

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 17-I (WESTERN CHULA VISTA DIF FINANCING PROGRAM) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN TO FINANCE THE ACQUISITION OR CONSTRUCTION OF CERTAIN PUBLIC FACILITIES, AND ORDERING AND DIRECTING THE PREPARATION OF A REPORT FOR SUCH PROPOSED COMMUNITY FACILITIES DISTRICT, AND SETTING THE PUBLIC HEARING TO CONSIDER ESTABLISHMENT OF SUCH DISTRICT

WHEREAS, the CITY COUNCIL of the CITY OF CHULA VISTA, CALIFORNIA (the “City Council”), at this time desires to initiate proceedings to establish a Community Facilities District pursuant to the terms and provisions of the “Mello-Roos Community Facilities Act of 1982,” being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (commencing with Section 53311) (the “Act”) and the City of Chula Vista Community Facilities District Ordinance enacted pursuant to the powers reserved by the City of Chula Vista under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California (the “Ordinance”) (the Act and the Ordinance may be referred to collectively as the “Community Facilities District Law”). This Community Facilities District shall hereinafter be referred to as Community Facilities District No. 17-I (Western Chula Vista DIF Financing Program) (the “District”); and

WHEREAS, the District is proposed to be established for the purpose of financing, at the voluntary request and election of the owners of multi-family, commercial or industrial properties generally 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 payment of certain development impact fee obligations described herein below and imposed on such properties; and

WHEREAS, this City Council desires to proceed to adopt its Resolution of Intention to initiate the proceedings to consider the establishment of such District, to set forth the proposed boundaries for such District, to describe the development impact fee obligations proposed to be financed by such District, to indicate the proposed rate and apportionment of a special tax sufficient to finance the payment of such development impact fee obligations and the administration of the District and to fix a time and place for a public hearing on the establishment of such District; and

WHEREAS, the Community Facilities District Law provides that the City Council may initiate proceedings to establish a community facilities district only if it has first considered and adopted local goals and policies concerning the use of the Community Facilities District Law; and

WHEREAS, this City Council has adopted local goals and policies as required pursuant to the Community Facilities District Law; and

WHEREAS, this City Council desires to declare its intention to consider the establishment of such proposed District; and

WHEREAS, this City Council further desires to direct, pursuant to the provisions of Section 53321.5 of the Government Code, the preparation of a report to provide more detailed information relating to the proposed District, the proposed development impact fee obligations to be financed through the District, and estimate of the cost of financing the payment of such development impact fee obligations (the “Community Facilities District Report”); and

WHEREAS, this City Council desires to approve the form of an Agreement for Deferral of Development Impact Fees required to be entered into by the owner of the property proposed to be included within the boundaries of the District upon the establishment thereof and the City.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City of Chula Vista, that:

SECTION 1. Recitals. The above recitals are all true and correct.

SECTION 2. Initiation of Proceedings. These proceedings are initiated by this City Council pursuant to the authorization of the Community Facilities District Law.

SECTION 3. Boundaries of District. It is the intention of this City Council to establish the boundaries of the proposed District. A description of the proposed boundaries of the territory to be included in the District including the properties and parcels of land proposed to be subject to the levy of a special tax by the District is as follows:

All that property as shown on a map as previously approved by this City Council, such map entitled “Boundaries of Community Facilities District No. 17-I (Western Chula Vista DIF Financing Program), City of Chula Vista, County of San Diego, State of California” a copy of which is on file in the Office of the City Clerk and shall remain open for public inspection.

SECTION 4. Name of District. The name of the proposed District shall be Community Facilities District No. 17-I (Western Chula Vista DIF Financing Program).

SECTION 5. Description of the Development Impact Fee Obligations and the Related Facilities. It is the intention of this City Council to finance the payment of the development impact fees imposed by the City in connection with the approval of a development project to be developed on property located within the District. Such fees may 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”).

The proceeds of the payment of the DIF Obligations will pay for facilities which this legislative body is authorized by law to contribute revenue to or to construct, own, or operate (the “DIF Facilities”). It is hereby further determined that the DIF Facilities are necessary to meet increased demands and needs placed upon the City as a result of development within the District.

The cost of the payment of DIF Obligations includes certain Incidental Expenses as such term is defined in Government Code Section 53317(e) and may include, but not be limited to, all costs associated with the establishment of the District; the costs of collecting any special taxes; and costs otherwise incurred in order to carry out the authorized purposes of the District.

