

ACQUISITION/FINANCING AGREEMENT

COMMUNITY FACILITIES DISTRICT NO. 2024-1 (CITRUS BAY)

THIS AGREEMENT, dated as of _____, 2024 (the “Agreement”), is made and entered into by and between the CITY OF CHULA VISTA, a charter city duly organized and validly existing under the Constitution and laws of the State of California, (the “City”), COMMUNITY FACILITIES DISTRICT NO. 2024-1 (Citrus Bay), a community facilities district formed and existing pursuant to the laws of the State of California (the “CFD No. 2024-1”), and CWC BROADWAY CV 256 LLC, a Delaware limited liability company (the “Developer”).

WHEREAS, the Developer is the developer of certain property within that portion of the City known as the Citrus Bay described in Exhibit F attached hereto and incorporated herein by this reference (the “Property”) and Developer has obtained certain land use entitlements from the City which permit the development of the Property with approximately 244 dwelling units (the “Development Project”); and

WHEREAS, as a condition of approval of the Development Project, and pursuant to the Agreement for the Construction of a Public Park for the Chula Vista Center Residential Development Project by and between the City and the Developer dated as of February 13, 2024, as it may be amended (the “Park Construction Agreement”), the Developer will be constructing a public improvement to serve the Development Project as identified in Exhibit A attached hereto and incorporated herein by this reference (the “Improvement”); and

WHEREAS, in connection with the development of the Development Project, certain Sewer Capacity Charges (“Sewer Capacity Charges”), Parkland Acquisition Fees (“PAD A”), Parkland Development Fees (“PAD D,” together with “PAD A” referred to as “Park DIF”) and Public Facilities Development Impact Fees (“PFDIF”) (together referred to as the “Fees”) described in Exhibit A hereto are required to be paid and then used by the City to pay the costs of constructing or acquiring capital improvements to be owned, operated or maintained by the City; and

WHEREAS, the City and the Developer desire that the Agreement provide that the CFD No. 2024-1 finance the Sewer Capacity Charges in the amounts equal to the development impact fee obligations imposed pursuant to Title 13 of the Chula Vista Municipal Code in effect at the time of payment of such fee and as designated in Exhibit A hereto.

WHEREAS, the City and the Developer desire that the Agreement provide that the CFD No. 2024-1 finance the PAD A and PAD D in the amounts equal to the development impact fee obligations imposed pursuant to Chapter 17.10 of the Chula Vista Municipal Code in effect at the time of payment of such fee and as designated in Exhibit A hereto.

WHEREAS, the City and the Developer desire that the Agreement provide that the CFD No. 2024-1 finance the PFDIF in the amounts equal to the development impact fee obligations imposed pursuant to Chapter 3.50 of the Chula Vista Municipal Code in effect at the time of payment of such fees and as designated in Exhibit A hereto.

WHEREAS, the Developer requested that the City consider and the City did consider and form CFD No. 2024-1 under the terms and conditions of the “Mello-Roos Community Facilities Act of 1982,” as amended (Government Code Section 53311 and following) (the “Act”), for the purpose of financing the acquisition or construction of the Improvement and financing the Fees; and,

WHEREAS, Developer, in order to proceed in a timely way with development of the Development Project, desires to construct the Improvement that will, following the completion of the construction thereof, be acquired, owned, operated and maintained by the City; and,

WHEREAS, the City, CFD No. 2024-1 and Developer agree that the Improvement to be constructed by the Developer may, upon the completion of the construction thereof, be acquired by the City through financing provided by CFD No. 2024-1 at prices determined pursuant to and in accordance with the provisions of this Agreement; and,

WHEREAS, the City and the Developer further agree that the Fees and acquisition price of the Improvement shall be funded solely from the proceeds of special taxes of CFD No. 2024-1 (“Special Taxes”) levied in accordance with the Rate and Method of Apportionment of Special Tax (the “Rate and Method”) and bonds which shall be issued by CFD No. 2024-1 and which shall be secured by the levy of the Special Taxes (“Bonds”); and,

WHEREAS, it is the intent of this Agreement that Developer shall be entitled pursuant to the provisions of this Agreement to be paid for the Improvement constructed by the Developer at the prices as determined by the City pursuant to this Agreement upon the completion of the construction of the Improvement; and,

WHEREAS, the City and CFD No. 2024-1 are willing to have CFD No. 2024-1 finance the acquisition of the Improvement to be constructed by the Developer and the Fees, subject to the requirements of the Act, the City of Chula Vista Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts adopted by the City Council (the “Goals and Policies”) and this Agreement and Developer desires that CFD No. 2024-1 so finance the acquisition of such Improvement and Fees.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the respective parties as follows:

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

SECTION 2. Plans and Specifications. All plans, specifications and bid documents for the Improvement (the “Plans and Specifications”) and all changes in the Plans and Specifications

necessitated by change orders shall be prepared by the Developer at the Developer's initial expense, subject to City approval. The costs of acquisition of such Improvement shall include costs of the preparation of the Plans and Specifications and all related documentation as set forth in Section 7 below.

