

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of San Luis Obispo
Community Development Department
919 Palm Street
San Luis Obispo, CA 93401-3249
Attn: Community Development Director

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

The undersigned declare that there is no documentary
transfer tax on this matter.

IMPACT FEE DEFERRAL AGREEMENT

(Affordable Housing Impact Fee Deferral Program)

This IMPACT FEE DEFERRAL AGREEMENT ("**Agreement**") is made and entered into on this _____ day of _____, 20__, by and between the City of San Luis Obispo, a California charter city and municipal corporation (the "**City**"), and [*enter Owner's name and entity type*] (the "**Owner**"), collectively referred to as the "**Parties**."

RECITALS

A. Owner is the owner of certain real property located at [*enter street address*] in the City, which is more particularly described in attached Exhibit A incorporated herein by this reference (the "**Property**").

B. On [*enter date*], the City [*enter City approval body*] adopted [*enter entitlement name and number*] (the "**Project Approvals**") to approve Owner's construction of [*enter number of units*] residential units on the Property (the "**Project**").

C. The City collects development impact fees in accordance with Chapter 4.56 of the San Luis Obispo Municipal Code and pursuant to the Comprehensive Fee Schedule established by the City.

D. The Project is eligible for deferral of impact fees under Section 4.56.050 of the San Luis Obispo Municipal Code and the City's Development Impact Fee Deferral Program Guidelines because [*basis for eligibility; units in excess of Inclusionary Housing Ordinance req, 100% affordable and developed by nonprofit*]

E. On [date], the City approved Owner's Application for Development Impact Fee Deferral Program as to the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree and acknowledge that the above recitals are true and accurate, and are incorporated into this Agreement by this reference, and the Parties mutually acknowledge and agree as follows:

1. Owner is electing to participate in the Impact Fee Deferral Program.
2. The City has agreed to issue a loan to Owner in the form of deferred payment of certain development impact fees associated with the Project.
3. Owner shall execute a Promissory Note, secured by a Deed of Trust, prior to the City's issuance of certificate(s) of occupancy for the Project. The Promissory Note and Deed of Trust shall be recorded against the Property to secure repayment of the loan.
4. An estimated breakdown of the development impact fees to be deferred (the "loan amount") is found in **Exhibit A**. The actual loan amount will be calculated according to the fee schedule in effect at the time of execution of the Promissory Note.

ENFORCEMENT

Default. Failure of the Owner to satisfy any of Owner's obligations under the terms of this Agreement, including without limitation execution of a Promissory Note and Deed of Trust as discussed herein, within ninety (90) days after the delivery of a notice of default from the City will constitute a default under this Agreement ("**Default**"), and the loan amount shall immediately be due and payable. In addition, the City may exercise any and all remedies available to it under the Municipal Code or other any other provision of law or equity, including but not limited to:

withholding, conditioning, suspending or revoking any approvals for the Project, including without limitation final inspections for occupancy and/or the issuance of any certificates of occupancy;

instituting against the Owner, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

where one or more persons have received financial benefit as a result of violation of this Agreement, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received.

Protest. Owner acknowledges and agrees that the Project Approvals referenced in the Recitals, which are incorporated herein, provided adequate and proper notice pursuant to Government Code Section 66020 of Owner's right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Agreement, that no protest in compliance with Section 66020 was made within ninety (90) days of the date that notice was given, and that the period has expired in which Owner may protest any and all fees, dedications, reservations, and other exactions as may be included in this Agreement.

Attorney's Fees and Costs. If either Party takes or commences any actions or proceedings, including litigation or arbitration, against the other by reason of any breach or claimed breach of any provision of, or in any way connected with, this Agreement, or seeks a judicial declaration of rights under this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party the prevailing Party's reasonable attorney's fees and costs, including, but not limited to, all expert witness fees, other witness fees and associated expenses, whether or not the proceeding or action proceeds to judgment.

GENERAL PROVISIONS

Appointment of Other Agencies. At its sole discretion, the City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the City's obligations under this Agreement.

Records. The Owner shall retain all records related to compliance with obligations under this Agreement for a period not less than five (5) years from the date of origination of such records, and make them available to City employees or others designated by the City for inspection and copying on five (5) business days' written notice. The City shall be entitled to monitor compliance with this Agreement, and the Owner shall cooperate with City monitoring, including obtaining Eligible Household verification upon request of the City.

Compliance With Law. The Owner shall keep itself informed of and shall observe and comply with all applicable State and Federal laws and regulations, and county and City of San Luis Obispo ordinances, regulations and adopted codes, which in any manner affect this Agreement, including, without limitation, and as applicable, state prevailing wage laws pursuant to Labor Code sections 1720, *et seq.*, and building regulations or standards applicable to public housing, as that term is defined in the respective regulation(s) and/or standard(s). The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Owner to comply with this Section.

Hold Harmless. Owner will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "**Indemnitees**"), and any of them, from and against all loss, all risk of loss and all damage (including expense and attorney's fees) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Affordable Units, or Owner's performance or

non-performance under this Agreement, including but not limited to claims pursuant to California Labor Code Section 1720 et seq., and to any building regulations or standards applicable to public housing, as that term is defined in the respective regulation(s) and/or standard(s) and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the proven gross negligence or willful misconduct of the City. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section shall remain in full force and effect.

Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the addressed set forth below:

TO THE CITY:

City of San Luis Obispo
Community Development Department
919 Palm Street
San Luis Obispo, CA 93401-3249
Attn: Community Development Director

WITH COPY TO:

City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401
Attn: City Attorney

TO THE OWNER [*enter in Owner's Information; insert more lines as necessary*]:

Attn: _____

Any notice shall be deemed delivered on the first business day that delivery is attempted or upon receipt, whichever is sooner. As used herein, "business day" means any day other than a Saturday, Sunday, or any state or federal holiday on which financial institutions in San Luis Obispo County are authorized or required to close for observance thereof. Any Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above.

Integrated Agreement. This Agreement sets forth the full and entire understanding of the Parties regarding the matter set forth herein. Any other prior or existing understandings or agreements by the Parties, whether formal or informal, regarding any matters addressed within this Agreement are hereby superseded or terminated in their entirety.

Each Party's Role in Drafting the Agreement. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Amendment of Agreement. No changes, amendments, or alterations to this Agreement shall be effective unless in writing and signed by all Parties hereto. Major amendments to this Agreement, shall be subject to the review and approval of the decision-making body which approved the Project. Minor amendments to this Agreement may be approved by the Director. Upon approval, a new Agreement containing the amendments shall be executed and recorded.

Applicable Law. This Agreement shall be governed by California law. Venue shall be the County of San Luis Obispo.

Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Title of Parts and Sections. Any titles of the sections, subsections, or subparagraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Recording of Agreement. This Agreement shall be recorded against the Property in the Official Records of the County of San Luis Obispo.

Binding on Successors. Should Owner transfer any or all of its obligations under the Promissory Note, to be executed by Owner for the loan contemplated by this Agreement, to the extent permitted by and in compliance with the terms of the Deed of Trust which secures said Note, this Agreement shall be binding upon any such successor, assignee, or transferee.

Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless be and remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

OWNER:

_____, a _____

By: _____

Its: _____

CITY:

City of San Luis Obispo, a California charter city and municipal corporation

By: _____

Timothea (Timmi) Tway, Community Development Director

APPROVED AS TO FORM AND LEGAL EFFECT:

By: _____

J. Christine Dietrick, City Attorney

EXHIBIT A