

**AGREEMENT FOR DEFERRAL
OF DEVELOPMENT IMPACT FEES**

This AGREEMENT FOR DEFERRAL OF DEVELOPMENT IMPACT FEES (“Agreement”), is entered into effective _____, 20 ____ (“Effective Date”), by and between the City of Chula Vista, a chartered municipal corporation (the “City”), and _____ a _____ (“Owner”). The City and Owner are collectively referred to in this Agreement as the “Parties”. The Parties enter into this Agreement with reference to the following recited facts (each a “Recital”).

RECITALS

A. Owner (and/or its affiliates) owns, in fee simple, the real property generally known as [describe property], as described and depicted in the attached Exhibit “A” (the “Property”), incorporated herein by this reference.

B. The Owner has applied for and the City has approved [describe development] (the “Project”).

C. As authorized by California *Government Code* section 66000, *et seq.*, the City imposes development impact fees in connection with the approval of a development project. Such fees include: (i) the Public Facilities Development Impact Fee pursuant to Chula Vista Municipal Code (“CVMC”) section 3.50, *et seq.* (“PFDIF”); (ii) the Western Transportation Development Impact Fee pursuant to CVMC section 3.55, *et seq.* (“TDIF”); and (iii) the Park Development Fee pursuant to CVMC section 17.10, *et seq.* (“PAD” and together with the PFDIF and TDIF, the “DIFs” and the obligation to pay the DIFs, the “DIF Obligation”).

D. Owner has pursued numerous financing sources to finance the Project, and has obtained a commitment for the requisite financing to commence and complete the Project; however, the terms of the financing require that payment of the DIF Obligation be deferred and paid in installments, rather than at the issuance of the certificate of occupancy for the residential units, as otherwise required by the City.

E. Without such deferral, the Owner will be unable to secure financing and the Project will not be financially feasible.

F. Owner has requested that the City defer the aggregate DIF Obligation for the Property estimated to be \$ _____ in order to obtain the financing necessary to construct the Project.

G. The City has formed the City of Chula Vista Community Facilities District No. 17-I (Western Chula Vista DIF Financing Program) (“CFD No. 17-I”) pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Mello-Roos Act”), as amended, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (the “State”), and the City of Chula Vista Community Facilities District Ordinance enacted pursuant to the powers reserved by the City under Sections 3, 5 and 7 of Article XI of the Constitution of the State (the “CFD Ordinance” and, together with the Mello Roos Act, the “CFD Law”), for the purpose of

financing, at the voluntary request of the owners of multi-family, commercial or industrial properties located in that portion of the City between Interstate 5 and Interstate 805, including the Palomar Gateway and Urban Core Specific Planning Areas and the Auto Park located east of Interstate 805 (such properties to be referred to herein as “Western Chula Vista”), the DIF Obligation imposed on such properties and thereby enabling the owners of such properties to pay the DIF Obligations through the levy of special taxes on such properties.

G. The Owner has requested that the Property be annexed to CFD No. 17-I to enable the DIF Obligation for the Property to be paid over time through the levy of special taxes on the Property.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals and for good and valuable consideration the receipt and sufficiency of which the Parties hereby acknowledge, Owner and the City agree as follows:

1. **Agreement Regarding Payment of the DIF Obligation.** City agrees that the Owner’s obligation to pay the DIF Obligation for the Project may be satisfied on the terms and conditions set forth in this Agreement. Owner agrees and affirms that it has the obligation to pay the DIF Obligation for the Project and agrees to do so on the terms and conditions set forth within this Agreement.
 - a. **Amount of DIF Obligation.** At the time of the execution of this Agreement, the DIF Obligation is estimated to be _____ dollars (\$ _____). This amount is an estimate only, and the amount of DIF Obligation under this Agreement shall be calculated according to the rates in effect at the time of issuance of the building permits for the Project.
 - b. **Interest.** Interest shall accrue from the date of issuance of a certificate of occupancy for the Project at a rate of two percent (2.00%) per annum on any outstanding DIF Obligation balance during the term of the Special Tax (defined below).
2. **Inclusion of Property in CFD No. 17-I.**
 - a. **Consent and Agreement to Cooperate.** Owner consents and agrees to cooperate with the City to annex the Property to CFD No. 17-I for the purpose enabling the DIF Obligation for the Property to be paid through the levy of a special tax by the City on the Property (the “Special Tax”).
 - b. **Timing of Completion of Inclusion of Property in CFD No. 17-I.** The Property must be legally annexed to CFD No. 17-I and the Special Tax must be authorized to be levied against the Property prior to the issuance of the initial building permit required for the construction of the Project.
 - c. **Consent to Waive Certain Provisions of the CFD Law.** In order to shorten the period of time to complete the annexation of the Property to CFD No. 17-I Owner

agrees that Owner shall waive any time limit or requirement specified in the CFD Law applicable to any election conducted pursuant to the CFD Law to authorize the levy of the Special Tax on the Property, including without limitation, the time period for holding such election, the analysis and arguments that would otherwise be applicable to such an election.