Developer shall not award bids for construction, commence construction or cause commencement of construction of the Improvement until the Plans and Specifications for the Improvement have been approved by the City.

SECTION 3. Design, Bid and Construction of Improvement. The Developer covenants and agrees that the Improvement to be acquired from Developer pursuant to this Agreement shall be designed, bid and constructed:

- (a) in substantial compliance with the approved Plans and Specifications for such Improvement;
- (b) in a good and workmanlike manner by well-trained adequately supervised workers;
- (c) in strict compliance with all governmental and quasi-governmental rules, regulations, laws, building codes and all requirements of Developer's insurers and lenders;
- (d) free of any known design flaws and defects; and
- (e) except as provided below, in substantial compliance with the requirements of the Park Construction Agreement.

In the event of a protest by a bidder to the award of a contract for the construction of the Improvement to the apparent low bidder, the Developer may, in its sole discretion, elect to:

- (a) award the contract to the apparent low bidder pursuant to the provisions of Park Construction Agreement if the Developer has determined that the bid of the apparent low bidder was, in fact, responsive and that the irregularity upon which the protest is based was minor in nature, i.e., the irregularity did not create an unfair competitive advantage for the apparent low bidder;
- (b) reject the bid of the apparent low bidder if the Developer determines that the irregularity upon which the protest is based did create an unfair competitive advantage for the apparent low bidder and the bid of the apparent low bidder was, therefore, not responsive and award the contract to the lowest responsive bidder; or
- (c) reject all bids and solicit new bids for the construction of the Improvement.

Should a legal action be filed challenging the validity of the Developer's decision regarding any such bid protest and/or the award of any contract for the construction of the Improvement, the Developer shall, at Developer's sole expense, defend such action and shall defend, indemnify, and hold harmless the City, its officers, directors, employees and agents and CFD No. 2024-1, its officers, directors, employees and agents (each, an "Indemnified Party" and collectively, the "Indemnified Parties").

SECTION 4. Inspection and Acceptance of the Improvement. The construction activities relating to the Improvement to be constructed by the Developer shall be subject at all reasonable times to inspection by authorized representatives of City. Once the Improvement to be acquired by City is substantially completed in accordance with the approved Plans and Specifications, then such Improvement shall be eligible for payment of the Base Increment of the Purchase Price (as defined in Section 7 below) therefor.

Prior to acceptance by the City of the Improvement constructed by the Developer for purposes of paying the Retained Increment (as defined in Section 7 below) of the Purchase Price, the Developer shall provide to the Director of Development Services of the City, or his or her designee (the "DSD Director"), the documentation set forth in this Section 4 and Section 7(c)(ii) below and obtain approval of as-built drawings for the Improvement in accordance with the process described below in this Section 4. The engineer of record for any such Improvement ("Engineer of Record") shall file form PW-E-106 (Request for Release of Bonds) with the DSD Director. Within 20 working days of such filing, the field inspector of the City or his or her designee ("Field Inspector") shall issue and transmit to the Engineer of Record a letter requesting (i) as-built drawings and soils reports (when applicable) and (ii) a punchlist of work to be completed or corrections to work to be completed before such Improvement will be eligible for payment of the Retained Increment. Within 20 working days of receipt of the Field Inspector's letter, the Engineer of Record shall prepare redline as-built drawings and submit them, together with any necessary soils reports, to the Field Inspector and the Developer shall complete the items of work and/or corrections specified in the punchlist. Within 10 working days of the Engineer of Record's submittal of the red lined as-built drawings, the Field Inspector shall review such drawings and provide comments. The Engineer of Record shall revise the redline as-built drawings per the Field Inspector's comments and resubmit within 10 working days. The Field Inspector shall make his final review within 5 working days of the Engineer of Record's resubmittal and notify the Engineer of Record to prepare mylar as-built drawings and a microfiche copy and submit both to the DSD Director or his designee and notify the Developer of any punchlist items which remain to be completed. The City and Developer shall make best efforts to perform within the time periods described above. The inability of City or Developer to perform within each time period, notwithstanding its best efforts, shall not constitute a breach of this Agreement.

SECTION 5. Warranty of Improvement Constructed by the Developer. At all times prior to the City's acceptance of the Improvement constructed by the Developer, the Developer shall be responsible for maintaining such Improvement at the Developer's expense. The Developer shall be obligated for the period of twelve (12) months immediately following the City's acceptance of such an Improvement to repair or replace, at Developer's expense, any defects or

failures resulting from the work of Developer, its contractors or agents. Upon the expiration of such twelve (12) month period, Developer shall assign to City and CFD No. 2024-1 its rights in and to any warranties, guarantees or other evidence of contingent obligations of third persons with respect to such Improvement. As a condition precedent to the payment of the Retained Increment (as defined in Section 7 below) of the Purchase Price, Developer shall post a maintenance bond in a form reasonably approved by the City, cause such a maintenance bond to be posted, or assign Developer's rights under such a maintenance bond naming City and/or CFD No. 2024-1 as beneficiary in an amount equal to fifteen percent (15%) of the Purchase Price of such Improvement in order to secure Developer's obligations pursuant to this Section. Upon posting of such maintenance bond, the City shall release any performance, labor and material bonds for such Improvement.

