental Assessment: Not a Project. Zoning Districts R-2 and RM-15

From: City Manager

Lead Department: Planning and Development Services

Recommendation
Staff recommends that Council adopt the Resolution in Attachment A authorizing the City Manager or his designee to execute Amendment No. 2 to the Agreement between the City of Palo Alto and Golden Gate Homes, LLC, securing a lien for the deferral of Development Impact Fees and/or Housing In-lieu fees. The proposed Amendment No. 2 (Attachment B) amends the timing of the deferred affordable housing in-lieu fee and development impact fee payments for the subject property.

Summary
The PTC, ARB, and City Council previously reviewed the approved project, which includes construction of sixteen single-family homes. The project requires payment of development impact fees and affordable housing in-lieu fees in accordance with Chapters 16.58, 16.59, 16.60, 16.64 and 16.65. As part of the project approval, Council authorized the payment of affordable housing in-lieu fees instead of requiring on-site affordable housing units;¹ the

¹ The City’s current BMR ordinance, which went into effect in 2017 after the subject project was approved, expresses a strong preference for the construction of affordable units. PAMC Section 16.65.080 sets forth alternative means for compliance
current housing in-lieu fee estimate is $4,934,239. In addition, the current development impact fees estimate is $1,196,126.

In August 2018, the City Manager approved the developer’s request to defer payment of *development impact fees*, requiring payment prior to issuance of final occupancy of the first home. Consistent with PAMC Section 16.64.030, this approval required recordation of an agreement placing a lien on the property, which is included in Attachment D.

PAMC Section 16.65.060 states that *affordable housing in-lieu fees* must be paid prior to issuance of a building permit unless Council specifies an alternative timing by ordinance or resolution. In October 2018, Council adopted Resolution 9794 (Attachment E) authorizing the City Manager to amend the Agreement, allowing 90 percent (90%) of the housing in-lieu fees to also be deferred to final occupancy of the first residence. The amended Agreement (Amendment No. 1) is provided in Attachment C.

The applicant now requests Council approval of a Resolution authorizing a second amendment to the agreement. The applicant’s request is included in Attachment F. The amendment would modify the timing of payment for development impact fees and the remaining housing-in-lieu fees. The applicant requests approval to pay these fees in installments, based on final occupancy for the first, fifth, and tenth residence in this 16-unit development. Consistent with the adopted resolution and previously executed agreements, the required fees would be calculated based on the rates in effect at the time of payment and the amount due would increase by four percent (4%) compounded annually from the date the building permit was issued.

**Discussion**

Development impact fees, generally, are in place to defray the costs of direct impacts a new development has on the City’s infrastructure or services. The fees are set forth in the City’s Municipal Fee Schedule and updated annually based on the construction cost index for the San Francisco Bay Area. Fees are assessed based on net new square footage, net new units, and net new vehicular peak hour trips. They are typically due at the time of building permit issuance.

The City also requires developers of ownership housing to construct on-site below market rate units or provide some alternative means of compliance, including payment of fees in-lieu of BMR construction. Council authorized the payment of affordable housing in-lieu fees for this development instead of requiring on-site affordable housing units.

At the time of Council approval, the housing in-lieu fees were estimated to be $4,771,350. In accordance with Council’s Resolution in Attachment E, the applicant was required to pay ten percent (10%) of the housing in-lieu fees prior to issuance of the building permit. The applicant
paid this 10% fee ($477,135) in November 2018 (FY 2019) prior to issuance of the building permit. The remaining balance of deferred housing in-lieu fees (90%) was $4,294,215.

Council’s resolution stipulates that any deferred housing in-lieu fees be calculated at the rates in effect at the time of payment and that the amount due also be increased by four percent (4%), compounded annually, for each year that the fees are deferred. Based on this calculation, the deferred housing in-lieu fees that would have been due in 2018 ($4,294,215)\(^2\) increased to $4,503,382\(^3\) in fiscal year 2020 and are now currently estimated at $4,934,239\(^4\).

Development impact fees (as distinguished from housing in-lieu fees) were also deferred to final occupancy of the first residence. These fees are required to be paid at the rates in effect at the time of payment but are not currently subject to any additional interest. The applicant’s current proposal includes interest on development impact fees and staff recommends that 4% interest on these fees be compounded annually from the date the building permit was issued in 2018. Table 1 shows the development impact fee estimate at the time of building permit issuance (FY 2019) and calculates how that fee increased over the last two years based on the rates in effect for each fiscal year and the addition of 4% compounded interest. The development impact fees were calculated based on a net total of 12 units because the 16-unit development replaces four existing units. The column for fiscal year 2021 reflects the current fees due.

