

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Marcos
ATTN: City Clerk
1 Civic Center Drive
San Marcos, CA 92069-2949

Recorded Without Fee Per GC §27383

A.P.N. _____

**REAL PROPERTY SECURITY AND LIEN AGREEMENT
FOR DEFERRED PUBLIC FACILITIES FEES**

This REAL PROPERTY SECURITY AND LIEN AGREEMENT FOR DEFERRED PUBLIC FACILITIES FEES ("Lien Agreement") is entered into this ____ day of _____, 20__ by and between the CITY OF SAN MARCOS, a chartered municipal corporation ("City") and _____, a _____, ("Owner"), collectively referenced herein as "the Parties."

WHEREAS, Owner has received the necessary land use entitlements from City and is developing that certain real property described in Exhibit A, attached hereto and incorporated by reference ("the Real Property") in accordance with such entitlements ("the Project"); and

WHEREAS, pursuant to Ordinance No. 90-856, further implemented by Ordinance No. 2003-1203 and Resolutions No. 2003-6217, 2007-6840 and 2008-7007, City has adopted development impact fees that are required to be paid in connection with development and/or redevelopment of real property within its jurisdictional boundaries, which are collectively identified and classified as Public Facilities Fees ("PFF"); and

WHEREAS, all PFF for development projects were previously required to be paid in full at time of building permit issuance, until the City Council adopted Ordinance Number 2014-1389 on February 25, 2014, which modified Chapter 17.44 of the San Marcos Municipal Code to allow developers to defer the payment of PFF to the point at which City's Building Division conducts utility inspection for projects ("PFF Deferral Program"), and which PFF Deferral Program further provides that electrical services for participating projects and properties will not be released until any and all such deferred PFF amounts are paid in full; and

WHEREAS, Owner wishes to participate in the PFF Deferral Program to defer all or a portion of the PFF associated with development of the Real Property and the Project, as described below, and agrees to the amounts and provisions set forth herein for that purpose; and

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WHEREAS, the PFF Deferral Program requires Owner to enter into a lien agreement to be recorded against the Real Property to secure its obligation to pay the Project's deferred PFF against such Real Property; and

WHEREAS, Owner understands and acknowledges that, to participate in the PFF Deferral Program, the PFF for the Project and the Real Property are calculated as of the date that Owner requests a utility inspection for the Project by City's Building Division, and that the total deferred PFF for the Project that are secured by the Real Property may therefore be in excess of the base amount specified herein.

NOW, THEREFORE, the Parties agree as follows:

1. RECITALS. The aforesaid Recitals are true and correct and are incorporated as if set forth at this point.
2. PFF FEES DEFERRED, ESTIMATED AMOUNTS. The deferred PFF and estimated amounts (collectively, "Deferred PFF Amount") for the Project, agreed upon by Owner, are listed below.

- a) \$ _____
- b)
- c)
- d)
- e)

TOTAL:

3. RECORDATION. A fully executed, notarized duplicate original of this Lien Agreement shall be recorded against any and all parcels of real property described herein.
4. PAYMENT OF DEFERRED AMOUNT. Upon Owner's request to City's Building Division that the first utility inspection be conducted, the then-current PFF amount will be calculated to arrive at an adjusted total Deferred PFF Amount. Prior to the release of electrical services for the Project and/or Real Property, Owner will submit payment of the total adjusted Deferred PFF Amount to City, and said payment must have cleared the applicable financial institution for deposit into the City's account.
5. RELEASE OF ELECTRICAL SERVICES, LIEN. This Lien Agreement shall not terminate until Owner satisfies its obligation under the PFF Deferral Program and the total adjusted Deferred PFF Amount as described herein has cleared the applicable financial institution and has been deposited into City's account. City will thereafter promptly release the electrical services for the Project and Real Property. Additionally, after Owner's obligations hereunder have been satisfied as described above, City will cause a release and satisfaction of this Lien Agreement to be recorded with the Office of the County Recorder of San Diego County.

