

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 DEFERRED PAYMENT OF
DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES
ADDRESS: _____, PALO ALTO, CA
A.P.N. No. _____

This Agreement, made and executed this ____ day of _____, 20 __, by and between the CITY OF PALO ALTO, a California charter municipal corporation ("City"), and _____, a _____ ("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 _____ [street address], Palo Alto, California and more fully described in Exhibit A [legal description], (the "Property"); and
- B. On or about _____ [date], City approved Developer's application(s) for _____ [entitlements], 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 the development is approved for occupancy. If the development contains more than one dwelling, the fee shall be paid on a pro rata basis for each dwelling when it is approved for occupancy. 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, except: (1) an applicant for a vesting tentative map for a development project shall pay the fees at the rate in effect on the date the application for the vesting tentative map is deemed complete, and (2) an applicant that defers fees for a designated residential redevelopment project, as defined in California Government Code Section 66007, may elect to pay the fees at the rate in effect at the time of building permit issuance.

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. Upon request by the Developer, the City will execute a partial release of the lien in the event the fee is prorated pursuant to Section 1 above.
4. **Enforcement.** 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: _____

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

Developer

City Manager

Name: _____

APPROVED AS TO FORM:

Title: _____

Deputy City Attorney

APPROVED AS TO CONTENT:

Name: _____

Title: _____

Director of Planning
and Development Services

EXHIBIT A

LEGAL DESCRIPTION

**EXHIBIT B
DEFERRED DEVELOPMENT IMPACT FEES AND/OR IN-LIEU FEES**

[name of fee]	[amount of fee]

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 except: (1) an applicant for a vesting tentative map for a development project shall pay the fees at the rate in effect on the date the application for the vesting tentative map is deemed complete, and (2) an applicant that defers fees for a designated residential redevelopment project, as defined in California Government Code Section 66007, may elect to pay the fees at the rate in effect at the time of building permit issuance.

**EXHIBIT C [Option 1: Full Release]
LIEN RELEASE FORM**

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RELEASE OF LIEN UPON REAL PROPERTY
ADDRESS: _____, PALO ALTO, CA
A.P.N. No. _____

WHEREAS, on _____, _____ (“Grantor”) and the City of Palo Alto (“Grantee”) 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, Grantor has satisfied the conditions for the release of lien encumbering certain property under the Agreement;

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

CITY OF PALO ALTO

Date: _____

City Manager

APPROVED AS TO FORM:

City Attorney or Designee

APPROVED AS TO CONTENT:

Director of Planning and Development Services

**EXHIBIT C [Option 2: Partial Release for Pro Rata Payments]
LIEN RELEASE FORM**

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250 Hamilton Avenue
Palo Alto, CA 94301

PARTIAL RELEASE OF LIEN UPON REAL PROPERTY
ADDRESS: _____, PALO ALTO, CA
A.P.N. No. _____

WHEREAS, on _____, _____ (“Grantor”) and the City of Palo Alto (“Grantee”) 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, the Agreement provides that the fees shall be paid on a pro rata basis for each dwelling unit when it is approved for occupancy;

WHEREAS, Grantor has partially satisfied the conditions for the release of lien encumbering certain property under the Agreement by paying \$_____ upon the approval for occupancy of _____ [number or description of dwelling units];

NOW, THEREFORE, Grantee hereby partially releases its right, title, and interest to the lien in the real property described in Exhibit A, attached hereto.

There remain unpaid fees for _____ units.

CITY OF PALO ALTO

City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney or Designee

APPROVED AS TO CONTENT:

Director of Planning and Development Services

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.
