

RECORDING REQUESTED BY:  
City of Chula Vista

AND WHEN RECORDED MAIL  
DOCUMENT AND TAX  
STATEMENT TO:  
City of Chula Vista – City Clerk  
276 Fourth Avenue  
Chula Vista, CA 91910

WITH COPIES TO:  
Eastlake Hospitality Ventures LLC  
Attn: Roberto Brutocao, President  
6 Venture, Suite 100  
Irvine, CA 92618

Burnett & Lesko LLP  
Attn: Michael W. Burnett  
7321 Veering Circle  
Huntington Beach, CA 92648

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: 595-710-21-00

**AGREEMENT FOR DEFERRAL  
OF DEVELOPMENT IMPACT AND SEWER CAPACITY FEES**

This AGREEMENT FOR DEFERRAL OF DEVELOPMENT IMPACT AND SEWER CAPACITY FEES (“Agreement”), is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Chula Vista, a chartered municipal corporation (the “City”), and Eastlake Hospitality Ventures LLC, a California Limited Liability Company (“Developer” or “Borrower” and collectively with the City, the “Parties”), with reference to the below Recitals and terms.

**RECITALS**

A. Developer (and/or its affiliates) owns, in fee simple, the real property generally known as 870 District Place, Chula Vista, California, 91914 (APN 595-710-21-00), as described in the attached Exhibit “A,” which is incorporated herein (the “Property”).

B. The City has received an application from Developer related to the proposed development of a 179-room hotel project on the Property (the “Project”).

C. The Project will further the desired objectives and goals of the City to facilitate development of a hotel within the eastern portion of the City thereby offering a significant benefit to the public within the surrounding area.

D. 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 for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

E. It is anticipated that the Project will impact the public facilities of the City, and the Parties wish to ensure that the burdens of the Project and required impact fees correspond proportionately to the impact on the City.

F. Developer has pursued numerous financing sources to finance the Project, and has obtained the requisite financing to commence and complete the Project, but requires assistance from the City to defray payment of some components of the development costs to make the Project fiscally feasible.

G. The City conditions of approval of the Project, *inter alia*, required the payment by Developer of the Eastern Transportation Development Impact Fee, the Public Facilities Development Impact Fee pursuant to Chula Vista Municipal Code chapters 3.54 and 3.50, *et seq.* and Sewer Capacity Fees in the sum of Three Hundred Sixty-Eight Thousand Three Hundred Fifty-Five dollars and Six cents (368,355.06), which are fees payable for the Project (collectively, the "Fees").

H. Developer has requested and the City agrees to defer payment of the Fees, estimated to be Two Million Two Hundred Forty-Three Thousand Three Hundred Forty-Three dollars and Ten cents (\$2,243,343.10) for a time, as provided in this Agreement and assessed as further described in Section 2 below.

#### 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. **Acknowledgments.** The Parties hereby certify that the above Recitals are true and correct, which are incorporated herein by this reference.

2. **Terms of Payment.** Developer will pay the total Fees in the sum of Two Million Two Hundred Forty-Three Thousand Three Hundred Forty-Three dollars and Ten cents (\$2,243,343.10), plus any and all accrued interests as discussed in this Agreement, and subject to potential reduction of the ETDIF Fees pursuant to Section 2.3 below. Developer's obligation to make such payment shall be evidenced by a promissory note ("Note") executed by Developer in favor of the City, in the form attached hereto as Exhibit "B."

2.1. Developer shall execute and deliver the Note to the City concurrently with its execution of this Agreement.

2.2. Full payment and satisfaction of the Fees, together with all accrued interest, shall be deferred for forty-eight (48) months (the "Deferral Period") from the date of the issuance by the City of a final Certificate of Occupancy (the "Certificate of Occupancy") for the Project ("Effective Date").