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6. DEFAULT/REMEDIES. Any breach of this Lien Agreement, including, but not limited to, Owner's failure to timely make payment due hereunder or timely perform any obligation or duty owing under this Lien Agreement, shall constitute a default. Owner shall not be entitled to notice of default. Upon default, Owner shall individually and collectively have no further right or entitlement to continue development of and/or construction activities on the Property and/or Real Property, and Owner's activities in that regard shall be fully and completely discontinued. No further permits, approvals, inspections and/or other City action will occur and/or be issued for the Project until the adjusted Deferred PFF Amount plus accrued interest and penalties are paid in full and such payment has cleared the applicable financial institution for deposit into the City's account. On the occurrence of default, and at any time after such default, City may without notice declare all obligations secured by this Lien Agreement immediately due and payable. Owner waives any right to contest City's action in foreclosure against the secured Real Property and hereby consents to such a foreclosure action. In the event of Owner's failure to timely comply with the terms of this Lien Agreement, addition to the immediate cessation of development and construction activities on the Project and/or Real Property, interest shall immediately begin to accrue on the remaining due and payable adjusted Deferred PFF Amount at the maximum legal rate and shall compound monthly as a penalty, with payments being applied first to interest, until the adjusted Deferred PFF Amount, interest and penalties accrued pursuant to this Section 5 are paid in full and such payment has cleared the applicable financial institution for deposit into the City's account. The remedies provided for herein shall be cumulative and non-exclusive, and shall be in addition to any and all other remedies available to City. Owner agrees that City does not waive any of its rights and remedies, and that the same are cumulative.
7. LIEN AGAINST PROPERTY, COSTS OF ENFORCEMENT. Upon Owner's default of the terms of this Lien Agreement, or Owner's abandonment of the Project prior to requesting the first utility inspection by City, City shall have the right to undertake any action necessary, including litigation, to secure compliance with the terms and conditions hereof. Any cost, expense or fee related to said action of enforcement shall be included with the unpaid portion of any principal amounts owed to City by Owner pursuant to the terms of this Lien Agreement, and any interest and penalties accrued thereon, shall collectively constitute an obligation running with the Property, and shall be reimbursed to City by Owner. Until such reimbursement is made in full and such payment has cleared the applicable financial institution for deposit into the City's account, such amount(s) shall constitute a lien against the Property. City's rights under this Lien Agreement are cumulative in nature, and City shall have the right, at its option, to pursue any other remedy available at law for the recovery of any such cost, expense or fee, as well as the unpaid principal and interest amount owed to City.
8. ABANDONMENT. In the event Owner voluntarily abandons the Project prior to the expiration of the term hereof, and prior to the payment of the Deferred PFF Amount, the obligation of Owner to satisfy the terms of this Lien Amended Agreement shall remain an obligation of the Real Property and the Project.

9. ASSIGNMENT. Owner shall not assign any or all of the rights hereunder without first obtaining the written consent of City. Owner shall not convey any right, title or interest in or to the Real Property and/or the Project without disclosing the duties and obligations hereunder and making such conveyance subject to the assumption of said duties and obligations by any person acquiring such right, title or interest.
10. BINDING ON SUCCESSORS. Notwithstanding the transfer restrictions of Section 8, above, this Lien Agreement is intended to create binding covenants and obligations that benefit and run with the Real Property and/or the Project, and shall bind successor owners, transferees, assignees and/or lessees of the Real Property and/or the Project.
11. ATTORNEYS' FEES/COSTS. In the event any Party hereto commences legal proceedings against the other Party to enforce the terms hereof or to declare rights hereunder, the prevailing Party shall be entitled to recover its costs of suit, including reasonable attorneys' fees and witness fees.
12. INDEMNIFICATION. To the fullest extent permitted by law, Owner shall defend and hold City and its agents and employees ("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 Lien 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 Owner or its contractors, subcontractors, agents, employees or other persons acting on Owner's behalf which relate to the Project and/or the Real Property. Owner 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, Owner shall not be obligated to indemnify and hold the Indemnified Parties harmless from liability from damages, liability and/or claims arising from the active negligence or willful misconduct of Indemnified Parties or their agents and employees. This indemnification shall not terminate upon expiration or earlier termination of this Lien Agreement, but shall survive any and all applicable statutes of repose.
13. INTERPRETATION. Owner acknowledges and agrees that it has been given the opportunity to independently review this Lien Agreement with legal counsel, and/or that it has requisite experience and sophistication to understand, interpret and agree to the language herein. In the event of an ambiguity in or dispute regarding the interpretation of this Lien Agreement, it shall be interpreted as though both Parties participated equally in its drafting.
14. HEADINGS. The headings in this Lien Agreement are for convenience only and do not define or limit the scope or interpretation of this document.

15. COUNTERPARTS. This Lien Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement.
16. ENTIRE AGREEMENT. This document contains the entire agreement between the parties with respect to the subject matter hereof, and it supersedes all prior or contemporaneous agreements in connection with the subject matter. No amendment or modification of this Lien Agreement shall be binding unless executed in writing by the Parties hereto.
17. GOVERNING LAW. This Lien Agreement shall be interpreted in accordance with the laws of the State of California, and each Party consents to the non-exclusive jurisdiction of the appropriate state and federal courts with jurisdiction over matters arising in San Marcos.
18. AUTHORITY. The undersigned individuals executing this Lien Agreement represent and warrant that they are authorized to enter into and execute the same on behalf of such Parties, the appropriate corporate resolutions or other consents have been passed and/or obtained, and that this Agreement shall be binding on the Party on whose behalf they execute this document.

This Lien Agreement is entered into and effective as of the date first set forth above.

CITY:

The CITY OF SAN MARCOS, a chartered
municipal corporation

OWNER:

_____,
a _____

By: _____
Michelle Bender, City Manager

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Phillip Scollick, City Clerk

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Helen Holmes Peak, City Attorney

[THE SIGNATURE(S) OF PERSONS SIGNING AS OWNER MUST BE NOTARIZED,
AND THE PROPERTY OWNER MUST ALSO SIGN IF SEPARATE FROM THE DEVELOPER]

Document # _____

ATTACHEMENT "A"

PROPERTY DESCRIPTION