\(^2\) The adopted Fiscal Year 2019 Municipal Fee Schedule can be found here: https://www.cityofpaloalto.org/civicax/filebank/documents/66147

\(^3\) Fiscal Year 2020 Municipal Fee Schedule can be found here: https://www.cityofpaloalto.org/civicax/filebank/documents/73099

\(^4\) The adopted Fiscal Year 2021 Municipal Fee Schedule can be found here: https://www.cityofpaloalto.org/civicax/filebank/documents/78473
### Table 1: Development Impact Fee Summary

<table>
<thead>
<tr>
<th></th>
<th>FY 2019</th>
<th>FY 2020</th>
<th>FY 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Center Fee</td>
<td>$38,352</td>
<td>$41,446</td>
<td>$45,414</td>
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<tr>
<td>Libraries Fee</td>
<td>$13,404</td>
<td>$14,052</td>
<td>$15,406</td>
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<tr>
<td>Public Safety Fee</td>
<td>$12,864</td>
<td>$13,491</td>
<td>$14,783</td>
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<tr>
<td>General Government Fee</td>
<td>$16,212</td>
<td>$16,998</td>
<td>$18,625</td>
</tr>
<tr>
<td>Charleston/Arastradero</td>
<td>$16,212</td>
<td>$16,998</td>
<td>$18,625</td>
</tr>
<tr>
<td>Corridor Fee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citywide Transportation Fee</td>
<td>$44,400</td>
<td>$98,417</td>
<td>$107,844</td>
</tr>
<tr>
<td>Parkland Dedication Fee</td>
<td>$751,004</td>
<td>$757,587</td>
<td>$862,942</td>
</tr>
<tr>
<td>Public Art Fee</td>
<td>$104,000</td>
<td>$108,160</td>
<td>$112,486</td>
</tr>
<tr>
<td><strong>Total Fees Due</strong></td>
<td><strong>$996,448</strong></td>
<td><strong>$1,097,149</strong></td>
<td><strong>$1,196,126</strong></td>
</tr>
</tbody>
</table>

### Summary of Key Issues

Deferring the in-lieu housing payment impacts the City in two principal ways. First, the money is not readily available to the City should it elect to support a below market rate housing development within the deferral timeframe. Second, the City loses out on any interest earned within the deferral timeframe (though this is partially offset by annual increases in the fee rates).

To bridge any shortcoming that could result from further deferral of development impact fees and housing in-lieu fees, the applicant proposes the following:

- Pay $2,640,000 of the remaining housing in-lieu fees and one-third of the development impact fees prior to final occupancy of the first home
- Divide the remaining balance of housing in-lieu fees and development impact fees into two additional payments payable prior to final occupancy of the fifth home and prior to final occupancy of the tenth home
- All deferred fees shall be paid based on the rate in effect at the time of payment increased by an interest rate of four percent (4%), compounded annually, for each year that the fees have been deferred
- All fees shall be paid no later than December 31, 2021

On January 13, 2020, Council reallocated $2,638,993 from the housing in-lieu and impact fee funds for an affordable housing project at 3705 El Camino Real (Wilton Court Apartments) (CMR 10928). These funds were previously reserved for a potential teacher housing project on Grant Avenue and were intended to be replenished with the first home sold at the subject property. The pandemic delayed construction, subsequent real estate transactions and therefore the
restoration of these funds. The proposed payment schedule provides an initial payment enough to cover the City’s $3 million pledge toward the future County project.

The remaining fees would be paid prior to final occupancy of the fifth and tenth residence within the development. All remaining housing in-lieu fees and development impact fees would be evenly split between those two payments. Consistent with Council’s previous stipulations regarding housing in-lieu fees, this Resolution and Amendment to the Agreement would require that any deferred fees be paid based on the fees in effect at the time of payment and subject to an annual 4% compounded interest.

With the proposed provisions included in the lien agreement and associated amendments (Attachments A, B and C), staff supports this payment deferral request.

Policy Implications
The City continues to promote and advance policy initiatives to encourage housing development, consistent with the Comprehensive Plan. The applicant has indicated that the pandemic has resulted in unexpected burdens with respect to construction costs, delays and the sale of the homes, as discussed further in the applicant’s request letter in Attachment F. Council’s approval of this request supports the applicant’s effort for a timely completion of all sixteen units, which are currently under construction. Without this approval, the property owner has expressed the potential need to pause construction on some of the homes until revenue is available from the sale of completed units.

Resource Impact
At the time of building permit issuance (FY 2019) housing in-lieu fees totaled $4,294,215. Due to rate increases and compounded interest, the current housing in-lieu fees total $4,934,239.

With approval of the proposed amendment, the developer would pay $2.64 million into the residential housing in-lieu fund prior to final occupancy of the first residence. The property owner anticipates that this will occur within the 60 days. The remaining housing in-lieu fees, totaling $2,294,239 would be paid in two installments as described further below.

At the time of building permit issuance, the development impact fees totaled approximately $980,081. Due to annual rate increases and compounded interest, the current development impact fee estimate is $1,196,126.

