

Exempt from recording fees pursuant
to California Government Code
Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

City of Sunnyvale
Community Development Dept.
P. O. Box 3707
Sunnyvale, CA 94088-3707

APN [REDACTED]

**AGREEMENT AFFECTING REAL PROPERTY
AND CREATING A LIEN TO SECURE PAYMENT OF CERTAIN DEFERRED
DEVELOPMENT IMPACT FEES FOR DESIGNATED RESIDENTIAL
DEVELOPMENT PROJECT (SB 937)**

This development impact fee deferral agreement (the “Agreement”) is made and entered into this ____ day of _____, 202__ (“Effective Date”), by and between [INSERT PROPERTY OWNER—THE COMPLETE ENTITY NAME, TYPE OF ENTITY AND STATE OF ORGANIZATION] (“Property Owner”), and the City of Sunnyvale, a California municipal corporation (“City”).

WHEREAS, the Property Owner is the owner of that certain property commonly known as _____ [INSERT FULL ADDRESS/ES AND APN/S], located in the City of Sunnyvale, County of Santa Clara, State of California that is more fully described in Exhibit A, which is attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the Property Owner has received approval to develop the Property pursuant to [INSERT PLANNING PERMIT TYPE(S) AND FILE NUMBER(S)] (the “Project”); and

WHEREAS, the Project is a “designated development project” subject to the requirements of Government Code Section 66007(c); and

WHEREAS, the Property Owner has requested that the City defer specific development impact fees associated with the Project, as specified in Exhibit B, which is attached hereto and incorporated herein by the reference (the “Deferred Fees”); and

WHEREAS, pursuant to Government Code Section 66007(c), the City shall not require the payment of the covered development impact fees until the date the first certificate of occupancy or temporary certificate of occupancy is issued; and

WHEREAS, the City may require earlier payment of the Deferred Fees if such fees are collected for public improvements or facilities for which an account has been established, funds appropriated, and a construction schedule or plan adopted by the City prior to final inspection or issuance of the certificate of occupancy, or if the fees are to reimburse the City for expenditures previously made; and

WHEREAS, pursuant to Government Code Section 66007(c), if development impact fees are not fully paid prior to issuance of a building permit for construction of any portion of the Project, the City may require the Property Owner to execute a contract to secure payment of the deferred fees.

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

1. Deferred Fees and Lien.

(a) The Property Owner acknowledges that it owes the City the sum of [INSERT FEE AMOUNT IN WORDS] Dollars (\$) for the Deferred Fees identified in Exhibit B.

(b) To secure the payment of these Deferred Fees, the Property Owner hereby grants the City a lien on the Property. The lien shall be enforceable against the Property as provided in this Agreement.

2. Payment of Deferred Fees. The Property Owner agrees to pay the Deferred Fees identified in Exhibit B for each residential dwelling unit that constitutes part of the Project on or before the date the certificate of occupancy (or temporary certificate of occupancy) is issued for that specific unit [or building], whichever occurs first. City may withhold a certificate of occupancy (or temporary certificate of occupancy) until payment of the Deferred Fees is received.

3. Maximum Deferral Period. Notwithstanding the provisions of Section 2 above, the maximum deferral period for the Deferred Fees is twenty-four (24) months from the date of the issuance of the Project's first building permit, provided that one of the conditions of Government Code Section 66007(c)(2)(A) applies; or five (5) years from the date of issuance of the Project's first building permit, if construction of the Project does not begin within that time period ("Maximum Deferral Period"). Any portion of the Deferred Fees that remains unpaid at the expiration of the Maximum Deferral Period is immediately due and payable.

4. Lien Created. This Agreement, when recorded, is a lien against the Property that guarantees the payment in full of the Deferred Fees, and the City's cost of enforcement (including foreclosure) and collection, including attorney's fees.

5. 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.

6. Release of Lien. Upon full payment of the Deferred Fees and complete satisfaction of all terms and conditions of this Agreement by the Property Owner, the City will release the lien created hereunder by executing a lien release. If the City receives payment for the portion of the Deferred Fees attributable to a dwelling or structure, and the dwelling or structure is located on a parcel separate from others in the Property, the City will record a release of lien as to the parcel where the dwelling or structure is located.

7. Escrow Notification. 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.

8. Default and Remedies. If the Deferred Fees are not paid when due, the City may seek all available legal and equitable remedies 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 attorney's 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.

9. Voidance of Occupancy Certificate. If the Deferred Fees are not paid when due, the City shall have the right to void the certificate of occupancy for any residential unit or building in the Project until such fees are paid.

10. Successors in Interest; Binding Effect. Each Property Owner who is a party to this Agreement is jointly and severally liable for compliance with its terms. This Agreement binds the Property Owner's heirs, successors, assigns, and any other person claiming under them. 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 11 (Assignment).

11. Assignment. This Agreement may 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. 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 will: (1) be null and void; and (2) constitute a material breach of this Agreement.

12. Waiver. The waiver by any party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. Waiver shall not be deemed effective until and unless signed by the waiving party.

13. Governing Law. This Agreement shall be governed by, construed, and enforced under the laws of the State of California without regard to its conflict of laws rules. Venue for any legal action related to this Agreement shall be exclusively in the Superior Court of Santa Clara County, California.

14. Amendments. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by all parties hereto.

15. Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

16. Notices. All correspondence regarding this Agreement must be directed to the following persons at the following addresses:

CITY:

City of Sunnyvale – Planning Division
465 West Olive Avenue
Sunnyvale, CA 94086
Attn: Planning Officer

PROPERTY OWNER:

[INSERT]

17. Authority. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

18. Counterparts. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

19. Entire Agreement. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

20. Recordation. This Agreement shall be recorded in the office of the county recorder for the County of Santa Clara, in the grantor-grantee index in the name of the City of Sunnyvale as grantee and Property Owner as grantor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

[PROPERTY OWNER SIGNATURES MUST BE NOTARIZED]

“CITY”

“PROPERTY OWNER”

CITY OF SUNNYVALE, a California Municipal
Corporation

[INSERT ENTITY NAME AND TYPE]

[INSERT NAME]

[City Manager or Designee]

Print Name: _____

Title: _____

**[ADD ADDITIONAL SIGNATURE
LINES AS NEEDED, IF MULTIPLE
SIGNATURES REQUIRED FOR
PROPERTY OWNER OR IF THERE ARE
MULTIPLE PROPERTY OWNERS]**

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Legal Description

EXHIBIT B

Fees