2.3 The total principal sum of the Fees consists, in part, of the estimated Eastern Transportation Development Impact Fee ("ETDIF"). Final determination of the total amount of ETDIF Fees will be based on a traffic study that the Developer shall pay for, have prepared, and submitted for approval to the City's Director of Development Services after the Project has stabilized, but no later than the fourth year from the Effective Date. Developer and City hereby agree that final ETDIF Fees shall be the lesser of: (i) the trip generation determined in the traffic study and the rates in effect at the time of payment (ii) or One Million Seven Hundred and Sixty Three Thousand, Four Hundred and Seventeen Dollars and Seventy Nine Cents (\$1,763,417.79), the fees assessed at time of Agreement execution, which shall also bear interest at the rate of three and one-half percent (3.5%) per annum. Failure to submit such traffic study and obtain the City's approval prior to the expiration of the Deferral Period shall result in the entire and total principal sum of Fees, together with all accrued interest, as assessed herein being imposed and become immediately due and payable.

2.4 The total principal sum of the Fees also consists, in part, of the Public Facilities Development Impact Fee ("PFDIF"). Developer and City hereby agree that the PFDIF Fees shall be One Hundred and Eleven Thousand, Five Hundred and Seventy Dollars and Twenty Five Cents (\$111,570.25) and the PFDIF Fees shall also bear interest at the rate of three and one-half percent (3.5%) per annum. The total principal sum of the Fees also consists, in part, of the Sewer Capacity Fee ("SCF"). Developer and City hereby agree that the SCF Fees shall be Three Hundred Sixty-Eight Thousand Three Hundred Fifty-Five dollars and Six cents (368,355.06) and the SCF Fees shall also bear interest at the rate of three and one-half percent (3.5%) per annum.

2.5. Interest shall begin to accrue as of the Effective Date.

2.6. The total outstanding amount of the Fees, together with all accrued interest, shall become immediately due and payable if Developer transfers the Project and/or Property to any other

party without the reasonable advance written notice to the City and without the City's express written consent to such transfer. The Developer and any potential transferee shall timely provide the City with documentation satisfactory to the City Manager or designee showing that the other party (the "Transferee") is fully capable of timely and fully assuming, and fully and timely assumes, all obligations of the Developer with regards to the Project including the obligation to pay the total outstanding balance of the Fees, together with all accrued interest, as provided herein, including, without limitation, the provision of appropriate security acceptable to the City as evidenced in writing by the Transferee. Developer shall notify the City in writing thirty (30) calendar days prior to transferring the Project and/or Property to the Transferee evidencing that the Transferee will assume all obligations of the Developer with regards to the Project including the obligation to pay the outstanding balance of the deferred fees pursuant to this section. The City shall, in its discretion, determine whether to consent or not to the transfer or assignment to a potential Transferee of all obligations of Developer relating to the Project and to this Agreement.

2.7. Developer may prepay the outstanding balance of the Note, together with all accrued interest, in whole or in part at any time without penalty.

3. **Security.** The Note representing the obligation to pay the Fees shall be secured by a deed of trust against the Property ("Trust Deed"), in the form attached hereto as Exhibit "C," or, in the alternative, by a first priority pledge of a bank account or brokerage account in amount, form and content acceptable to the City in its sole discretion ("Alternative Security", which is attached hereto as Exhibit "D"). The Alternative Security pledged brokerage account balance shall be continuously maintained by Developer in an amount not less than the minimum principal amount of Two Million Two Hundred Forty-Three Thousand Three Hundred Forty-Three dollars and Ten cents (\$2,243,343.10) (such amount, the "Alternative Security Minimum Balance"), which is the total amount of all deferred Fees relating to the Project. Pursuant to Section 5 of the Alternative Security, the City as the Secured Party is to receive monthly account statements and trade confirmations that show the then current balance in the Alternative Security pledged brokerage account. If for any reason the City does not receive such statements in a timely manner, then upon written request from the City, Developer shall forthwith provide the City with copies of such monthly account statements. If the balance in the Alternative Security pledged brokerage account falls below the Alternative Security Minimum Balance, then Developer shall timely deposit additional funds in the account to bring the fund amount to at or above the Alternative Security Minimum Balance. Failure of the Developer to maintain the first priority pledged brokerage account at or above the Alternative Security Minimum Balance or failure to provide monthly account statements as provided above shall entitle the City to record this Agreement and the Trust Deed. Further, Developer shall have the right to cause the Alternative Security to be released by causing the Trust Deed and this Agreement to be recorded. For the avoidance of doubt, this Agreement and the Trust Deed shall not be recorded by the City if the Alternative Security is approved by the City. The Trust Deed shall be subordinate to all voluntary liens now or hereafter in favor of financing lenders for the Property. Developer agrees that at no time after the Effective Date will the principal

balance of the Note, together with accrued interest, exceed five percent (5.00%) of the stabilized value of the Property, as developed with the Project, as determined by an appraiser as of the Effective Date. If the City requests in writing, Developer shall timely provide the City with a full copy the appraisal relating to stabilized value of the Property within ninety (90) days after the Effective Date. The City shall, in its discretion, determine whether or not to accept the appraised value of the Property identified in the appraisal.