**SECTION 6. Special Tax.** It is hereby further proposed that, except where funds are otherwise available, a special tax sufficient to finance the payment of the DIF Obligations and related Incidental Expenses authorized by the Community Facilities District Law, secured by recordation of a continuing lien against all non-exempt real property in the District, will be levied annually within the boundaries of the District. For further particulars as to the rate and method of apportionment of the proposed special tax (the “Rate and Method of Apportionment”) reference is made to the attached and incorporated Exhibit A, which sets forth in sufficient detail the method of apportionment to allow each landowner or resident within the proposed District to clearly estimate the maximum amount that such person will have to pay.

Under no circumstances will the special tax levied in any fiscal year against any residential parcel be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the District by more than 10 percent (10%) above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. A parcel shall be considered “used for private residential purposes” not later than the date on which an occupancy permit or the equivalent for private residential use is issued for such parcel.

The special taxes herein proposed, to the extent possible, shall be collected in the same manner as ad valorem property taxes or in such other manner as this City Council or its designee shall determine, including, without limitation, direct billing of the affected property owners, and shall be subject to the same penalties, procedure, sale and lien priority in any case of delinquency as applicable for ad valorem taxes. Any special taxes that may not be collected on the County tax roll shall be collected through a direct billing procedure by the Treasurer of the City of Chula Vista (the “City”), acting for and on behalf of the District.

The special tax obligation for any parcel may be prepaid and permanently satisfied in whole or in part pursuant to the provisions therefor contained in the Rate and Method of Apportionment.

Pursuant to Government Code Section 53340 and except as provided in Government Code Section 53317.3, properties of entities of the state, federal, and local governments shall be exempt from the levy of the Special Tax.

SECTION 7. Public Hearing. NOTICE IS GIVEN THAT ON MARCH 15, 2016, AT THE HOUR OF 5:00 O'CLOCK P.M. OR AS SOON THEREAFTER AS THE PUBLIC HEARING MAY BE CALLED, IN THE REGULAR MEETING PLACE OF THE CITY COUNCIL BEING THE COUNCIL CHAMBERS, CITY HALL, LOCATED AT 276 FOURTH AVENUE, CHULA VISTA, CALIFORNIA, A PUBLIC HEARING WILL BE HELD WHERE THIS CITY COUNCIL WILL CONSIDER THE ESTABLISHMENT OF THE PROPOSED DISTRICT, THE RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX PROPOSED TO BE LEVIED WITHIN THE DISTRICT, AND ALL OTHER MATTERS AS SET FORTH IN THIS RESOLUTION OF INTENTION. AT THE ABOVE-MENTIONED TIME AND PLACE FOR PUBLIC HEARING ANY PERSONS INTERESTED, INCLUDING TAXPAYERS AND PROPERTY OWNERS MAY APPEAR AND BE HEARD. THE TESTIMONY OF ALL INTERESTED PERSONS FOR OR AGAINST THE ESTABLISHMENT OF THE DISTRICT, THE EXTENT OF THE DISTRICT, OR THE FINANCING OF THE PAYMENT OF THE DIF OBLIGATIONS, WILL BE HEARD AND CONSIDERED. ANY PROTESTS MAY BE MADE ORALLY OR IN WRITING, HOWEVER, ANY PROTESTS PERTAINING TO THE REGULARITY OR SUFFICIENCY OF THE PROCEEDINGS SHALL BE IN WRITING AND CLEARLY SET FORTH THE IRREGULARITIES AND DEFECTS TO WHICH THE OBJECTION IS MADE. ALL WRITTEN PROTESTS SHALL BE FILED WITH THE CITY CLERK OF THE CITY ON OR BEFORE THE TIME FIXED FOR THE PUBLIC HEARING. WRITTEN PROTESTS MAY BE WITHDRAWN IN WRITING AT ANY TIME BEFORE THE CONCLUSION OF THE PUBLIC HEARING.

If a written majority protest against the establishment of the District is filed, the proceedings shall be abandoned. If such majority protest is limited to certain DIF Obligations or portions of the special tax, those DIF Obligations or that portion of the special tax shall be eliminated by the City Council. A majority protest shall exist if 50 percent or more of the registered voters, or six (6) registered voters, whichever is more, residing within the land of the territory proposed to be included in the District, or the owners of one-half or more of the area of the land in the territory proposed to be included in the District and not exempt from the special tax, file written protests against the establishment of the District, and the protests are not withdrawn so as to reduce the value of the protests to less than a majority.

SECTION 8. Election. If, following the public hearing described in the section above, the City Council determines to establish the District and proposes to levy a special tax within the District, the City Council shall then submit the levy of the special taxes to the qualified electors of the District. If at least twelve (12) persons, who need not necessarily be the same twelve (12) persons, have been registered to vote within the District for each of the ninety (90) days preceding the close of the public hearing, the vote shall be by registered voters of the District, with each voter having one (1) vote. Otherwise, the vote shall be by the landowners of District who were the owners of record at the close of the subject hearing, with each such landowner or the authorized representative thereof, having one (1) vote for each acre or portion of an acre of land owned within the District.

