

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

This development impact fee deferral agreement (the "Agreement") is entered into as of
XX (the "Effective Date"), by and between XX
(the "Property Owner"), and the City of Millbrae (the "City").

RECITALS

- A. The Property Owner owns and intends to develop that certain real property commonly known as XX and more fully described in Exhibit A, which is attached and incorporated by reference into this Agreement (the "Property"). The development is a residential development project (the "Project"). The Project consists of one parcel.
- B. The City is authorized to levy development impact fees to offset the impacts of development on the local system of infrastructure such as roads, water facilities, wastewater facilities and community facilities.
- C. The Property Owner has requested a deferral of the payment of certain development impact fees for the Property from the time of issuance of a building permit to a later time.
- D. The City desires to allow the fee deferral subject to the execution of a fee deferral agreement authorized by Millbrae Municipal Code Section 10.05.3135 and Government Code Section 66007(d).
- E. The total amount of development impact fees to be deferred under this Agreement is currently estimated to be \$ XX, plus any Annual Fee Adjustments, pursuant to Government Code Sections 65589.5(o)(2)(A) and 66007(c) (the "Deferred Fees").

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Property Owner and the City agree as follows:

1. **Deferred Fees.** The development fees for the Property that are to be deferred pursuant to this Agreement are defined and detailed in Recital E.
2. **Payment of Deferred Fees.** The Property Owner agrees to pay to the City the Deferred Fees, plus any Annual Fee Adjustments, per Section 9 (Fee Calculated at Time of Payment). In the event the Property Owner elects not to pay the Deferred Fees upon issuance of the building permit, the Deferred Fees are due and payable upon the earliest of the following: (1) the date of the final inspection for the dwelling; or (2) when a certificate of occupancy is issued for the dwelling (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.
3. **Maximum Deferral Period.** The provisions of Section 2 notwithstanding, the maximum deferral period for the Deferred Fees is twenty-four (24) months from the date of issuance of the Project's first building permit (the "Maximum Deferral Period"), provided that one of the conditions of Government Code Section 66007(b) applies to the Project. Any portion of the Deferred Fees that remains unpaid at the expiration of the Maximum Deferral Period is immediately due and payable.
4. **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 timely obtain the building permits, then the Deferred Fees shall become due and immediately payable.
5. **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.
6. **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 attorneys' fees.
7. **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.
8. **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 Project, the City will record a release of lien as to the parcel where the dwelling or structure is located.

9. **Fee Calculated at Time of Payment.** The Property Owner agrees to pay the Deferred Fees as calculated at the time of payment. This calculation will include any additional monies owed per the Annual Fee Adjustment for development impact fees under the City's Service and Fee Schedule.
10. **Interest.** No interest will be assessed on the Deferred Fees during the Maximum Deferral Period, as applicable to the Project and subject to the limitations of Government Code Section 66007 ("Applicable Deferral Period"). If the entire amount of the Deferred Fees has not been paid at the expiration of the Applicable Deferral Period, the unpaid Deferred Fees balance shall be immediately due and payable and shall incur interest at the rate set forth in Code of Civil Procedure Section 685.010 from the date of the expiration of the Applicable Deferral Period.
11. **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 decline to certify a final inspection and/or withhold issuance of any 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 and any Interest Payment due, 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.
12. **Successors in Interest.** 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 13 (Assignment).
13. **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. Any person or entity seeking assignment or transfer of this Agreement shall meet all of the terms and conditions of this Agreement and Millbrae Municipal Code Section 10.05.3135. 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; (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.
14. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

15. **Applicable Law; Venue.** 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 San Mateo County, California.
16. **Waiver.** If either City or Property Owner at any time or times waives any breach of this Agreement by the other, such waiver will not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver is not effective until and unless signed by the waiving party.
17. **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 and remains valid and fully enforceable.
18. **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.
19. **Notices.** All correspondence regarding this Agreement must be directed to the following persons at the following addresses:

CITY:

Andrew Mogensen
Community Development Director
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

PROPERTY OWNER: XX

20. **Entire Agreement.** This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded. This Agreement may not be modified except by written mutual agreement signed by the parties.

CITY OF MILLBRAE

By: _____

Name: _____

Title: _____

PROPERTY OWNER

By: _____

Name: _____

PROPERTY OWNER SIGNATURES MUST BE NOTARIZED