

**Recording Requested By
and When Recorded Mail To:**

Western Riverside Council of Governments
Riverside County Administrative Center
4080 Lemon Street, Third Floor
Riverside, California 92501-3609

EXEMPT FROM RECORDING FEE PER GOVT. CODE § 27383

TRANSPORTATION UNIFORM

MITIGATION FEE DEFERRAL AGREEMENT

(INSERT COMPANY NAME)

Between

WESTERN RIVERSIDE COUNTY OF GOVERNMENTS
a joint powers agency and council of governments

And

[INSERT PROJECT DESCRIPTION]
a California limited partnership

Dated _____, 2009

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

**TRANSPORTATION UNIFORM
MITIGATION FEE DEFERRAL AGREEMENT**

(INSERT COMPANY NAME)

This Transportation Uniform Mitigation Fee Deferral Agreement (“**Agreement**”) is dated as of _____, 2009 for reference purposes only, by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS, a joint powers agency and council of governments, (“**WRCOG**”) and [INSERT PROJECT DESCRIPTION] a California limited partnership (collectively, “**Owner**”). WRCOG and Owner are sometimes referred to herein collectively herein as the “**Parties**”. This Agreement shall not become effective until the date on which this Agreement has been approved by the Executive Committee of WRCOG and executed by the appropriate authorities of WRCOG and Owner (“**Effective Date**”).

RECITALS

A. WRCOG is the Administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County (“**TUMF Program**”). The TUMF Program is funded by TUMF paid by new development in Western Riverside County (collectively, “**TUMF Program Funds**”).

B. WRCOG has identified and designated certain transportation improvement projects throughout Western Riverside County as projects of regional importance (“**Qualifying Projects**”). TUMF Program Funds are held in trust by WRCOG for the purpose of funding the Qualifying Projects. The Qualifying Projects are more specifically described in that certain WRCOG study entitled “TUMF Nexus Study”, as may be amended from time to time.

C. Owner owns certain real property currently located at [INSERT ADDRESS] in the City of [INSERT CITY], County of Riverside (“**Property**”). The Property is legally described in Exhibit “A” attached hereto and incorporated herein by reference. The Property is currently planned to be an [INSERT PROJECT DESCRIPTION] (“**Project**”).

D. As a condition of approval for the Project, Owner is obligated to pay to WRCOG Transportation Uniform Mitigation Fees (“**TUMF**”) prior to obtaining a Certificate of Occupancy for the Project, in order to help finance regional transportation improvements as a way to mitigate transportation impacts of the Project.

E. Owner is to pay the required TUMF in installments over a twenty four (24) month period, at five percent (5%) interest. To secure payment of the outstanding TUMF owed to WRCOG, as further described in this Agreement, Owner agrees to provide the security as required herein.

F. The purpose of this Agreement is to set forth the terms and conditions upon which WRCOG will allow Owner to defer payment of the TUMF in a lump sum amount, and make monthly installment payments in order to fulfill its TUMF obligation.

G. The Parties acknowledge and agree that the obligations created under this Agreement shall run with the land and be binding upon all successors and assigns to the Property, or any part thereof.

THE PARTIES AGREE AS FOLLOWS:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

2. Total TUMF Obligation. As a condition of Project approval, Owner is required to pay TUMF, in a single lump sum payment, in the amount of [INSERT DOLLAR DESCRIPTION] (INSERT DOLLAR

AMOUNT) (“**Original TUMF Obligation**”) prior to obtaining a Certificate of Occupancy for the Project. The Parties have agreed to permit payment of the Original TUMF Obligation in monthly installments, over a twenty four (24) month period, provided that an interest rate of five percent (5%) shall be charged on the entire balance of the Original TUMF Obligation, for a new total TUMF obligation of [INSERT DOLLAR DESCRIPTION] (INSERT DOLLAR AMOUNT) (“**Total TUMF Obligation**”).

3. Monthly Payments. Owner agrees to pay the Total TUMF Obligation in twenty four (24) equal monthly installments in the amount of [INSERT DOLLAR DESCRIPTION] (INSERT DOLLAR AMOUNT) each (“**Monthly Installments**”). The first Monthly Installment shall be due concurrently with execution of this Agreement, and subsequent Monthly Installments shall be remitted to WRCOG no later than the 15th day of each month thereafter until the Total TUMF Obligation has been paid in full. The last Monthly Installment shall be increased or decreased, as necessary, to effect payment in full of all outstanding amounts owing to WRCOG pursuant to this Agreement. A late fee of up to ten percent (10%) may be charged on any Monthly Installment not received by the due date.

