

This document is recorded for the benefit of the City of Pleasanton 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 CLERK
123 Main Street
P.O. Box 520
Pleasanton, CA 94566

**AGREEMENT CREATING A LIEN TO SECURE DEFERRED
PAYMENT OF DEVELOPMENT IMPACT FEES**

ADDRESS: _____, Pleasanton, CA (A.P.N. No. _____)

This Agreement, made and executed this _____ day of _____, 20__, by and between the CITY OF PLEASANTON, a California municipal corporation ("City"), and, _____ a _____ ("Property Owner") to secure the payment of deferred development impact fees that would otherwise be due prior to issuance of a building permit.

RECITALS

- A. Property Owner is the owner of that certain tract of land situated in the City of Pleasanton, County of Alameda, State of California, generally known and described as [Insert address, Pleasanton, California], more fully described in Exhibit A, (the "Property"), which is attached hereto and incorporated herein by this reference.
- B. Property Owner has received approval to develop the Property pursuant to Planning Application Nos. [Insert Planning Application Nos.], subject to conditions of approval including the payment of development impact fees under the Pleasanton Municipal Code ("PMC").
- C. The development on the Property is a "designated residential development project" subject to the requirements of Government Code Section 66007(c) ("the Project").
- D. Property Owner wishes to defer payment of development impact fees associated with the Project, more fully described in Exhibit B. The total amount of development impact fees to be deferred under this Agreement is currently estimated to be \$_____, pursuant to Government Code Section 66007(c) (the "Deferred Fees").
- E. The City desires to allow the fee deferral subject to the execution of a fee deferral agreement authorized by Government Code Section 66007(d).

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.** Payment of the Deferred Fees, as described in Exhibit B, shall be deferred until the date the development is approved for occupancy. The outstanding balance of the Deferred Fees is due and payable to the City on a lump-sum basis when the first dwelling unit in the Project receives its first: (1) certificate of occupancy; or (2) temporary certificate of occupancy, whichever occurs first (the “Fee Deadline”.) Any portion of the Deferred Fees that remains unpaid at the expiration of the Fee Deadline is immediately due and payable. Any unpaid Deferred Fees balance is immediately due and payable upon the sale of the entire property. 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.** The Property Owner 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. **City Lien Primary.** The Property Owner shall submit proof satisfactory to the City that the lien created by this Agreement is not secondary to any existing or future encumbrance.
4. **Release of Lien.** Upon full payment of the Deferred Fees to City and complete satisfaction of all terms of this Agreement by the Property Owner, the City shall promptly release the lien created hereunder by executing a lien release in substantial form as shown in Exhibit C.
5. **Building Permit Issuance.** The Property Owner represents that he or she has obtained or will obtain within sixty (60) days of the effective date of this Agreement, all building permits for the Project. If the Property Owner does not obtain the building permits within the time period required under this Section 5, then the Deferred Fees shall become due and immediately payable.
6. **Escrow.** The Property Owner shall notify the City in writing of the opening of each escrow for the sale of each parcel or dwelling in the Project. If an escrow account is opened for the sale of a parcel or dwelling in the Project, the Property Owner shall provide in those escrow instructions that the portion of the Deferred Fees attributable to the parcel or dwelling shall be paid to the City from the sale proceeds in escrow before sale proceeds are disbursed to the seller.

7. **Default.** If the Property Owner fails to pay any amount owing under this Agreement and such failure is continuing thirty (30) days after the Property Owner's receipt of written notice of such failure from the City, the City may withhold issuance of any certificates of occupancy or temporary certificates of occupancy for the Project. 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. The City may pursue collection through all available legal and administrative means, including but not limited to judicial foreclosure of the recorded lien against the Property and civil judgment against the applicant for breach of this Agreement. The obligation secured by this Agreement includes, in addition to the amount of the Deferred Fees, all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation secured by this Agreement, all to be taxed as costs and included in any judgment rendered.
8. **Assignment.** This Agreement shall not be assigned or otherwise transferred to a person or entity not a party to this Agreement without the express prior written consent of the City. Any person or entity seeking assignment or transfer of this Agreement shall meet all of the terms and conditions of this Agreement. Assignment is not effective until the proposed assignee executes an assignment and assumption agreement, in a form acceptable to the City Attorney, assuming all duties and obligations of the Property Owner under this Agreement. Any assignment or transfer not in strict compliance with this provision shall: (1) be null and void; (2) constitute a material breach of this Agreement; and (3) cause the Deferred Fees to become due and immediately payable at the time of the attempted assignment or transfer.
9. **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 Property Owner for breach of this Agreement and/or the security provided hereunder. The Property Owner shall be responsible for any fees required of the City for the enforcement and collection of the development impact fees, including reasonable attorney's fees.
10. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
11. **Indemnity.** The Property Owner agrees to defend, indemnify and hold harmless the City, its officials, employees and agents for any and all actions, proceedings, damages, claims, costs and attorneys' fees arising out of, or related to, this Agreement, except to the extent arising from the sole negligence or willful misconduct of the City or its officials, employees, or agents.
12. **Applicable Law.** This Agreement is governed by and construed in accordance with the substantive laws of the State of California without regard to its conflict of laws rules. The venue for any legal action pertaining to this Agreement shall be in Alameda County, California.

- To City: Office of the City Clerk
123 Main Street
P.O. Box 520
Pleasanton, CA 94566-0802

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

CITY OF PLEASANTON

PROPERTY OWNER

Gerry Beaudin, City Manager

Name: _____
Title: _____

APPROVED AS TO FORM

Dan Sodergren, City Attorney

Name: _____
Title: _____

ATTEST:

Jocelyn Kwong, City Clerk

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
DEFERRED DEVELOPMENT IMPACT 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 - LIEN RELEASE FORM

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RELEASE OF LIEN UPON REAL PROPERTY

ADDRESS: _____,
PLEASANTON, CA
A.P.N. No. _____

WHEREAS, on _____, _____ (“Grantor”) and the City of Pleasanton (“Grantee”) entered into an Agreement Creating a Lien to Secure Deferred Payment of Development Impact Fees (“Agreement”), which Agreement was recorded as Document No. _____ in the Official Records of the County of Alameda 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 PLEASANTON

Gerry Beaudin, City Manager

Date: _____

APPROVED AS TO FORM

Dan Sodergren, City Attorney

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.

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