

*Note: This is a sample agreement. This form may be modified from time to time and will be changed as necessary to meet the facts and circumstances of an individual development. This example applies only to residential development.*

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TUCSON  
AND \_\_\_\_\_, PROVIDING FOR DEFERRAL  
OF DEVELOPMENT IMPACT FEES**

**THIS DEVELOPMENT AGREEMENT (“Agreement”)** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the CITY OF TUCSON, an Arizona Municipal Corporation (the “City”) and \_\_\_\_\_, hereinafter referred to as “Property Owner.”

**RECITALS**

The following recitals are incorporated by reference into and constitute an integral part of this Agreement.

**A. WHEREAS**, the Property Owner owns property located in Tucson, AZ, as more fully described in **Exhibit(s)** “\_\_\_\_”, attached hereto and made a part hereof and hereinafter referred to as “Property”, whereupon Property Owner intends to develop the Property by erecting or remodeling thereon certain residential improvements (“Property Owner Improvements”).

**B. WHEREAS**, the Property Owner owes development fees to the City of Tucson for the development of the Property, as more fully described in **Exhibit** “\_\_\_\_,” attached hereto and made a part hereof, such fees ordinarily due and payable at time of permit for the development of such improvements.

**C. WHEREAS**, it is the interest of the City of Tucson to support affordable housing through developer contributions to the City of Tucson Affordable Housing Trust Fund.

**D. WHEREAS**, this Agreement is entered into by authority of A.R.S. § 9-500.5, the City finding that the consideration and commitments herein from and to the Property Owner and the City are justified based on other consideration provided hereby, including without limitation the economic benefits to the community resulting from this Agreement.

**E. WHEREAS**, A.R.S. § 9-463.05(B)(3) provides that development impact fees associated with the construction of residential dwelling units may be deferred as specified in a development agreement executed pursuant to A.R.S. § 9-500.05, so long as the deferred fees shall be paid no later than fifteen (15) days after the issuance of a certificate of occupancy and so long as the value of the fees is supported by appropriate security.

**F. WHEREAS**, on or about March 10, 2009, the Mayor and Council of the City of Tucson directed City staff to develop a policy under which development impact fees for Public Facilities, Transportation and Parks may be deferred through the approval of development agreements that result in a public benefit through the developers' contribution of funds to the City of Tucson Affordable Housing Trust Fund; and under which the deferral period for residential development shall not extend beyond the time of closing or ten (10) months, whichever is less.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations contained herein, the City and Property Owner agree to proceed under the following terms and conditions:

### **1. PROPERTY OWNER OBLIGATIONS**

1.1 Contribution to Affordable Housing Trust Fund. On or before the date that Property Owner secures, and the City issues, permits for the construction of a residential dwelling unit within the Property, Property Owner shall make a contribution to the City of Tucson Affordable Housing Trust fund in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for each residential dwelling unit for which Property Owner requests the deferral of development impact fees as described in Sections 1.3 and 2.1, below.

1.2 Security. Payment of development impact fees that shall be deferred as provided in Sections 1.3 and 2.1 of this Agreement shall be supported by appropriate security, pursuant to A.R.S. § 9-463.05(B)(3). Within ten (10) days of the execution of this Agreement, Property Owner shall provide to the City security to ensure payment of the deferred fees. The security shall be in the form of a letter of credit, cash deposit, certificate of deposit, surety bond or other security acceptable to the City. Subdivision trust assurances may be accepted by the City if the land is held in trust by an escrow or title insurance company in the business of serving as trustee of land trusts and where the terms of the trust prohibit conveyance of the land by the trustee until the development impact fees are paid. Property Owner's failure to provide acceptable security as required shall result in the immediate termination of any and all of the City's obligations under this Agreement.

1.3 Payment of Deferred Development Impact Fees. Property Owner shall pay in full any and all development impact fees for the Property that are deferred pursuant to Section 2.1, below and as more fully described in **Exhibit "\_\_\_\_,"** attached hereto on or before the occurrence of any of the following, whichever occurs first;

- a) within 15 days of the issuance of a 'Certificate of Completion' or 'Certificate of Occupancy' for a residential dwelling unit; or
- b) within ten (10) months of the issuance of a building permit for construction of a structure; or

c) prior to the time that a residential lot as reflected in the Subdivision Plat with a house constructed thereon shall have closed escrow with a third party homebuyer.

1.4 Property Owner shall be responsible for payment of any filing fees associated with the recording of this document with the Pima County Recorder.

1.5 Property Owner shall pay all development impact fees other than those specified in Section 2.1, below, at the time and in the manner as provided under Chapter 23A (Development Compliance Code) of the Tucson Code.

## **2. OBLIGATIONS OF THE CITY**

2.1 The City agrees to defer collection of Property Owner's road, park, and public facilities development impact fees, for development within the Property, as set forth in Section 1.3 above, subject to Property Owner's satisfaction of all of the terms and conditions set forth in Sections 1.1 through 1.5, above. The only development impact fees eligible for deferral under this Agreement are the City's road, park, and public facilities development impact fees.

## **3. DEFAULT**

3.1 A party shall be in default under this Agreement if it fails to perform, in material respect, any covenants made by it or obligations assumed by it under this Agreement, which failure adversely affects the other party's interest under this Agreement, and in such an event, each party shall be entitled to all available legal and equitable remedies, including, but not limited to, the right of specific performance, including all costs of enforcement of this Agreement, with reasonable attorneys' fees paid to the prevailing party. No permit for any project or development will be issued by City of Tucson to Property Owner during any period of default hereunder.

## **4. MISCELLANEOUS PROVISIONS**

4.1 This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all offers, negotiations and other agreements of any kind. This Agreement may be amended only in writing and signed by both parties. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party, without the prior written consent of the other party. Such consent may not be unreasonably withheld or delayed. This Agreement is not intended to confer any rights or benefits to

any individual or entity other than to the City and to Property Owner, nor shall anything contained herein create any partnership, joint venture or similar arrangement between the Property Owner and the City.

4.2 This Agreement is and shall constitute a contract under and is to be construed in accordance with the laws of the State of Arizona.

4.3 This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.

4.4 All notices required to be given under this Agreement shall be deemed given upon the earlier of actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows:

If to City:

City Manager  
255 W. Alameda  
P.O. Box 27210  
Tucson, AZ 85726-7210

With a copy to:

Mike Rankin  
City Attorney  
255 W. Alameda  
P.O. Box 27210  
Tucson, AZ 85726-7210

If to Property Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.5 This Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Agreement.

4.6 Time is of the essence and a material provision of this Agreement.

4.7 Tax Consequences. City makes no representation concerning the tax consequences or liability resulting from this Agreement. The parties have each had an opportunity to consult with legal counsel concerning the terms and effects of this

Agreement and either party's failure to do so is at its own choosing.

4.8 This Agreement is subject to the provisions of A.R.S. § 38-511, relating to conflicts of interest.

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

CITY OF TUCSON,  
An Arizona Municipal Corporation

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Print Name)  
Its: \_\_\_\_\_  
(Title of person signing)

Dated: \_\_\_\_\_