SECTION 9. Notice. Notice of the time and place of the public hearing shall be given by the City Clerk by causing the publication of a Notice of Public Hearing in the legally designated newspaper of general circulation, such publication pursuant to Section 6061 of the Government Code, with such publication to be completed at least seven (7) days prior to the date set for the public hearing.

The City Clerk shall also cause notice to be given by first-class mail to each registered voter, if any, and to each landowner as defined in the Community Facilities District Law within the proposed boundaries of the District. Such notice shall be mailed at least 15 days before the public hearing and shall contain the same information as is required to be contained in the notice published pursuant to the preceding paragraph.

SECTION 10. Preparation of Report. The Director of Public Works is hereby directed and ordered to prepare or cause to be prepared the Community Facilities District Report to be presented to this City Council, generally setting forth and containing the following:

DIF OBLIGATIONS: A full and complete description of the DIF Obligations the payment of which are proposed to be financed through the District and the facilities that are authorized to be funded from the proceeds of the payment of the DIF Obligations.

COST ESTIMATE: A general cost estimate setting forth costs of the payment of the DIF Obligations.

SPECIAL TAX: Further particulars and documentation regarding the rates and methods of apportionment of the special taxes proposed to be levied within the District.

The Community Facilities District Report, upon its preparation, shall be submitted to this City Council for review, and such report shall be made a part of the record of the public hearing on the Resolution of Intention to establish such District.

SECTION 11. Agreement for Deferral of Development Impact Fees. The owner of any property who requests that such owner's property be included in the District shall be required to enter into the Agreement for Deferral of Development Impact Fees, the form of which is attached hereto as Exhibit B hereto and incorporated herein by this reference. The City Manager or his or her designee is hereby authorized to execute the form of any such agreement following review by the City Attorney or special counsel to the City designated by the City Attorney.

SECTION 12. Survival. If any section, subsection, subdivision, sentence, clause, or phrase in this Resolution or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Resolution or any part thereof. The City Council of the City of Chula Vista hereby declares that it would have adopted each section irrespective of the fact that any one or

more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 13. Effective Date of Resolution. This Resolution shall become effective immediately upon its adoption.

Prepared by:

Approved as to form by:

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Eric Crockett,  
Director of Economic Development

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Glen R. Googins,  
City Attorney

EXHIBIT A

RATE AND METHOD OF APPORTIONMENT

# Rate and Method of Apportionment of Special Tax Community Facilities District No. 17-I (Western Chula Vista DIF Financing)

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A Special Tax shall be levied on each Assessor's Parcel of Taxable Property within the boundaries of Community Facilities District No. 17-I (Western Chula Vista DIF Financing) of the City of Chula Vista (the "City") and collected each FY commencing in Special Tax Commencement FY applicable to such Assessor's Parcel, in an amount determined by the CFD Administrator through the application of the procedures described below. All of the real property within CFD No. 17-I, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

## 1. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Accrued Interest Obligation"** means for each Assessor's Parcel, the amount of interest accrued on the Deferred DIF Obligation from the date of the issuance or grant of a Certificate of Occupancy for such property as determined in accordance with Section 3.D below.

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map. An Acre means 43,560 square feet of land.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**"Annual Special Tax"** means the Special Tax actually levied in any Fiscal Year on any Assessor's Parcel which is equal to the sum of the Annual Special Tax for Facilities and the Annual Special Tax for Accrued Interest in accordance with Section 3.E below.

**"Annual Special Tax for Facilities"** means the amount of the Special Tax levied on an Assessor's Parcel of Developed Property in any FY, commencing with the Special Tax Commencement FY, to satisfy the repayment of the Deferred DIF Obligation over the term of the Special Tax as set forth in Section 7 determined in accordance with Section 3.E below unless the Special Tax Obligation is prepaid pursuant to the provisions of Section 6 thereto.

**"Annual Special Tax for Accrued Interest"** means the amount levied on an Assessor's Parcel of Developed Property in any FY, commencing with the Special Tax Commencement FY, to satisfy the repayment of the Accrued Interest Obligation over the term of the Special Tax as set forth in Section 7 determined in accordance with Section 3.E below unless the Special Tax Obligation is prepaid pursuant to the provisions of Section 6 thereto..



**“Annual Special Tax for Current Interest”** means the amount levied on an Assessor’s Parcel of Developed Property in any FY, commencing with the Special Tax Commencement FY, to satisfy the requirement to pay interest on unpaid deferred fees during the 20-year repayment period commencing with the Special Tax Commencement FY and ending on June 30th of the Special Tax Final Year.