Timeline
The following table summarizes the timing of payment of each fee. Note that the fee estimates provided below are based on the current fees in effect (FY 2021) and compounded interest to date. Should fees be deferred to FY 2022, any deferred payments would increase accordingly.
based on the rate in effect at the time of payment and another 4% compounded interest on any remaining fees. Because Council has not yet adopted the Municipal Fee Schedule for FY 2022, the total amount due if one or more payments are deferred to FY 2022 cannot be assessed at this time. All fees shall be paid no later than December 31, 2021.

### Table 2: Summary of Payment Timing for Deferred Housing In-Lieu and Development Impact Fees

<table>
<thead>
<tr>
<th>Timing</th>
<th>Housing In-Lieu fee Estimate Due</th>
<th>Development Impact fee Estimate Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final occupancy of the first unit (anticipated November 2020)</td>
<td>$2,640,000</td>
<td>$398,709</td>
</tr>
<tr>
<td>Final occupancy of the fifth unit (anticipated April 2021)</td>
<td>$1,147,119</td>
<td>$398,709</td>
</tr>
<tr>
<td>Final occupancy of the tenth unit or December 31, 2021 (whichever is sooner)</td>
<td>$1,147,119</td>
<td>$398,709</td>
</tr>
</tbody>
</table>

### Environmental Review

In accordance with the California Environmental Quality Act (CEQA) 15061(b)(3), the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The project involves the execution of an agreement between the City and the applicant and this action would no direct or in-direct effect on the environment.

**Attachments:**

- Attachment A: Resolution Modifying Timing of Impact Fee Payment
- Attachment B: Draft Amendment No.2 to Existing Agreement Creating a Lien for Deferral of Impact Fees
- Attachment C: Amendment No. 1 to Existing Agreement Creating a Lien For Deferral of Impact Fees
- Attachment D: Existing Agreement Creating a Lien for Deferral of Impact Fees
- Attachment E: Existing Resolution for Deferral of Impact Fee Payment (Reso 9794)
- Attachment F: Applicant's Request for Modification to Timing of Payment
**NOT YET ADOPTED**

DRAFT

Resolution No. ___
Resolution of the Council of the City of Palo Alto Authorizing the City Manager or Designee to Execute Amendment No.2 to a Lien to Secure Deferred Payment of Development Impact Fees And/or In-Lieu Fees for 567 Maybell

RECITALS

A. Golden Gate Homes, LLC, (“Developer”) is the owner of that certain tract of land situated in the City of Palo Alto, County of Santa Clara, State of California, generally known and described as 567 Maybell, Palo Alto, California (the "Property"); and

B. On or about June 28, 2017 and August 24, 2017, City approved Developer’s application(s) for Tentative Map and Architectural Review, respectively, subject to conditions of approval including the payment of development impact fees and/or in-lieu fees under Chapter 16.64 of the Palo Alto Municipal Code (“PAMC”).

C. On or about August 15, 2018, City Manager approved Developer’s request to defer payment of development impact fees and the Parties executed the AGREEMENT.

D. On or about October 15, 2018, Council adopted Resolution 9794 approving the Developer’s request to defer payment of below market housing in-lieu fees pursuant to Section 16.65.060 and amending the AGREEMENT, subject to conditions.

D. Pursuant to PAMC Section 16.65.060, below market rate housing in-lieu fees must be paid prior to issuance of any building permit for a development project, unless otherwise specified by City Council ordinance or resolution.

E. Developer has requested that the time of payment for below market rate housing in-lieu fees and development impact fees be deferred and paid in installments prior to the date a final occupancy permit is issued for the first, fifth and tenth unit in this sixteen unit development.

SECTION 1. The City Manager is hereby authorized to execute an agreement deferring below market rate housing in-lieu fees for Architectural Review Approval No. 15PLN-00248 and Tentative Map Approval No. 15PLN-00270 to allow payment in installments prior to the date a final occupancy permit is issued for the first, fifth and tenth unit in this sixteen unit development, subject to 4% interest compounded annually for each year of deferral. In no event shall fees be deferred beyond December 31, 2021.

SECTION 2. The Council finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.
INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_________________________________________  __________________________________________
City Clerk                                    Mayor

APPROVED AS TO FORM:

_________________________________________  __________________________________________
Assistant City Attorney                       City Manager

_________________________________________  __________________________________________
Director of Planning & Development Services   Director of Administrative Services
AMENDMENT NO. 2 TO AGREEMENT CREATING A LIEN
TO SECURE PAYMENT OF DEFERRED PAYMENT OF
DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES
ADDRESS: 567 Maybell Avenue, PALO ALTO, CA
A.P.N. Nos. 137-25-108 & 137-25-109

This Amendment No. 2 (“AMENDMENT”) to the above-referenced Agreement, recorded in the Official Records of Santa Clara County as Instrument No. 24049742, (“AGREEMENT”), as amended by Instrument No. 24058571, is entered into on __________ by and between the CITY OF PALO ALTO, a California charter municipal corporation (“City”), and GOLDEN GATE HOMES, LLC, a California Limited Liability Company (“Developer”) to secure the payment of deferred development impact fees and or in-lieu fees.