4. Personal Obligation; Obligation Runs with the Land. The Parties acknowledge and agree that payment of the Total TUMF Obligation benefits the Property, and the obligation to pay the Total TUMF Obligation in full shall run with the land and be binding on the Property, and all successors and assigns thereto. Owner hereby further acknowledges and agrees that the obligation to pay the Total TUMF Obligation shall continue and remain an obligation of Owner, as well as (jointly and severally) any successors in interest of Owner, including, without limitation, any successor in interest to the Property or any portion of the Property.

5. Letter of Credit. As security for payment of the Total TUMF Obligation, Owner shall obtain, at Owner’s sole cost and expense, and provide to WRCOG, an irrevocable standby letter of credit in the amount of [INSERT DOLLAR DESCRIPTION] (INSERT DOLLAR AMOUNT) which represents the Total TUMF Obligation (“**Letter of Credit**”). The Letter of Credit shall be in a form approved by and acceptable to WRCOG. The issuing institution for the Letter of Credit shall be licensed to do business in California, shall not be the subject of pending license revocation proceedings initiated by the Department of Financial Institutions or any other governmental agency with jurisdiction, and shall be satisfactory to WRCOG. Upon payment of the Total TUMF Obligation, all obligations hereunder as to the Letter of Credit shall be deemed released and satisfied.

6. WRCOG’s Remedies For Owner’s Default. Failure of Owner to pay the Monthly Installments as required and/or failure of Owner to satisfy, in full, the Total TUMF Obligation by the second anniversary of the Effective Date of this Agreement shall be deemed an event of default hereunder and WRCOG shall have the right, in addition to any other right or remedy contained in this Agreement, in its sole discretion, to: (i) draw upon the Letter of Credit; (ii) demand immediate payment in full by Owner or successors in interest of Owner of all outstanding amounts owed; (iii) charge a late fee on all late and outstanding payments; (iv) work with the City of Murrieta to revoke Owner’s Certificate of Occupancy for the Project; (v) treat and collect all outstanding amounts as a lien against the Property; or (vi) enforce any combination of the foregoing rights, in addition to any other right WRCOG may have in law or in equity.

7. Indemnification. Owner shall defend (with counsel of WRCOG’s choice), indemnify and hold WRCOG, its officials, officers, employees and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages or injuries to property or persons, including wrongful death, in any manner caused by any acts, omissions or willful misconduct of Owner, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with this Agreement (“**Claims**”), including without limitation, the payment of all consequential damages, attorneys fees and other related costs and expenses. The indemnity provided herein shall include coverage of WRCOG under any warranty or guarantee implied by law or fact, or otherwise given to Owner by Owner’s design consultant(s) or contractor(s). This indemnification provision shall not apply to any Claims arising out of or incident to the sole negligence or willful misconduct of WRCOG, its officials, officers, employees and agents. In addition, this indemnity provision and any warranties or guarantees shall not limit any liability under law of any consultants or contractors of Owner. Without limiting the foregoing, this indemnity shall extend to any claims arising because Owner has failed to properly secure any necessary easements, land rights, contracts or approvals, or to comply with the Prevailing Wage Laws.

8. Notice to Subsequent Owners. The original of this Agreement shall be recorded in the Official Records of the County Recorder of the County of Riverside, California, to provide record notice to subsequent owners/occupants of the Property that the Property is subject to this Agreement, and the conditions and obligations contained herein. Recordation of this Agreement shall provide constructive notice to all buyers and lessees of the existence of this Agreement and the obligations hereunder to pay the Total TUMF Obligation when and as due.

9. Cumulative Remedies. The rights or remedies of WRCOG, as provided in this Agreement, or pursuant to any applicable laws, rules or regulations, may be pursued singly, successively, together or otherwise against the Property, Owner or its transferees, successor or assigns at the sole discretion of WRCOG. WRCOG's failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights or remedies, or of the right to exercise them at any later time.

10. General Provisions.

(a) No Waiver. WRCOG's or Owner's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right, remedy or privilege or WRCOG's or Owner's waiver of any breach hereunder shall not thereafter be deemed a subsequent waiver of any other terms, conditions, or rights, remedies or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party or that party's duly authorized representative. All rights and remedies provided for under this Agreement are cumulative.

(b) Cooperation. The Parties agree to cooperate with each other in good faith and in furtherance of the purposes of this Agreement. The Parties hereby agree to take such other reasonable actions and execute such other documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require WRCOG to take any legislative act or exercise its discretion in any particular manner.