**“Assessor”** means the Assessor of the County of San Diego.

**“Assessor's Parcel”** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

**“Assessor's Parcel Map”** means an official map of the Assessor designating parcels by Assessor’s Parcel Number.

**“Assessor's Parcel Number”** means the number assigned to an Assessor's Parcel by the Assessor for purposes of identification.

**“Assigned Special Tax Obligation”** means for each Assessor’s Parcel, the amount determined in accordance with Section 3.B below.

**“Building Permit”** means a building permit issued by the City for construction of a Residential Unit or Non-Residential Property located within CFD No. 17-I.

**“Building Square Footage”** means all of the square footage of usable area within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, or similar area. The determination of Building Square Footage shall be made by reference to the Building Permit(s) issued for such Assessor’s Parcel and/or by reference to appropriate records kept by the City.

**“Certificate of Occupancy”** means a certificate issued or approval granted by the City, or other applicable government entity, that authorizes the actual occupancy of a Residential Unit for habitation by one or more residents or the occupancy of Non-Residential Property.

**“CFD Administrator”** means an authorized representative of the City, or designee thereof, responsible for determining the Assigned Special Tax Obligation and the Annual Special Tax, for preparing the Annual Special Tax roll and/or calculating the Backup Special Tax.

**“CFD No. 17-I”** means the City of Chula Vista Community Facilities District No. 17-I (Western Chula Vista DIF Financing).

**“City”** means the City of Chula Vista, California.

**“Council”** means the City Council of the City acting as the legislative body of CFD No. 17-I under the Act.

**“County”** means the County of San Diego, California.

**“Deferred DIF Obligation”** means for each Assessor’s Parcel, the remaining balance of DIFs that have been deferred on such Assessor’s Parcel since Building Permit issuance as determined in accordance with Section 3.C below.

**“Developed Property”** means for each FY, all Taxable Property for which a Building Permit was issued prior to May 1 of the previous FY. An Assessor’s Parcel classified as Developed Property but for which the Building Permit that caused such Assessor’s Parcel to be classified as Developed

Property has been cancelled and/or voided prior to the FY for which Special Taxes are being levied shall be reclassified as Undeveloped Property.

**“DIF Deferral Agreement”** means, as to an Assessor’s Parcel, the Agreement for Deferral of Development Impact Fees by and between the owner of such Assessor’s Parcel and the City.

**“DIF”** or **“DIFs”** shall, as to an Assessor’s Parcel, have the meaning given such terms in the DIF Deferral Agreement applicable to such Assessor’s Parcel.

**“Effective Date”** shall mean, as to each DIF Deferral Agreement, the effective date of such agreement as specified therein.

**“Exempt Property”** means for each FY, all Assessor’s Parcels designated as being exempt from Special Taxes pursuant to Section 8 below.

**“Final Map”** means a subdivision of property by recordation of a final map, parcel map, or lot line adjustment, pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or recordation of a condominium plan pursuant to California Civil Code 4285 that creates individual lots for which Building Permits may be issued without further subdivision.

**“Fiscal Year”** or **“FY”** means the period starting on July 1 and ending the following June 30.

**“Initial Fiscal Year”** means, as to any Assessor’s Parcel subject to a DIF Deferral Agreement, the FY in which the Effective Date of such DIF Deferral Agreement falls.

**“Initial Interest Accrual Date”** shall mean, as to any Assessor’s Parcel of Developed Property, the date on which the Certificate of Occupancy for such Assessor’s Parcel is issued.

**“Initial Accrued Interest Obligation FY”** shall mean, as to any Assessor’s Parcel of Developed Property, the Fiscal Year in which the Initial Interest Accrual Date for such Assessor’s Parcel falls.

**“Maximum Special Tax Obligation”** means for each Assessor’s Parcel, the amount assigned in accordance with Sections 3.A below.

**“Non-Residential Property”** means all Assessor’s Parcels of Developed Property for which a building permit has been issued for the purpose of constructing one or more non-residential structures or facilities.

**“Original Parcel”** means an Assessor’s Parcel within the boundaries of CFD No. 17-I that was assigned a Maximum Special Tax Obligation and an Assigned Special Tax Obligation in the prior FY but has been subsequently subdivided into Successor Parcels for the current FY.

**“Prepayment Amount”** means the amount required to prepay the Annual Special Tax obligation in full for an Assessor’s Parcel as described in Section 6.A below.

**“Public Property”** means any property within the boundaries of CFD No. 17-I, which is owned by, or irrevocably offered for dedication to the federal government, the State of California, the County, the City or any other public agency; provided however that any property owned by a public agency and leased to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified in accordance with its use.

**“Residential Property”** means all Assessor’s Parcels of Developed Property for which a Building Permit has been issued for the purpose of constructing one or more Residential Units.