RECITALS

A. Developer is the owner of that certain tract of land situated in the City of Palo Alto, County of Santa Clara, State of California, generally known and described as 567 Maybell, Palo Alto, California (the "Property"); and

B. On or about June 28, 2017 and August 24, 2017, City approved Developer’s application(s) for Tentative Map and Architectural Review, respectively, subject to conditions of approval including the payment of development impact fees and/or in-lieu fees under Chapter 16.64 of the Palo Alto Municipal Code (“PAMC”).

C. On or about August 15, 2018, City’s Director of Planning and Community Environment approved Developer’s request to defer payment of development impact fees and the Parties executed the AGREEMENT.

D. On or about October 15, 2018 the Palo Alto City Council adopted Resolution No. 9794, approving Developer’s request to defer payment of below market housing in-lieu fees pursuant to PAMC Section 16.65.060 and executed Amendment No. 1 to the AGREEMENT.

E. In November 2018, Developer paid $477,135, representing 10% of the housing in-lieu fees due at that time, pursuant to the AGREEMENT, as amended by Amendment No. 1.

F. The Parties wish to amend the AGREEMENT.
NOW, THEREFORE, for and in consideration of the approval and covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1 of the AGREEMENT, Deferral of Fees is hereby amended to read as follows:

   1. **Deferral of Fees.** Pursuant to PAMC Section 16.64.030 and City Council Resolution _______, payment of the development impact fees and in-lieu fees identified in Exhibit B shall be deferred as follows:

      a. Prior to the date of final occupancy approval for the first completed unit, Developer shall pay $2,640,000 in housing in-lieu fees. Prior to the date of final occupancy approval for the fifth (5th) completed unit, Developer shall pay one-half of the then-outstanding housing in-lieu fees. Prior to the date of final occupancy approval for the tenth (10th) completed unit, Developer shall pay all remaining housing in-lieu fees.

      b. Developer shall pay development impact fees for the Project in approximately equal one-third (1/3) installments prior to the dates of final occupancy for the first, fifth and tenth completed units.

      c. In no event shall the payment of any fee be deferred beyond December 31, 2021.

      d. The amount of outstanding housing in-lieu fees and development impact fees shall be calculated using the rates in effect at the time of payment, with an additional four percent (4%) increase, compounded annually from the date of building permit issuance.

2. The following Exhibit(s) to the AGREEMENT is/are hereby amended to read as set forth in the attachments to this Amendment, which are incorporated in full by this reference:

   a. Exhibit “B” entitled “DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES”

3. Except as herein modified, all other provisions of the AGREEMENT, including any exhibits and amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

CITY OF PALO ALTO                      Developer

______________________________     ______________________________
Name: ______________________

City Manager                        Title: ______________________

APPROVED AS TO FORM:
Albert S. Yang
Assistant City Attorney

APPROVED AS TO CONTENT:

____________________________
Jonathan Lait
Director of Planning and Development Services
**EXHIBIT B**
**DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES**

<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Estimated Amount of Fee (As of October 2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Art In-Lieu</td>
<td>$112,486.40</td>
</tr>
<tr>
<td>Community Centers</td>
<td>$45,414.22</td>
</tr>
<tr>
<td>Libraries</td>
<td>$15,406.31</td>
</tr>
<tr>
<td>Public Safety</td>
<td>$14,783.31</td>
</tr>
<tr>
<td>General Government</td>
<td>$18,625.15</td>
</tr>
<tr>
<td>Charleston/Arastadero Traffic</td>
<td>$18,625.15</td>
</tr>
<tr>
<td>Citywide Traffic</td>
<td>$107,844.71</td>
</tr>
<tr>
<td>Parkland Dedication</td>
<td>$862,941.71</td>
</tr>
<tr>
<td><strong>Sub-Total:</strong></td>
<td><strong>$1,196,126.43</strong></td>
</tr>
<tr>
<td>Affordable Housing (In-lieu) (90% deferred since November 2018)</td>
<td><strong>$4,934,239</strong></td>
</tr>
<tr>
<td>To be paid prior to issuance of final occupancy for the first unit</td>
<td>$2,640,000</td>
</tr>
<tr>
<td>To be paid prior to issuance of final occupancy for the fifth unit (approximately)</td>
<td>$1,147,119.35</td>
</tr>
<tr>
<td>To be paid prior to issuance of final occupancy for the tenth unit (approximately)</td>
<td>$1,147,119.35</td>
</tr>
<tr>
<td><strong>Total Deferred:</strong></td>
<td><strong>$6,130,365.43</strong></td>
</tr>
</tbody>
</table>

Amounts provided are estimates based on the rates in effect as of October 2020. Fees are payable at the rates in effect on the date of payment.
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ______________________
County of _______________________

On the ______________________ before me, ______________________ a Notary Public, personally appeared ________________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _______________________