(c) Entire Agreement. This Agreement contains the final and complete agreement between the Parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such prior communications and agreements are inconsistent with this Agreement.

11. Assignment.

(a) Assignment Of Agreement. Except as expressly provided herein, this Agreement is not assignable, in whole or in part, by Owner, without the prior written consent of WRCOG, and any attempt to make such assignment shall be void and shall constitute an incurable material default under this Agreement. Upon such unpermitted assignment, WRCOG shall be entitled, in addition to any other remedy provided in this Agreement, to immediately make demand upon the Note.

(b) Assignment To A Non-Related Entity. Owner may, with the prior written consent of WRCOG, which may be given in its sole and absolute discretion, assign this Agreement, in connection with a transfer of all or any portion of the Property to a nonrelated entity, provided Owner notifies WRCOG in writing at least 30 days prior to the date of such assignment and the assignee expressly assumes the rights and obligations of the Agreement by a written agreement in form and substance acceptable to WRCOG. In order for WRCOG to make an informed decision to approve or disapprove a proposed assignment of this Agreement, WRCOG may require the proposed assignee to submit financial statements in evidence of its fitness, experience and ability to comply with the rights and obligations being assumed.

12. Successors and Assigns. The terms, conditions and obligations created under this Agreement shall run with the Property in perpetuity from the Effective Date, and shall be binding upon all successors and assigns to the Property.

13. Attorneys' Fees. In the event that any action or proceeding is commenced between WRCOG and Owner to enforce or interpret any term of this Agreement, the prevailing party in such action or proceeding, in

addition to all other relief to which it may be entitled, shall be entitled to recover from the other party the prevailing party's costs of suit and reasonable attorney's fees. The attorney's costs and fees shall include, without limitation, attorney's costs and fees incurred on appeal and those incurred in enforcing any judgment rendered in any such action or proceeding. Such attorney's costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

14. Prevailing Wages. Owner is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq, as well as California Code of Regulations, Title 8, Section 16000 et seq ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. It shall be Owner's sole obligation to determine whether, and to what extent if any, the Prevailing Wage Laws apply to the Project. Owner shall defend, indemnify and hold WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any actual or alleged failure by Owner or its employees, agents and contractors to comply with the Prevailing Wage Laws, if applicable to the Project.

15. Notices. All notices shall be in writing and shall be considered given: (I) when delivered in person to the recipient named below; or (ii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the first business day on or following the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below; or (iv) on the date of delivery by facsimile transmission (with a copy sent by first class mail) to the recipient named below. All notices shall be addressed as follows:

If to WRCOG:

Executive Director
Western Riverside Council of Governments
4080 Lemon Street, Third Floor
Riverside, California 92501-3609
Telephone: (951) 955-8303
Facsimile: (951) 787-7991

With Copies to:

Best Best & Krieger LLP
3750 University Ave., Suite 400
Riverside, CA 92502
Attn: Steven C. DeBaun, Esq.
Telephone: (951) 686-1450
Fax: (951) 686-3083

If to Owner:

[INSERT COMPANY NAME]
[INSERT ADDRESS]
[INSERT CITY, STATE AND ZIP]
Telephone: (XXX) -
Facsimile: (XXX) -

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

16. Governing Law. This Agreement and its provisions shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of California, without regard to conflict of laws principles. Venue shall be in Riverside County.

17. Consent to Jurisdiction, Venue and Service. Any action or proceeding brought respecting this Agreement shall be instituted and maintained in the appropriate court in the County of Riverside, California. Owner hereby forgoes and waives any provision of law providing for a change of venue from such courts on the grounds that WRCOG is or may be a party to any such action or proceeding.

18. Modification. This Agreement may be modified only by another written instrument duly authorized and executed by both WRCOG and Owner.

19. Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein.

20. Headings. Section headings contained in this Agreement are for convenience only, and shall not impact the construction or interpretation of any provision.

21. Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either WRCOG or Owner. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement.

22. Execution. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement of the Parties hereto.

23. Authorization. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.

[Signatures on following page]

**SIGNATURE PAGE
TO
TRANSPORTATION UNIFORM
MITIGATION FEE DEFERRAL AGREEMENT
(INSERT COMPANY NAME)**

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

By: _____
Rick Bishop
Executive Director

[INSERT OWNER/COMPANY NAME]

By: _____

Its: _____

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____
General Counsel to WRCOG

TEMPLATE

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

[insert]

Exhibit A