**“Residential Unit”** means each separate residential dwelling unit that comprises an independent facility capable of conveyance or rental, separate from adjacent residential dwelling units.

**“Special Tax”** means any special tax levied within CFD No. 17-I pursuant to the Act and this Rate and Method of Apportionment of Special Tax.

**“Special Tax Commencement FY”** shall mean, as to each Assessor’s Parcel classified as Developed Property, the FY falling after the first day of the eleventh calendar year after the Effective Date of the DIF Deferral Agreement applicable to such Assessor’s Parcel.

**“Special Tax Final FY”** shall mean, as to each Assessor’s Parcel of Developed Property, the FY commencing on July 1 of nineteenth (19th) FY following the Special Tax Commencement FY.

**“Special Tax Obligation”** means the total obligation of an Assessor’s Parcel of Developed Property to pay the Special Tax for the remaining term of the Special Tax applicable to such Assessor’s Parcel.

**“Successor Parcel”** means an Assessor’s Parcel created by the Subdivision of one or more Original Parcels pursuant to Section 4 below.

**“State”** means the State of California.

**“Taxable Property”** means all of the Assessor’s Parcels within the boundaries of CFD No. 17-I, which are not exempt from the levy of the Special Tax pursuant to law or Section 8 below.

**“Undeveloped Property”** means, for each FY, all Taxable Property not classified as Developed Property.

## 2. LAND USE CLASSIFICATION

Each FY, beginning with FY 2016-17, each Assessor’s Parcel within CFD No. 17-I shall be classified as Taxable Property or Exempt Property. In addition, all Taxable Property shall further be classified as Developed Property or Undeveloped Property, and all such Taxable Property shall be subject to the levy of Special Taxes in accordance with this Rate and Method of Apportionment of Special Tax determined pursuant to Sections 3 and 4 below.

## 3. SPECIAL TAX RATES

### A. Maximum Special Tax Obligation

The Maximum Special Tax Obligation applicable to an Assessor’s Parcel subject to a DIF Deferral Agreement in the Initial FY applicable to such Assessor’s Parcel shall be determined pursuant to Table 1 below.

**Table 1**  
**Initial FY Maximum Special Tax Obligation**

<b>Assessor’s Parcel No.</b>	<b>Maximum Special Tax Obligation</b>
618-010-17	\$1,366,800

The Maximum Special Tax Obligation applicable to an Assessor's Parcel subject to a DIF Deferral Agreement shall be subject to escalation by the increase in any DIF included in the Deferred DIF Obligation between amount of such DIF in effect on the Effective Date of such DIF Deferral Agreement and the amount of such DIF in effect on the date of issuance of the first Building Permit for development of such Assessor's Parcel.

Commencing on July 1 of the FY following the Initial Interest Accrual Date, the Maximum Special Tax Obligation for such Assessor's Parcel shall increase on July 1 of each FY by an amount equal to two percent (2%) of the Maximum Special Tax Obligation in effect for the prior FY.

#### **B. Assigned Special Tax Obligation**

On July 1 of each FY commencing the Special Tax Commencement FY, the CFD Administrator shall determine the Assigned Special Tax Obligation for that FY.

The Assigned Special Tax Obligation in any given FY commencing the Special Tax Commencement FY shall be the sum of the Deferred DIF Obligation plus the Accrued Interest Obligation. If for any FY the Assigned Special Tax Obligation is determined to be greater than the Maximum Special Tax Obligation, then the Assigned Special Tax Obligation shall be equal to the Maximum Special Tax Obligation.

#### **C. Deferred DIF Obligation**

The Deferred DIF Obligation applicable to an Assessor's Parcel classified as Undeveloped Property shall be zero.

The initial Deferred DIF Obligation applicable to an Assessor's Parcel classified as Developed Property shall be determined by the CFD Administrator at the time of issuance of a Building Permit for such Assessor's Parcel. The Deferred DIF Obligation shall be equal to the sum of the applicable DIFs specified in the DIF Deferral Agreement for each Building Permit issued for Assessor's Parcels within CFD No. 17-I. The amount of each DIF specified in the DIF Deferral Agreement for an Assessor's Parcel shall be based on the fee schedule applicable to such DIF in effect at the time of issuance of such Building Permit.

The Deferred DIF Obligation in any FY applicable to an Assessor's Parcel of Developed Property shall be equal to the Deferred DIF Obligation in the prior FY less any Annual Special Tax for Facilities payments made in the prior FY.

If a partial prepayment is made pursuant to Section 6.B below, the Deferred DIF Obligation will also be reduced by the applicable amount of the Deferred DIF Obligation that was prepaid.

#### **D. Accrued Interest Obligation**

The Accrued Interest Obligation in the Initial FY and each subsequent FY prior to the Initial Accrued Interest Obligation FY applicable to an Assessor's Parcel classified as Developed Property for which a Certificate of Occupancy has not been issued prior to July 1 of such FY shall be zero.

