

**AGREEMENT FOR THE DEFERRAL OF
DEVELOPMENT FEES AFFECTING REAL PROPERTY**

OWNER:

ADDRESS:

APN:

PROJECT:

1. PARTIES. This Agreement is entered into on _____, by and between the CITY OF MANTECA, a municipal corporation ("CITY"), and _____, a _____ ("OWNER").

2. PURPOSE. The Manteca Municipal Code requires OWNER to pay certain development fees at the time of issuance of a building permit or pursuant to a deferral agreement. The purpose of this Agreement is to set forth the terms and conditions under which CITY agrees to defer the collection of certain development fees pursuant to the Administrative Guidelines for Development Fee Deferral Program as adopted and amended by the City Council and in effect as of the date of execution of this Agreement (the "Guidelines"), and OWNER agrees to pay the development fees as provided in this Agreement.

3. TERMS AND CONDITIONS.

a. OWNER has submitted an application (the "Application"), dated _____, 20__, a copy is attached as Exhibit A and incorporated herein by this reference, and CITY has approved the Application, in whole or in part, as provided in the Guidelines. The Application describes, among other things, the project consisting of _____ to be constructed at _____ (the "Project").

b. The Project is located within the City of Manteca, County of San Joaquin, State of California, and the land on which the Project will be developed is more particularly described in Exhibit B attached and incorporated herein by this reference (the "Property").

c. OWNER'S obligation to pay the Applicable Fees, as defined in Section 5 of this Agreement, shall be secured by a deed of trust (the "Deed of Trust") substantially in the form set forth in Exhibit C attached hereto.

d. The Deed of Trust shall be recorded in the Official Records of the County of San Joaquin prior to issuance of the building permit.

e. CITY shall have received a title policy (the "Title Policy") in an amount equal to OWNER'S obligation to pay the Applicable Fees, as defined in Section 5 of this Agreement, insuring the Deed of Trust as an encumbrance on the Property, subject only to matters acceptable to CITY. The Title Policy shall be in form and substance acceptable to the Authorized Officer as defined in the Guidelines (the "Authorized Officer").

f. The OWNER shall submit proof satisfactory to CITY that the deed of trust is not secondary to any existing encumbrance or the Authorized Officer may agree that the Deed of Trust shall be subordinate and junior to an existing or future lien securing construction or permanent financing for the Project provided that: (i) the Authorized Officer has determined that the subordinate Deed of Trust and any other collateral for or guaranty of the OWNER'S obligations provide adequate security and adequate assurance of repayment; (ii) the holder of the senior lien executes and acknowledges a subordination agreement in recordable form which includes reasonable provisions enabling the CITY to protect its security in the event of a default under the senior lien, including the right to receive notices of default under the senior loan documents from the senior lender and a reasonable opportunity to cure the default; and (iii) the subordination agreement is recorded against the Property.

4. WARRANTY. All of the declarations and warranties of Owner made in the Application are incorporated in this Agreement as if fully set forth herein.

5. APPLICABLE FEES. The development fees eligible for deferral pursuant to this Agreement are set forth in the Manteca Municipal Code. The amounts of each of development fee and the total amount to be deferred pursuant to this Agreement (such total amount of fees being deferred is the "Applicable Fees") are as stated in Exhibit D attached and incorporated by this reference.

6. INTEREST AND COLLECTION OF FEES. Beginning on the date of execution of this Agreement and continuing during the period of deferral, interest shall accrue on the unpaid balance of the Applicable Fees and shall be equal to the 11th District Cost of Funds, plus one percent. On the date of execution of this Agreement, that rate is _____. The interest rate shall be adjusted to reflect the then current 11th District Cost of Funds, plus one percent, upon the due date of each annual payment of deferred development fees. Should CITY incur any costs in

collection of any amount under this Agreement, CITY may recover such costs from Owner or any successor in interest.

7. DOCUMENT PREPARATION. All document preparation and recording fees, if any, shall be paid by OWNER prior to issuance of any building permit for the Project.

8. BUILDING PERMIT. Upon CITY'S determination that OWNER has executed the documents required by this Agreement and made all payments due prior to issuance of a building permit for the Project, then CITY may issue building permits for the Project, provided that the permit applicant has complied with all other requirements for issuance. Nothing in this Agreement shall waive any requirement of the Manteca Municipal Code.