Name: _______________________
   (Typed or Printed)           (Seal)
This document is recorded for the benefit of the City of Palo Alto and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code. After Recordation, mail to: OFFICE OF THE CITY ATTORNEY 250 Hamilton Avenue Palo Alto, CA 94301

AMENDMENT NO. 1 TO AGREEMENT CREATING A LIEN TO SECURE PAYMENT OF DEFERRED PAYMENT OF DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES ADDRESS: 567 Maybell Avenue, PALO ALTO, CA A.P.N. Nos. 137-25-108 & 137-25-109

This Amendment No. 1 ("AMENDMENT") to the above-referenced Agreement, recorded in the Official Records of Santa Clara County as Instrument No. _24049742_, ("AGREEMENT") is entered into October 15, 2018 by and between the CITY OF PALO ALTO, a California charter municipal corporation ("City"), and GOLDEN GATE HOMES, LLC, a California Limited Liability Company ("Developer") to secure the payment of deferred development impact fees and or in-lieu fees that would otherwise be due prior to issuance of a building permit.

RECATALS

A. Developer is the owner of that certain tract of land situated in the City of Palo Alto, County of Santa Clara, State of California, generally known and described as 567 Maybell, Palo Alto, California (the "Property"); and

B. On or about June 28, 2017 and August 24, 2017, City approved Developer’s application(s) for Tentative Map and Architectural Review, respectively, subject to conditions of approval including the payment of development impact fees and/or in-lieu fees under Chapter 16.64 of the Palo Alto Municipal Code ("PAMC").

C. On or about August 15, 2018, City’s Director of Planning and Community Environment approved Developer’s request to defer payment of development impact fees and the Parties executed the AGREEMENT.

D. On or about October 15, 2018 the Palo Alto City Council adopted Resolution No., approving Developer’s request to defer payment of below market housing in-lieu fees pursuant to PAMC Section 16.65.060.

E. The Parties wish to amend the AGREEMENT.

NOW, THEREFORE, for and in consideration of the approval and covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1 of the AGREEMENT, Deferral of Fees is hereby amended to read as follows:

1. Deferral of Fees. Pursuant to PAMC Section 16.64.030 and City Council Resolution 9794, payment of the development impact fees and in-lieu fees
identified in Exhibit B shall be deferred until the date of final occupancy approval for the first completed unit, except that percent (10%) of the affordable housing in-lieu fee shall be paid prior to issuance of a building permit. The remaining ninety percent (90%) of the affordable housing in-lieu fee shall be recalculated using the rates in effect at the time of payment; in addition, the deferred amount of the affordable housing in-lieu fee shall increase by four percent (4%), compounded annually, for each year such fees are deferred. All fees must be paid before final occupancy approval may be granted and shall be payable at the rates in effect on the date the fees are paid.

2. The following Exhibit(s) to the AGREEMENT is/are hereby amended to read as set forth in the attachments to this Amendment, which are incorporated in full by this reference:

   a. Exhibit “B” entitled “DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES”

3. Except as herein modified, all other provisions of the AGREEMENT, including any exhibits and amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

CITY OF PALO ALTO

__________________________
City Manager

APPROVED AS TO FORM:

__________________________
Albert S. Yang
Deputy City Attorney

APPROVED AS TO CONTENT:

__________________________
Jonathan Lait
Interim Director of Planning
and Community Environment

Developer

Yurong Han

Name: Yurong Han
Title: Manager

See attached certificate
### EXHIBIT B
**DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES**

<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Estimated Amount of Fee (As of July 2018)</th>
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</thead>
<tbody>
<tr>
<td>Public Art In-Lieu</td>
<td>$100,000</td>
</tr>
<tr>
<td>Community Centers</td>
<td>$36,900</td>
</tr>
<tr>
<td>Libraries</td>
<td>$12,888</td>
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<td>Public Safety</td>
<td>$12,372</td>
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<tr>
<td>General Government</td>
<td>$15,588</td>
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<tr>
<td>Charleston/Arastadero Traffic</td>
<td>$15,600</td>
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<td>Citywide Traffic</td>
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<td>$722,457.36</td>
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<tr>
<td><strong>Sub-Total:</strong></td>
<td><strong>$958,513.36</strong></td>
</tr>
<tr>
<td>Affordable Housing (In-lieu)</td>
<td>$4,771,350</td>
</tr>
<tr>
<td>10% to be paid prior to issuance of building permit</td>
<td>$477,135</td>
</tr>
<tr>
<td>90% to be deferred</td>
<td>$4,294,215</td>
</tr>
<tr>
<td><strong>Total Deferred:</strong></td>
<td><strong>$5,252,728.36</strong></td>
</tr>
</tbody>
</table>

Amounts provided are estimates based on the rates in effect as of July 2018. Fees are payable at the rates in effect on the date of payment.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On October 31, 2018 before me, Etsuko Hartnett, Notary Public,

personally appeared ________________

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are

 subscribing to the within instrument and acknowledged to me that he/she/they executed the same in

his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the

person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Notary Seal]