The Accrued Interest Obligation applicable to any Assessor's Parcel classified as Developed Property shall commence to accrue on the Initial Interest Accrual Date. The Accrued Interest Obligation applicable to such Assessor's Parcel in the Initial Accrued Interest Obligation FY shall be equal to two percent (2%) of the Deferred DIF Obligation as of July 1 of such FY multiplied by a fraction the numerator of which is the number of calendar days from and including the Initial Interest Accrual Date to and including June 30th of such FY and the denominator of which is 365. The Accrued Interest Obligation for each subsequent FY prior to the Special Tax Commencement FY shall be equal to the Accrued Interest Obligation in the prior FY plus two percent (2%) of the Deferred DIF Obligation as of July 1 of the prior FY.

The Accrued Interest Obligation in the Special Tax Commencement FY and each subsequent FY applicable to an Assessor's Parcel classified as Developed Property shall be equal to the Accrued Interest Obligation as of July 1 of the prior FY less any Annual Special Tax for Accrued Interest payments made in the prior FY.

If a partial prepayment is made pursuant to Section 6.B below, the Deferred DIF Obligation will also be reduced by the applicable amount of the Accrued Interest Obligation that was prepaid.

#### **E. Annual Special Tax**

The Annual Special Tax for Developed Property in any FY commencing the Special Tax Commencement FY shall be equal to (i) the Annual Special Tax for Facilities plus (ii) the Annual Special Tax for Accrued Interest plus (iii) the Annual Special Tax for Current Interest.

The Annual Special Tax for Facilities in any FY commencing the Special Tax Commencement FY shall be equal to the Deferred DIF Obligation on July 1 of the Special Tax Commencement FY times the Repayment Rate specified in Table 2 below that corresponds with such FY. In each subsequent FY, the Annual Special Tax for Facilities will remain unchanged until the Deferred DIF Obligation is paid in full.

The Annual Special Tax for Accrued Interest in any FY commencing the Special Tax Commencement FY shall be equal to the Accrued Interest Obligation on July 1 of the Special Tax Commencement FY times the Repayment Rate specified in Table 2 below that corresponds with such FY. In each subsequent FY, the Annual Special Tax for Accrued Interest will remain unchanged until the Accrued Interest Obligation is paid in full.

The Annual Special Tax for Current Interest in any FY commencing the Special Tax Commencement FY shall be equal to the Deferred DIF Obligation on July 1 of such FY times the Current Interest Rate in Table 2 below that corresponds with such FY.

**Table 2**  
**Amortization Table**

Fiscal Year	Repayment Rate	Current Interest Rate
Initial Accrued Interest Obligation FY through the FY preceding the Special Tax Commencement FY	0%	0%
Special Tax Commencement FY through the Special Tax Final FY	5%	2%

**4. METHOD OF APPORTIONMENT**

Commencing with the Special Tax Commencement FY and for each following FY, the CFD Administrator shall apportion the Assigned Special Tax Obligation as set forth below.

First: All Original Parcels that are reflected on the Assessor’s Parcel Maps applicable to the current FY will be assigned a Maximum Special Tax Obligation and Assigned Special Tax Obligation in accordance with Section 3 above.

Second: All Original Parcels that are not reflected on the Assessor’s Parcel Maps applicable to the current FY will be assigned a Maximum Special Tax Obligation and Assigned Special Tax Obligation in accordance with Section 3 above as if such parcels still existed in their previous form.

Third: The Maximum Special Tax Obligation and Assigned Special Tax Obligation that were calculated in the Second step above will be assigned to each applicable Successor Parcel based on the amount of Taxable Acreage contained in such Successor Parcel divided by the amount of Taxable Acreage contained in the relevant Original Parcel. The sum of the Maximum Special Tax Obligations of each group of Successor Parcels shall be equal to Maximum Special Tax Obligation of the applicable Original Parcel that was determined in the Second step. Likewise, the sum of the Assigned Special Tax Obligations of each group of Successor Parcels shall be equal to Assigned Special Tax Obligation of the applicable Original Parcel that was determined in the Second step.

Fourth: The Special Tax shall be levied on each Assessor’s Parcel of Developed Property at 100% of the applicable Annual Special Tax.

Successor Parcels that are assigned a Maximum Special Tax Obligation and an Assigned Special Tax Obligation in the current FY will be considered Original Parcels in the following FY.

**5. COLLECTION OF SPECIAL TAXES**

Collection of the Annual Special Tax shall be made by the County in the same manner as ordinary ad valorem property taxes are collected and the Annual Special Tax shall be subject to the same penalties and the same lien priority in the case of delinquency as ad valorem taxes; provided, however, that the Council may provide for (i) other means of collecting the Special Tax, including

direct billings thereof to the property owners; and (ii) judicial foreclosure of delinquent Annual Special Taxes.

