

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Santa Clara and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922.

**PARK IN-LIEU FEE DEFERRAL AGREEMENT
AND NOTICE OF LIEN WITH POWER OF SALE**

This PARK IN-LIEU FEE DEFERRAL AGREEMENT AND NOTICE OF LIEN WITH POWER OF SALE (“Agreement”) is entered into as of _____, 20__, (“Effective Date”), by and between [OWNER NAME], a[n] choose one: _____ (enter State name) corporation/partnership/individual, (“Developer”), and the City of Santa Clara, a charter city and municipal corporation (“City”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties”. This Agreement is entered into with reference to the following facts:

RECITALS

- A. Developer is the fee title owner of certain real property located at [STREET ADDRESS], Santa Clara, California, more specifically described in **Exhibit A** (“Property”). Developer has received the required approvals for the development of the Property [PROJECT DESCRIPTION] (the “Project”).
- B. The City is authorized under state law to levy, and the Developer is obligated under the City of Santa Clara Municipal Code (“City Code”) Chapter 17.35 to pay certain park fees in-lieu of land dedication associated with the development of real property. The park in-lieu fees required for the Project are described in **Exhibit B** (“Park Fees”).
- C. Developer has requested, or is otherwise entitled to, a deferral of the payment of Park Fees and, pursuant to its authority under City Code Section 17.35.80, City has approved a deferral of Developer’s obligation to pay the required Park Fees for its Project subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, and other good and valuable consideration the receipt and sufficiency of which the Parties hereby acknowledge, Developer and City agree as follows:

1. Payment of Park Fees. Developer agrees to pay to the City the Park Fees for the Project prior to (and as a condition precedent to) the earlier of the following: (a) the City's issuance of the first certificate of occupancy (whether temporary or final) or (b) the City's approval of the final building inspection of the Project. If the Project contains more than one dwelling, the Park Fees are due consistent with the procedure set forth in City Code section 17.35.080(c) and as more particularly set forth in **Exhibit B** for each dwelling prior to receipt of the first certificate of occupancy, or final building inspection, whichever is first for that dwelling.
2. Lien Against the Property.
 - a. The Developer hereby grants to the City a lien, with power of sale, on the Property and Project to secure final payment of the Park Fees and the City's cost of foreclosure, if applicable, subject to the provisions of Section 2.b below. This Agreement shall be recorded in the grantor-grantee index in the name of the City as grantee and in the name of Developer as grantor.
 - b. Notwithstanding anything herein to the contrary, until such time as any indebtedness secured by a deed of trust recorded prior to the date hereof (the "Senior Indebtedness") has been repaid in full and the security instrument securing such Senior Indebtedness for the benefit of a senior lender (the "Senior Lender") has been released and discharged, the City shall not, without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion, take any enforcement action set forth herein, including, without limitation, (i) accelerate any amounts due hereunder, or (ii) exercise any of City's remedies or enforcement actions hereunder (including, without limitation, the commencement of any judicial or non-judicial action or proceeding, exercise of any power of sale or commencement of foreclosure of the lien created hereunder). Notwithstanding the foregoing, if the Developer does not timely pay the Park Fees, the City shall have the right, in its sole and absolute discretion, to withhold issuance of any Certificates of Occupancy or approval of the final building inspection for the Project.
3. Release of Lien and Issuance of Certificate of Occupancy. Upon full payment of the Parks Fees and foreclosure costs for a foreclosure commenced but not completed (if applicable): (i) the City shall promptly reconvey, terminate and release this Agreement and any lien created hereunder by executing a release of the lien from the Property in substantially the same form as shown in Exhibit C; and (ii) the City's Parks and Recreation Director will authorize issuance of the Certificates of Occupancy for any completed dwelling units in the Project being withheld pending such payment.
4. Enforcement of Lien. In the event Developer fails to pay any amount owing hereunder, on or before the due date, the City has the right to exercise all rights and remedies and to maintain any action in law or equity to enforce the terms and covenants of this Agreement. Without limiting the foregoing, the City shall have the right to withhold the issuance of any Certificates of Occupancy or final building inspection approval for the Project, may foreclose the lien described herein, using the power of sale, by non-judicial foreclosure under Civil Code Section 2924 et seq., and may appoint or substitute any title insurance company as trustee for such purpose, subject to the provisions of Section 2b, above. Any costs, expenses or fees related to any collection or enforcement of the foreclosure, including, but not limited to, City staff time, third-party costs, reasonable attorneys' fees and litigation costs, interest,

and any other costs, shall also be secured by the lien. A failure to cure a default under this Agreement within ten (10) business days after written notice shall cause the Park Fees to become immediately due and payable. All defaulted amounts shall bear interest from the date of issuance of the building permit until paid in full, at a rate equal to the lesser of ten percent (10%) per annum or the maximum rate permitted by law, and such interest shall be secured by the lien described herein.