[Notary Signature]

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed of Trust

Document Date: N/A

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: ________________

☐ Individual

☐ Corporate Officer

Title(s): ________________

☐ Partner -- ☐ Limited ☐ General

☐ Attorney-in-fact

☐ Trustee

☐ Parent, Guardian, or Conservator

☐ Other: ________________

Signer is Representing: ________________
This document is recorded for the benefit of the City of Palo Alto and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code.
After Recordation, mail to:
OFFICE OF THE CITY ATTORNEY
250 Hamilton Avenue
Palo Alto, CA 94301

AGREEMENT CREATING A LIEN
TO SECURE PAYMENT OF DEFERRED PAYMENT OF DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES
ADDRESS: 567 MAYBELL AVENUE, PALO ALTO, CA
A.P.N. No.137-25-108 & 137-25-109

This Agreement, made and executed this 15th day of August, 2018, by and between the CITY OF PALO ALTO, a California charter municipal corporation ("City"), and GOLDEN GATE HOMES, LLC, a California Limited Liability Company ("Developer") to secure the payment of deferred development impact fees and or in-lieu fees that would otherwise be due prior to issuance of a building permit.

RECITALS

A. Developer is the owner of that certain tract of land situated in the City of Palo Alto, County of Santa Clara, State of California, generally known and described as 567 Maybell Avenue, Palo Alto, California and more fully described in Exhibit A, (the "Property"); and

B. On or about June 28, 2017 and August 24, 2017, City approved Developer’s application(s) for Tentative Map and Architectural Review respectively, subject to conditions of approval including the payment of development impact fees and/or in-lieu fees under Chapter 16.64 of the Palo Alto Municipal Code ("PAMC”).

C. Developer wishes to defer payment of development impact fees and/or in-lieu fees associated with the Property, more fully described in Exhibit B, pursuant to PAMC Section 16.64.030

NOW, THEREFORE, for and in consideration of the approval and covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Deferral of Fees.** Pursuant to PAMC Section 16.64.030, payment of the development impact fees and/or in-lieu fees described in Exhibit B shall be deferred until the date of final building inspection approval. All fees must be paid before final occupancy approval may be granted. Fees shall be payable at the rates in effect on the date the fees are paid.

2. **Lien Created.** Developer hereby grants to the City a lien against the Property described in Exhibit A, said lien is intended to guarantee the payment in full of the deferred fees described in Exhibit B, plus the City’s costs of enforcement and collection, including reasonable attorney’s fees, if any.
3. **Release of Lien.** Upon full payment of all deferred fees to City and complete satisfaction of all terms of this Agreement by the Developer, the City shall promptly release the lien created hereunder by executing a lien release in substantial form as shown in Exhibit C.

4. **Enforcement.** If not timely paid, the City may pursue collection through all available legal and administrative means, including without limitation, judicial or non-judicial foreclosure of the recorded lien against the Property or a civil judgment against the Developer for breach of this Agreement and/or the security provided hereunder. The Developer will be responsible for any fees required of the City for the enforcement and collection of the development impact fees, including reasonable attorney’s fees.

5. **Notices.** All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

   - **To City:**
     
     Office of the City Clerk  
     250 Hamilton Avenue  
     Palo Alto, CA 94301

   - **To Developer:**
     
     Golden Gate Homes, LLC  
     2225 E. Bayshore Road, Suite 200  
     Palo Alto, CA 94303  
     Attn: Yurong Han, Manager

6. **Miscellaneous.**
   a. This Agreement will be governed by the laws of the State of California.
   
   b. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.
   
   c. The terms, covenants and conditions of this Agreement shall run with the land and shall bind, the heirs, successors, executors, administrators, assigns, contractors, and subcontractors of the parties.
   
   d. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.
   
   e. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.
   
   f. In the event the either the City or Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition, or obligation.
   
   g. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.
   
   h. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement
may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

CITY OF PALO ALTO

City Manager

Developer

Yurong Han / Golden Gate Home

Name: Yurong Han
Title: Manager

________________________

Deputy City Attorney

Albert S. Yang

APPROVED AS TO FORM:

________________________

Director of Planning
and Community Environment

Jonathan Last, Interim

APPROVED AS TO CONTENT:
EXHIBIT A

LEGAL DESCRIPTION

All that real property in the City of Palo Alto, County of Santa Clara, State of California, described as follows: Lots 1 through 16, inclusive and Lot A of Tract No. 10434, filed May 1, 2018, in Book 913 of Maps, Pages 3 through 7, inclusive, Official Records Santa Clara County.