9. TIME FOR PAYMENT. OWNER agrees to pay the total amount of Applicable Fees and accrued interest to CITY as follows:

a. At the time of issuance of the first building permit, OWNER shall pay an amount equal to no less than ten percent (10%) of the total amount of the Applicable Fees.

b. The remainder of the Applicable Fees shall be repaid in five **[ten]** annual installments comprised of equal annual payments of the principal amount of the Applicable Fees plus the accrued interest for each interest payment period.

c. OWNER may elect a shorter period within which to repay the fees. If such election is made, the same shall be reflected in an addendum to this Agreement that is executed by both parties.

10. TRANSFERS OF THE PROPERTY OR PROJECT. Upon the sale, transfer, conveyance or further encumbrance by OWNER of any portion of or interest in the Property or Project (including (i) a beneficial interest and (ii) the granting by OWNER in a purchase agreement of rights to purchase to any third party) or upon a change in direct or indirect majority ownership of Owner or a Change in Control of OWNER, as defined in the Guidelines, the obligations secured hereby shall become due and payable at the election of CITY without prior notice to OWNER.

11. CITY'S REMEDIES FOR BREACH. In the event of a violation of any of OWNER'S obligations set forth herein, CITY shall be entitled to all remedies at law or equity that may be available to it.

12. CAPTIONS. The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or intent.

13. SEVERABILITY. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

14. ATTORNEY'S FEES. If either party commences litigation under or with respect to this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees and costs incurred in the prosecution or defense of the action.

15. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the subject matter of this Agreement, all prior or contemporaneous agreements, understandings, representations and statements, oral or written, concerning the subject matter of this Agreement are merged into this Agreement and shall be of no further force or effect. This Agreement may be amended only by written instrument signed by CITY and OWNER.

16. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of California.

17. ASSIGNMENT PROHIBITED; SUCCESSORS IN INTEREST. The rights, duties, and obligations of this Agreement shall not be assigned or delegated by OWNER without the prior written consent of CITY, in its sole discretion. Any assignment to which CITY has not consented shall be null and void and shall never take effect. Nevertheless, upon any such attempted assignment, all fees that have been deferred shall become immediately due and payable. Except as expressly provided in this Section 17, this Agreement shall inure to the benefit of and bind all successors in interest.

18. INDEMNIFICATION OF CITY. OWNER shall defend, indemnify, assume all responsibility for and hold CITY and its elected and appointed officers and employees, harmless from all costs (including attorneys' fees and costs), claims, demands, liabilities, and judgments for injury or damage to property and injuries to persons, including death, which may be caused by any of OWNER'S activities pursuant to the Project approvals, this Agreement or on the Property, whether such activities or performance thereof are by OWNER or anyone directly or indirectly employed or contracted with by OWNER and whether such damage shall accrue or be discovered before or after termination of this Agreement. This indemnity includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in the Comprehensive Environmental Response, Compensation and Liability Act ["CERCLA"; 42 U.S.C. Section 9601, et seq.], the Resource Conservation and Recovery Act ["RCRA"; 42 U.S.C. Section 6901 et seq.] and California Health and Safety Code Section Code Section 25280 et seq. at any place where OWNER owns or has control of real property pursuant to any of OWNER'S activities under this Agreement or with respect to the Project. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA and California Health and Safety Code Section 25364 to assure, protect, hold harmless and indemnify CITY from liability.

19. GENERAL.

a. The person executing this Agreement on behalf of OWNER warrants and represents to CITY that this Agreement has been duly approved by OWNER and that all applicable notices and procedures were complied with and that he or she is duly authorized by OWNER to execute this Agreement on behalf of OWNER.

b. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts and legal research such party deems material. Each party warrants and represents to the other that it has had the opportunity to review this Agreement with legal counsel and financial consultants and to receive the advice of legal counsel and financial consultants prior to its approval and execution of the Agreement.

c. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Any rule of law (including, without limitation, California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is hereby waived.

d. Time is of the essence of each provision of this Agreement of which time of performance is a factor.

e. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by a notice given pursuant to this Section. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To CITY: City of Manteca
Mailing Address: 1001 West Center Street
Manteca, California 95337
Attention: City Manager

To OWNER:

f. Except with regard to breaches of an obligation to make a payment of Applicable Fees, neither party may commence litigation under or with respect to this Agreement until such time as a notice of breach has been properly served on the other party and the party fails to cure the breach within thirty (30) days after the date the notice is given.

g. The failure of either party to insist in any one or more instances upon the strict performance of any of the terms, provisions or obligations of this Agreement, or to exercise any election or option under the Agreement, shall not be construed as a waiver or relinquishment for the future of such term, provision, obligation, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any term, provision or obligation

of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF MANTECA,
a municipal corporation**

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNER

_____.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____