- d. Waiver of Right to Protest. Owner acknowledges that Owner has voluntarily requested that the Property be annexed to CFD No. 17-1 and that the Special Tax be authorized to be levied against the Property. Owner therefore waives any right that Owner may have to protest against the proceedings to annex the Property to CFD NO. 17-1 and/or the authorization to levy the Special Tax against the Property.
- e. Payment of the DIF Obligation. Upon annexation of the Property to CFD No. 17-1 the authorization of the levy of the Special Tax on the Property, the payment of the DIF Obligation for the Project shall be satisfied by the payment of the Special Tax as levied on the Property throughout the term of the Special Tax.

The Special Tax shall be levied pursuant to the Rate and Method of Apportionment thereof (the "Rate and Method"). The authorization to levy the Special Tax on the Property pursuant to the Rate and Method shall be subject to the approval of the Owner in a special election called for such purpose as a part of the proceedings to include the Property in CFD NO. 17-1.

The Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes; provided, however, the Special Tax may be collected by direct billing if so authorized and directed by the City Council.

The Special Tax shall be annually levied commencing in the fiscal year falling after the first day of the eleventh year after the Effective Date of this Agreement (the "Special Tax Commencement Date") for the term of such Special Tax as set forth in the Rate and Method until the DIF Obligation, and any accumulated interest and penalties on the DIF Obligation have been paid in full. All interest that has accrued prior to the Special Tax Commencement Date shall be incorporated into the Special Tax over the repayment term and no further interest shall accrue on said accrued interest amount; provided, however, that interest shall continue to accrue on any unpaid DIF Obligation.

- f. Prepayment. The Owner may prepay the Special Tax pursuant to the provisions of the Rate and Method.

- 3. **Results of Special Election to Authorize Levy of the Special Tax.** If the canvass of ballot to authorize the levy of the Special Tax on the Property determines that such vote is in favor of such authorization, the City shall record or cause the recordation of an Amendment to the Notice of Special Tax Lien against the Property pursuant to the

provisions of the CFD Law and Streets & Highways Code Section 3117.5. If the canvass of such ballot determines that such vote is in opposition to such authorization or the Owner fails to submit such a ballot, this Agreement shall terminate without further action by the Parties and the DIF Obligation in effect at the time of commencement of development of the Project shall be due and payable as provided for in the CVMC.

4. **Challenge to Annexation of Property to CFD No. 17-I or Authorization to Levy the Special Tax.** If legal proceedings are initiated to challenge the annexation of the Property to CFD No. 17-I and/or the authorization to levy the Special Tax, the City may tender the defense of any such action to the Owner. If the Owner elects to accept the defense of such action, the Owner shall bear all costs, including attorneys' fees, of such defense. If the Owner refuses or fails to accept the defense of such action, the City Council may, in its sole discretion, elect to defend such action at the City's expense or may, alternatively, elect to abandon such proceedings in which event this Agreement shall terminate without further action by the Parties and the DIF Obligation in effect at the time of commencement of development of the Project shall be due and payable as provided for in the CVMC.
5. **Development of the Project.** This Agreement does not obligate Owner to develop the Project on the Property. If Owner provides notice to the City of its abandonment of the Project at any time prior to issuance of a certificate of occupancy, Owner shall have no obligations or liabilities under this Agreement and the City Council shall instruct the City Clerk to record a notice of cessation of the Special Tax against the Property thereby terminating the Special Tax Lien; provided, however, if Owner or any successor thereto thereafter proceeds with development of the Project, the DIF Obligation therefor, recalculated at the time of filing written notice of intent to proceed, shall be due and payable as a condition of issuance of a certificate of occupancy.
6. **Assignments and Transfers.** Owner may not assign or transfer all or any portion of its interest in the Property or Project, unless and until (a) Owner prepays the Special Tax obligation pursuant to the Rate and Method, or (b) City reasonably approves the proposed transferee(s), and such transferee(s) agrees in writing to assume Owner's obligations hereunder. In determining whether to consent to an assignment or transfer of interest, the City may evaluate the financial position of the entity or individual to whom the transfer is proposed, the length of time such entity or individual has engaged in a similar business to the Owner, and such other reasonable factors which may affect such entity's or individual's ability to satisfy the terms and conditions under this Agreement. Owner agrees to cooperate with the City as reasonably necessary during the approval process, which shall be completed within 21 days after delivery of written consent by the proposed transferee(s) to assume Owner's obligations under this Agreement (the "Review Period"). The City's determination shall be final. The proposed transferee(s) of Owner's interest in the Property or Project shall be deemed approved if the City does not approve or reject the transferee(s) prior to expiration of the Review Period.
7. **Recitals and Exhibits.** Any recitals set forth above and exhibits attached hereto are incorporated by reference into this Agreement.