APN's: 137-25-108 and 137-25-109
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On Aug 15, 2018 before me, Sam Sahi, Notary Public,

personally appeared Vu K. Han

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Seal

Notary Signature

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT CREATING LIEN

Document Date: ____________________ Number of Pages: ____________________

Signer(s) Other Than Named Above: ____________________

Capacity(ies) Claimed by Signer(s)

Signer's Name: ____________________

☐ Individual
☐ Corporate Officer
☐ Partner -- ☐ Limited ☐ General
☐ Attorney-in-fact
☐ Trustee
☐ Parent, Guardian, or Conservator
☐ Other: ____________________

Signer is Representing: ____________________

1/1/2015
This document is recorded for the benefit of the City of Palo Alto and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code.

After Recirdation, mail to:
OFFICE OF THE CITY ATTORNEY
250 Hamilton Avenue
Palo Alto, CA 94301

RELEASE OF LIEN UPON REAL PROPERTY
ADDRESS: 567 MAYBELL AVENUE, PALO ALTO, CA
A.P.N. No. 137-25-108 & 137-25-109

WHEREAS, on ____________, Golden Gate Homes, LLC (“Developer”) and the City of Palo Alto (“City”) entered into an Agreement Creating a Lien to Secure Deferred Payment of Development Impact Fees and/or In-Lieu Fees (“Agreement”), which Agreement was recorded as Document No. ____________ in the Official Records of the County of Santa Clara on ____________; and

WHEREAS, Developer has satisfied the conditions for the release of lien encumbering that certain property identified in the Agreement;

NOW, THEREFORE, the City hereby releases all of its right, title, and interest in the lien on the real property described in Exhibit A, attached hereto.

CITY OF PALO ALTO

__________________________________________________________ Date: ______________

City Manager

APPROVED AS TO FORM:

__________________________________________________________

Deputy City Attorney

APPROVED AS TO CONTENT:

__________________________________________________________

Director of Planning and Community Environment
EXHIBIT B
DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES

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Amounts provided are estimates based on the rates in effect at the time this Agreement is executed. Fees are payable at the rates in effect on the date of payment.
CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

STATE OF ____________________________ )
COUNTY OF __________________________ )

On __________________________, before me, __________________________, a notary public in and for said County, personally appeared __________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________________
CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

STATE OF _____________________

COUNTY OF _____________________

On ____________, before me, _____________________, a notary public in and for said County, personally appeared _____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________________
CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

STATE OF ____________________________
COUNTY OF ____________________________

On ________________, before me, ________________________, a notary public in and for said County, personally appeared ________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________________________

This is to certify that this is a true copy of the document on file in this office.

ATTEST: ____________________________
COUNTY CLERK-RECORER
SANTA CLARA COUNTY, CALIFORNIA
Resolution No. 9794
Resolution of the Council of the City of Palo Alto
Authorizing the City Manager or Designee to Execute an Agreement
Deferring Affordable Housing In-Lieu Fees for 567 Maybell

RECITALS

A. Golden Gate Homes, LLC, ("Developer") is the owner of that certain tract of land situated in the City of Palo Alto, County of Santa Clara, State of California, generally known and described as 567 Maybell, Palo Alto, California (the "Property"); and

B. On or about June 28, 2017 and August 24, 2017, City approved Developer's application(s) for Tentative Map and Architectural Review, respectively, subject to conditions of approval including the payment of development impact fees and/or in-lieu fees under Chapter 16.64 of the Palo Alto Municipal Code ("PAMC").

C. On or about October 15, 2018, City Manager approved Developer's request to defer payment of development impact fees and the Parties executed the AGREEMENT.

D. Pursuant to PAMC Section 16.65.060, below market rate housing in-lieu fees must be paid prior to issuance of any building permit for a development project, unless otherwise specified by City Council ordinance or resolution.

E. Developer has requested that the time of payment for below market rate housing in-lieu fees be deferred until the date a final occupancy permit is issued.

NOW, THEREFORE, the Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. The City Manager is hereby authorized to execute an agreement deferring below market rate housing in-lieu fees for Approval of Architectural Review application 15PLN-00248 and the Tentative Map approved by Record of Land Use Action No. 2016-4. Ten percent (10%) of the below market rate housing in-lieu fees shall be paid prior to issuance of a building permit; the remainder shall be deferred to the date of final occupancy approval for the first completed unit of the project. The deferred fees shall be calculated at the rates in effect at the time of payment; in addition, the amount due shall be increased by four percent (4%), compounded annually, for each year that the fees are deferred.
SECTION 2. The Council finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED: October 15, 2018

AYES: DuBois, Filseth Fine, Holman, Kou, Scharff, Tanaka

NOES: Wolbach

ABSENT: Kniss

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

Deputy City Attorney

APPROVED:

City Manager

Director of Planning and Community Environment

Director of Administrative Services
# Certificate Of Completion

**Envelope Id:** 22B9F6DC3B44ACC951C7EDC79B2379E  
**Subject:** Please DocuSign: Reso 9794 567 Maybell Final.pdf  
**Status:** Completed  
**Source Envelope:**  
- **Document Pages:** 2  
- **Certificate Pages:** 2  
- **AutoNav:** Enabled  
- **Enveloped Stamping:** Enabled  
- **Time Zone:** (UTC-08:00) Pacific Time (US & Canada)