## 6. PREPAYMENT OF SPECIAL TAX OBLIGATION

### A. Prepayment in Full

Property owners may prepay and permanently satisfy the Special Tax Obligation by a cash settlement with the City as permitted under Government Code Section 53344.

The Special Tax Obligation applicable to an Assessor's Parcel of Developed Property, or Undeveloped Property for which a Building Permit has been issued may be prepaid and the obligation to pay the Special Tax for such Assessor's Parcel permanently satisfied as described herein, provided that a prepayment may be made with respect to a particular Assessor's Parcel only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel eligible to prepay the Special Tax Obligation shall provide the CFD Administrator with written notice of intent to prepay, and designate or identify the company or agency that will be acting as the escrow agent, if any. The CFD Administrator shall provide the owner with a statement of the Prepayment Amount for such Assessor's Parcel within thirty (30) days of the request, and may charge a reasonable fee for providing this service. The Prepayment Amount (defined below) shall be calculated for each applicable Assessor's Parcel or group of Assessor's Parcels as summarized below (capitalized terms as defined below):

Deferred DIF Obligation  
plus Accrued Interest Obligation  
plus Prepayment Administrative Fees and Expenses  
Total: equals Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount (defined in Step 4 below) shall be calculated as follows:

#### Step No.:

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel.
2. For Assessor's Parcels of Developed Property, determine the Deferred DIF Obligation and the Accrued Interest Obligation. For Assessor's Parcels of Undeveloped Property for which a Building Permit has been issued, compute the Deferred DIF Obligation for that Assessor's Parcel as though it was already designated as Developed Property, based upon the Building Permit which has already been issued for that Assessor's Parcel.
3. Calculate the administrative fees and expenses of CFD No. 17-I, including the costs of computation of the prepayment and the costs of recording any notices to evidence the prepayment and the redemption (the "Prepayment Administrative Fees").

4. The amount to prepay the Special Tax Obligation is equal to the sum of the amounts computed pursuant to paragraphs 1, 2 and 3 (the “Prepayment Amount”).

The CFD Administrator will confirm that all previously levied Special Taxes have been paid in full. With respect to any Assessor's Parcel for which the Special Tax Obligation is prepaid in full, once the CFD Administrator has confirmed that all previously levied Special Taxes have been paid, the Council shall cause a notice of cancellation of Special Tax lien to be recorded in compliance with the Act, to indicate the prepayment of the Special Tax and the release of the Special Tax lien on such Assessor's Parcel, and the obligation of the owner of such Assessor's Parcel to pay the Special Tax shall cease.

### **B. Partial Prepayment**

The Special Tax on an Assessor's Parcel of Developed Property or Undeveloped Property for which a building permit has been issued may be partially prepaid. The amount of the prepayment shall be calculated as in Section 6.A, except that a partial prepayment shall be calculated according to the following formula:

$$PP = (P_E - A) \times F + A$$

These terms have the following meaning:

PP = the partial prepayment

$P_E$  = the Prepayment Amount calculated according to Section 6.A

F = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying the Special Tax Obligation

A = the Prepayment Administrative Fees and Expenses from Section 6.A

The owner of any Assessor's Parcel who desires such partial prepayment shall notify the CFD Administrator of (i) such owner's intent to partially prepay the Special Tax Obligation, (ii) the percentage by which the Special Tax Obligation shall be prepaid, and (iii) the company or agency that will be acting as the escrow agent, if any. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax Obligation for an Assessor's Parcel within sixty (60) days of the request and may charge a reasonable fee for providing this service.

With respect to any Assessor's Parcel that is partially prepaid, the City shall (i) distribute the funds remitted to it according to Section 6.A., and (ii) indicate in the records of CFD No. 17-1 that there has been a partial prepayment of the Special Tax Obligation and that the remaining Special Tax Obligation of such Assessor's Parcel, equal to the outstanding percentage (1.00 - F) of the Deferred DIF Obligation and the Accrued Interest Obligation, shall continue to be levied on such Assessor's Parcel in the same manner as before the Partial Prepayment.

## **7. TERM OF SPECIAL TAX**

The Special Tax shall be levied as long as necessary to satisfy the Assigned Special Tax Obligation for a period not to exceed thirty (30) FYs commencing with Special Tax Commencement FY,



provided however that the Special Tax will cease to be levied in an earlier FY if the CFD Administrator has determined that all CFD No. 17-I obligations have been satisfied.

## **8. EXEMPTIONS**

The CFD Administrator shall classify only Assessor's Parcels of Public Property as Exempt Property.