4. **Reserved.**

5. **Reserved.**

6 **Remedies.** In order to enforce Developer's obligations under the terms of this Agreement or the Note, the City shall be entitled to pursue any and all remedies provided at law or in equity, including, without limitation, any and all remedies provided under the Note, the Alternative Security, if applicable, and the Trust Deed, as applicable. Without limiting the generality of the foregoing, in the event of a default by Developer of its obligations hereunder, after reasonable notice and opportunity to cure such default, the City shall have the right to accelerate the debt owed under the Note and pursue collection of the Fees, together with all accrued interest, directly from Developer. All such remedies shall be cumulative and non-exclusive. Notwithstanding the foregoing, Developer shall have no further obligations or liabilities under this Agreement and the Note upon an assignment or transfer of the Project consented to in writing by the City.

7. **Indemnification.** To the maximum extent allowed by law, Developer shall fully and timely defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents, counsel, volunteers, and employees (collectively the "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Developer, its officials, officers, employees, agents, contractors, and subcontractors arising out of or in connection with this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the gross negligence or willful misconduct of the Indemnified Parties. The Indemnity obligations of this Section 7 shall survive termination of this Agreement.

8. **Reserved.**

9. **Agreement Runs with the Land.** The burden of the covenants contained in this Agreement is for the benefit of the Property and the City, its successors and assigns and any successor in interest and thereby run with the land. City is deemed the beneficiary of such covenants for and in its own right and for the purposes of protecting the interest of the community. This

Agreement shall be released from the Property when all Fees, together with all accrued interest, are paid in full. Upon the request of Developer or its successors in interest, City shall execute an appropriate document for recording evidencing such release.

10. **Miscellaneous Provisions.**

10.1. **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.

10.2. **Notices.** Any and all notices or other communications made pursuant to this Agreement shall be given in writing and delivered by Federal Express and email, which shall be addressed as follows:

**If to City:** City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attn: City Manager's Office  
[mkachadoorian@chulavistaca.gov](mailto:mkachadoorian@chulavistaca.gov)

With a copy to: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attn: City Attorney's Office  
[jsm@lfap.com](mailto:jsm@lfap.com)

**If to Developer:** Eastlake Hospitality Ventures LLC  
Attn: Roberto Brutocao, President  
6 Venture, Suite 100  
Irvine, CA 92618  
[Rbrutocao@gmail.com](mailto:Rbrutocao@gmail.com)

With a copy to: Burnett & Lesko LLP  
Attn: Michael W. Burnett  
7321 Veering Circle  
Huntington Beach, CA 92648  
[mwb@burnettandlesko.com](mailto:mwb@burnettandlesko.com)

Notices shall be deemed delivered upon receipt by personal service or as of the second (2nd) business day after deposit with Federal Express.

10.3. **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.

10.4. **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.

10.5. **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.

10.6. **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.

10.7. **Reserved.**

10.8. **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.

10.9. **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.

10.10. **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.

10.11. **Time of the Essence.** Time is of the essence in the performance of the Parties' obligations contained herein.

10.12. **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.

10.13. **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 has been executed by the Parties as of the date first written above.

**Eastlake Hospitality Ventures LLC**  
a California Limited Liability Company

By: \_\_\_\_\_  
Name: Roberto Brutocao  
Title: President

**CITY OF CHULA VISTA**  
a chartered municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: Kerry K. Bigelow, MMC  
Title: City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Jill D.S. Maland  
Title: Lounsbery Ferguson Altona and Peak,  
LLP, Acting City Attorney

\* Corporate Authority required for Signatory

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which the certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_,  
Notary Public, personally appeared Roberto Brutocao, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)