## Record Tracking

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- **Viewed:** 10/18/2018 1:55:11 PM  
- **Signed:** 10/18/2018 1:55:40 PM  
- **Resent:** 10/24/2018 1:54:26 PM  
- **Viewed:** 10/28/2018 9:33:26 PM  
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**Security Appliance Status:** Connected  
**Storage Appliance Status:** Connected

### Signer Events

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| Kiely Nose | ![Signature](signature2.png) | **Signature Adoption:** Uploaded Signature Image  
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| Jonathan Lait | ![Signature](signature3.png) | **Signature Adoption:** Uploaded Signature Image  
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| Ed Shikada | ![Signature](signature4.png) | **Signature Adoption:** Pre-selected Style  
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**Enveloped Originator:**  
- **Beth Minor**  
  Beth.Minor@CityofPaloAlto.org  
  250 Hamilton Ave  
  Palo Alto, CA 94301  
  IP Address: 12.220.157.20

**Certificate Pages:** 2  
**Signatures:** 4  
**Initials:** 0

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**Electronic Record and Signature Disclosure:**  
- Not Offered via DocuSign

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**Electronic Record and Signature Disclosure:**  
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October 1, 2020

Jonathan Lait, Director of Planning  
Planning and Community Environment Department  
250 Hamilton Avenue  
Palo Alto, CA 94301  
650.329.2679  
jonathan.lait@cityofpaloalto.org

Subject: Maybell Development Impact Fee Payment Modification

Mr. Lait:

On behalf of Golden Gate Homes LLC, I have been authorized to submit this formal request to modify the payment schedule of developer impact and below market rate housing in-lieu fees (hereafter ‘fees’) for the project at 567 Maybell Avenue consisting of 16 single family homes.

In 2018 the City Council of Palo Alto approved the deferral of the payment of fees to later in the construction of the project. The deferral provided that the payment of fees would be when the first of the 16 homes would be ready for final inspection, rather than at the time of issuing Building Permits.

As the final quarter of 2020 begins, we can all agree it has been an unprecedented, unpredictable, tumultuous, and contentious year for the economy, public health, education, and day-to-day lives. As many businesses struggle through this unpredictable year, this project has also been negatively impacted particularly in the timing and realization of revenues from home sales. Please consider:

- The project’s first home was formally listed and made available for the public to view 3 days prior to the statewide shelter-in-place order in March.

- At the outset of shelter-in-place, real estate was not classified as an essential service and since has slowly come back but is significantly limited to supporting appointment only showings made with Covid-19 & entry disclosures required to enter a home without the support of open houses or local brokerage community previews. The activity and volume of showings has been a fraction of what a typical cycle would see particularly in the spring season when the market is generally the most active.

- Construction activity was limited for the 2\textsuperscript{nd} half of March and completely shut down for the month of April. The month of May allowed for the
continuation of construction with much of the month slowly ramping as contractors reassembled and reactivated on the project.

- Since March, the residential real estate marketplace has had varied performance across different types of homes. While some areas and types have outperformed, that has not been the case for the Palo Alto market or for the homes that are in construction at the project. In general, the inventory of for sale homes and days-on-market in Palo Alto have been more like the 2008-09 time following the financial crisis brought on by poor lending practices.

- We do not believe the lack of sales activity is due to a significant decrease in value or demand for the homes. We observe that buyers have been less motivated to visit homes for safety reasons (including the recent air quality issues), logistical hassles to see homes and travel restrictions for both international and domestic potential buyers alike. Further, the homes under construction are best suited for families with school aged children. With many districts and schools operating with distance learning models, the desire to be in place in a new home or school district that typically drives the spring to summer market, this demand was not present. We also find that buyers who might be considering a “move up” to a larger home are more inclined to remain in a patient waiting pattern with a significant election forthcoming and the arrival of a Covid-19 vaccine that would hopefully usher confidence back to the marketplace and a return to a more normalized market environment.

The primary goal of the modification would provide cash flow relief to the project by more equitably spreading their payments across the sales cycle of the project. There is no request for a discount or reduction in any fees. The framework of the request is:

1. Developer will pay $2,640,000 of the remaining housing in-lieu fees and one-third of the development impact fees prior to final occupancy of the first home sale.

2. Divide the remaining balances of housing in-lieu fees and the remaining two-thirds of the development impact fees into 2 additional payments, payable prior to final occupancy of the 5th home and then, prior to final occupancy of the 10th home.

3. All deferred fees shall be paid based on the rate in effect at the time of payment increased by an interest rate of four percent (4%), compounded annually, for each year that the fees are deferred, as is already in place.

Thank you in advance for your consideration and work on this request.

Best Regards

Ted O’Hanlon

Cc: Yurong Han, Golden Gate Homes LLC