If the use of an Assessor's Parcel of Exempt Property changes so that such Assessor's Parcel is no longer classified as Public Property, per the first paragraph of Section 8 above, such Assessor's Parcel shall cease to be classified as Exempt Property and shall be deemed to be Taxable Property.

## **9. APPEALS**

Any landowner who pays the Special Tax and claims the amount of the Special Tax levied on his or her Assessor's Parcel is in error shall first consult with the CFD Administrator regarding such error not later than thirty-six (36) months after first having paid the first installment of the Special Tax that is disputed. If following such consultation the CFD Administrator determines that an error has occurred, then the CFD Administrator shall take any of the following actions, in order of priority, in order to correct the error:

(i) Amend the Special Tax levy on the landowner's Assessor's Parcel(s) for the current FY prior to the payment date,

(ii) Require the CFD to reimburse the landowner for the amount of the overpayment to the extent of available CFD funds, or

(iii) Grant a credit against, eliminate or reduce the future Special Taxes on the landowner's Assessor's Parcel(s) in the amount of the overpayment.

If following such consultation and action by the CFD Administrator the landowner believes such error still exists, such person may file a written notice of appeal with the City Council. Upon the receipt of such notice, the City Council or designee may establish such procedures as deemed necessary to undertake the review of any such appeal. If the City Council or designee determines an error still exists, the CFD Administrator shall take any of the actions described as (i), (ii) and (iii) above, in order of priority, in order to correct the error.

The City Council or designee thereof shall interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguities and make determinations relative to the administration of the Special Tax and any landowner appeals. The decision of the City Council or designee shall be final.

EXHIBIT B

AGREEMENT FOR DEFERRAL OF DIF

## **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 \_\_\_\_\_ (“Developer”). The City and Developer 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. Developer (and/or its affiliates) owns, in fee simple, the real property generally known as \_\_\_\_\_, Chula Vista, CA \_\_\_\_\_, as described and depicted in the attached Exhibit “A” (the “Property”), incorporated herein by this reference.

B. The Developer has applied for and the City has approved a mixed used development of 80 unit multi-family development and approximately 2,100 square feet of commercial space on the Property (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. Developer 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 Developer will be unable to secure financing and the Project will not be financially feasible.

F. Developer 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 is initiating proceedings to form 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 Developer has requested that the Property be included in 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, Developer and the City agree as follows:

1. **Agreement Regarding Payment of the DIF Obligation.** City agrees that the Developer’s obligation to pay the DIF Obligation for the Project may be satisfied on the terms and conditions set forth in this Agreement. Developer 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 \_\_\_\_\_. 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.** Developer consents and agrees to cooperate with the City to include the Property in 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 included in 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 inclusion of the Property in CFD No. 17-I Developer agrees

that Developer 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. Developer acknowledges that Developer has voluntarily requested that the Property be included in CFD NO. 17-1 and that the Special Tax be authorized to be levied against the Property. Developer therefore waives any right that Developer may have to protest against the proceedings to include the Property in CFD NO. 17-1 and/or the authorization to levy the Special Tax against the Property.
- e. Payment of the DIF Obligation. Upon inclusion of the Property in 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 Developer 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 Developer 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 canvas 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 a Notice of Special Tax Lien against the Property pursuant to the provisions of the CFD Law and Streets & Highways

Code Section 3115.5. If the canvas of such ballot determines that such vote is in opposition to such authorization or the Developer 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 Formation of CFD No. 17-I or Authorization to Levy the Special Tax.** If legal proceedings are initiated to challenge the validity of the proceedings to form 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 Developer. If the Developer elects to accept the defense of such action, the Developer shall bear all costs, including attorneys' fees, of such defense. If the Developer 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 Developer to develop the Project on the Property. If Developer provides notice to the City of its abandonment of the Project at any time prior to issuance of a certificate of occupancy, Developer 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 Developer 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.** Developer may not assign or transfer all or any portion of its interest in the Property or Project, unless and until (a) Developer 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 Developer'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 Developer, and such other reasonable factors which may affect such entity's or individual's ability to satisfy the terms and conditions under this Agreement. Developer 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 Developer's obligations under this Agreement (the "Review Period"). The City's determination shall be final. The proposed transferee(s) of Developer'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](mailto:kbroughton@chulavistaca.gov)

**If to Developer:**

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

**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. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, Developer shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement..
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: \_\_\_\_\_

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF CHULA VISTA,

a chartered municipal corporation

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

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

Name: Gary Halbert

Approved as to Form:

Title: City Manager

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

Glen R. Googins, City Attorney

**EXHIBIT A – Depiction and Description of Property**

APN: \_\_\_\_\_

**LEGAL DESCRIPTION**