8. **Authority.** Each of the signatories to this Agreement warrants and represents that he or she is competent and authorized to enter this Agreement on behalf of the Party for whom he or she purports to sign.
9. **Notices.** Unless otherwise specifically permitted by this Agreement, all notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered; sent by registered or certified mail, postage prepaid, return receipt requested; or sent by facsimile, provided that the telecopy cover sheet contain a notation of the date and time of transmission, and shall be deemed received: (a) if personally delivered, upon the date of delivery to the address of the person to receive such notice, (b) if mailed in accordance with the provisions of this paragraph, two (2) business days after the date placed in the United States mail, (c) if mailed other than in accordance with the provisions of this paragraph or mailed from outside the United States, upon the date of delivery to the address of the person to receive such notice, or (d) if given by facsimile during business hours when delivery can be confirmed, when delivered. Notices shall be given at the following addresses:

If to City: City of Chula Vista
 276 Fourth Avenue
 Chula Vista, CA 91910
 Attn: Director of Development Services
 Email: kbroughton@chulavistaca.gov

If to Owner: _____

With copies to: _____

City of Chula Vista
 276 Fourth Avenue
 Chula Vista, CA 91910
 Attn: City Attorney

10. **Captions.** Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.
11. **Allocation of Legal Expenses.** Each Party shall bear its own costs relative to any costs or expenses incurred in compliance with, or in the drafting or negotiation of, and the approval process, of this Agreement.
12. **Entire Agreement.** This Agreement contains the entire agreement between the parties regarding the subject matter hereof. Any prior oral or written representations, agreements, understandings, and/or statements shall be of no force and effect and are intended to be replaced in total by this Agreement. Each Party warrants and represents that no representative of any other Party has made any oral representation or oral

agreements not contained in this Agreement. Each party further warrants and represents that it has not relied upon any oral statements or promises made by any representatives of any other Party to this Agreement in executing this Agreement.

13. **Preparation of Agreement.** No inference, assumption or presumption shall be drawn from the fact that a party or its attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.
14. **Attorneys' Fees.** In any action or proceeding brought by either Party seeking to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs in addition to any other costs, damages, or remedies.
15. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of California, without regard to conflict of law rules.
16. **Severability.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties, provided that the provision stricken is not a material term or condition of this Agreement. In the event that the provision is material, the Parties agree to meet and confer to amend the Agreement such that its original purpose and intent can be fulfilled. If the Parties are unable to amend the Agreement, then payment of the outstanding balance of the DIF Obligation shall be accelerated in the manner identified in Section 4 of this Agreement.
17. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.
18. **Time of the Essence.** Time is of the essence in the performances of the Parties' obligations contained herein.
19. **Waiver.** A failure of a Party to enforce strictly a provision of this Agreement shall in no event be considered a waiver of any party of such provision. No waiver by a Party of any breach or default by the other Party shall operate as a waiver of any succeeding breach or other default or breach by such other Party. No waiver shall have any effect unless it is specific, irrevocable and in writing.
20. **Further Acts.** In addition to the acts recited in this Agreement, the Parties agree to perform, or cause to be performed on the date of this Agreement, or thereafter, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby. Each of the Parties agrees that it will execute and deliver all such

documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement for Deferral of Development Impact Fees has been executed by the Parties as of the last date set forth below.

Dated: _____

Owner: _____

By: _____

Name: : _____

Title: : _____

Dated: _____

CITY OF CHULA VISTA,
a chartered municipal corporation

By: _____

Name: Gary Halbert

Title: City Manager

Approved as to Form:

Glen R. Googins, City Attorney

**EXHIBIT A – Depiction and Description of Property
(Property Address, APN, Legal Description & Vicinity Map)**