5. Covenants Run with the Land. The terms, covenants, and conditions made in this Agreement shall run with the land and shall bind all heirs, legal representatives, successors in interest, assigns, contractors, and subcontractors of the Parties. If there is more than one successor in interest, all successors will be jointly and severally liable for all obligations under this Agreement. This Section does not limit the effect of Section 7 below.
6. Payment of Escrow Proceeds. Developer shall immediately notify the City of the opening of any escrow account for the sale of the Property, or portion thereof, while this Agreement is effective. In addition, Developer shall provide appropriate notification in the escrow instructions to the escrow agent that the total amount of the Park Fees shall be paid to the City from the sale proceeds in escrow prior to disbursing proceeds to the seller.
7. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. No person or entity who or which is not a signatory to this Agreement shall be deemed benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the City or Developer hereunder as a result of the City's or Developer's performance or nonperformance of their respective obligations under this Agreement.
8. Prevailing Wage.
 - a. To the maximum extent allowed by law, Developer shall defend (with counsel acceptable to the City), indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Developer and its contractors to comply with, to the extent applicable to the Project, all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).
 - b. It shall be the sole responsibility of Developer to determine whether to comply with Prevailing Wage Laws with respect to all or any portion of the Project as a result of this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws.
9. Venue; Jurisdiction. In the event that an action or proceeding is brought by either Party hereunder, the Parties agree that venue of such action is exclusively in a state court in Santa Clara County, California. This Agreement must be interpreted in accordance with, and governed by, the laws of the State of California.
10. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

11. **Severability.** If any provision of this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and remains valid and fully enforceable.
12. **Indemnity.** To the fullest extent permitted by law, Developer shall defend and hold City its officials, officers, employees and agents (collectively, the “Indemnified Parties”) harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the Indemnified Parties’ approval of any and all entitlements or permits arising from the Project and this Agreement; (ii) any damages, liability and/or claims of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on Developer’s behalf which relate to the Project and/or the Property. Developer further agrees that such indemnification and hold harmless shall include all fees and costs associated with the defense of the Indemnified Parties. City shall have the right to have its legal counsel represent Indemnified Parties in any such proceeding. Notwithstanding the foregoing, Developer shall not be obligated to indemnify and hold the Indemnified Parties harmless from liability from liabilities, claims, losses, damages, costs, and expenses arising from the active negligence or willful misconduct of Indemnified Parties or their agents and employees. The provisions of this Paragraph 12 (Indemnity) shall survive the expiration or earlier termination of this Agreement with respect to matters.
13. **Attorneys’ Fees.** If any actions or proceeding is instituted by either party to interpret, challenge, enforce, or which relates in any other way to, this Agreement, the prevailing Party is entitled to reasonable attorneys’ fees and costs in addition to any other relief adjudged by the court.
14. **Notices.** Any notices relating to this Agreement are to be given in writing and deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

<p>City:</p> <p>City of Santa Clara Attention: Office of the City Manager 1500 Warburton Avenue Santa Clara, CA 95050 and by e-mail at manager@santaclaraca.gov Copy to: Director of Parks and Recreation</p>	<p>Developer:</p>
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Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

15. **Entire Agreement.** This Agreement, including all its exhibits, which are hereby incorporated herein by this reference, and all documents reference herein, constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, representations,

warranties and understandings of the Parties concerning the subject matter contained herein, written or oral.

16. Amendment. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each Party hereto.
17. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of their respective legal entities. This Agreement may be executed in multiple originals, each of which is deemed to be an original.
18. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute a single binding instrument.

(Signature page follows)

**SIGNATURE PAGE
TO PARK IN-LIEU DEVELOPMENT FEE DEFERRAL AGREEMENT
AND NOTICE OF LIEN WITH POWER OF SALE**

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed on their behalf by their respective duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

JÖVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT DEVELOPER’S NAME**

*choose one: a[n] _____ (insert State) corporation/partnership/individual

Dated: _____

By (Signature): _____
Name: _____
Title: _____
Principal Place of
Business Address: _____
Email Address: _____
Telephone: () _____
Fax: () _____

“DEVELOPER”

- * All signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for signatures is required to be submitted concurrently with this Agreement.

EXHIBIT A

Legal Description of Property

[Insert Legal Description]

APN: [Insert APN]

JPN: [Insert JPN]

EXHIBIT B

[INSERT FEE HERE]

EXHIBIT C

Form Release of Lien

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[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

RELEASE OF LIEN UPON REAL PROPERTY

FOR PAYMENT OF DEVELOPMENT IMPACT FEES

WHEREAS, on _____, _____ (“Developer”) and the City of Santa Clara, a charter city and municipal corporation (“City”), entered into an Park In-Lieu Development Fee Deferral Agreement and Notice of Lien with Power of Sale (“Agreement”), which created a lien to secure deferred payment of park in-lieu fees. This Agreement was recorded as Document No. _____ in the Official Records of the County of Santa Clara, California.

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

NOW, THEREFORE, the City hereby releases all of its right, title, and interest to the lien in the Affected Property consisting of real property described in Exhibit A of the Agreement and reproduced as Exhibit 1, which is attached to and incorporated a part of this Release.

(SIGNATURE PAGE TO FOLLOW)

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

GLEN R. GOOGINS

City Attorney

JÖVAN D. GROGAN

City Manager

City of Santa Clara

1500 Warburton Avenue

Santa Clara, CA 95050

Telephone: (408) 615-2210

Fax: (408) 241-6771

“CITY”