SECTION 6. Notice of Completion and Lien Releases. Upon completion of the construction of the Improvement, Developer shall notify the DSD Director in writing of such completion and shall prepare and execute a Notice of Completion for such Improvement in the form prescribed by Section 3093 of the California Civil Code and shall record such notice in the Official Records of the County of San Diego. Developer shall cause its contractors to provide unconditional lien releases for such Improvement in accordance with Section 3262 of the Civil Code. Notwithstanding the foregoing, City may waive the requirement for a Notice of Completion and lien releases if City determines that as of the date of payment of the Retained Increment of the Purchase Price for the Improvement, title to such Improvement or portion thereof satisfies the requirements for Acceptable Title (as hereinafter defined).

SECTION 7. Payment of Purchase Price.

(a) Amount of Purchase Price. The amount to be paid by City for the Improvement to be constructed by and acquired from Developer (the "Purchase Price") shall be determined by City in accordance with the provisions of the Park Construction Agreement, which costs include and are not limited to the costs of the title insurance policy described in Section 9 (a), and all other costs of construction and incidental costs eligible under the Act and the Goals and Policies as a part of the cost of the Improvement, up to the Park Budget, as defined in the Park Construction Agreement.

Incidental costs eligible to be included in the Purchase Price of the Improvement shall include the following:

- (i) the actual hard costs for the construction of the Improvement, including labor, materials and equipment costs;
- (ii) the costs of grading related to the Improvement;
- (iii) the costs incurred in designing, engineering and preparing the plans and specifications for the Improvement;
- (iv) the costs of environmental evaluation and mitigation of or relating to the Improvement;

- (v) fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Improvement;
- (vi) costs of construction administration and supervision up to one and three quarters percent (1.75%) of the total cost of the Improvement;
- (vii) professional costs associated with the Improvement, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services, subject to the limitations established in the Goals and Policies; and
- (viii) costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Improvement.

The costs associated with items (iii) through (viii) above shall not exceed a total of 35% of total Improvement costs financed. In no event shall the cost or value of the construction of the Improvement be deemed to exceed the construction contract prices set forth in the contracts and change orders approved by City (“Approved Change Orders”) pursuant to the applicable provisions of the Park Construction Agreement, or otherwise authorized pursuant to this Agreement.

Notwithstanding the foregoing, the aggregate Purchase Price of the acquisition of all new utilities to be owned by a public utility or public utilities may not exceed 5% of the proceeds of the series of the Bonds to be utilized to pay such Purchase Price less that portion of the reserve fund, costs of issuance and other incidental costs allocable to such amount.

(b) Incremental Payment of Purchase Price of the Improvement. The Purchase Price for the Improvement constructed by the Developer shall be payable in not to exceed two increments: (i) the “Base Increment” which shall be an amount equal to 75% of the audited, eligible costs as reflected in the written request for payment of the Base Increment submitted by the Developer and as approved by the Director and shall not exceed 75% of the cost estimate set forth in Exhibit A for such Improvement; and (ii) the “Retained Increment” which shall be an amount not to exceed the remaining, unpaid portion of the Purchase Price for such Improvement determined pursuant to the provisions of (a) above.

(c) Requisition for Incremental Payment of Purchase Price of the Improvement.

- (i) Base Increment. The Developer may submit only one (1) written request to the DSD Director for the payment of the Base Increment for the Improvement constructed by the Developer upon the “Completion of the Construction” as defined in the Park Construction Agreement. Each Base Increment payment request must be in the form attached hereto as Exhibit D, which is incorporated herein by this reference, and conform to the requirements of (f) below. The request for payment of the Base Increment for the Improvement shall be accompanied by a copy of the following documents related to the construction of such Improvement: (1) each construction contract and copy of bid notice for such

contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, (4) evidence of payment of each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the DSD Director, and (5) written conditional lien releases executed by each applicable contractor, subcontractor and materialman in a form satisfactory to the City Attorney of the City (the "City Attorney") for such Improvement.

(ii) Retained Increment. The Developer may submit only one (1) written request to the DSD Director for the payment of the Retained Increment for the Improvement in the form attached hereto as Exhibit E, which is incorporated herein by this reference, upon the submission to the City Engineer of (1) as-built drawings or other equivalent plans and specifications for such Improvement in a form reasonably acceptable to the City, (2) evidence that the Developer has posted a maintenance bond for such Improvement as required by Section 5 hereinabove, (3) evidence of the satisfaction of the requirements of Section 10 herein below directly related to such Improvement and (4) written unconditional lien releases from all contractors, subcontractors and materialmen satisfactory to the City Attorney for such Improvement. For any costs not included in the Developer's written request for payment of the Base Increment but requested for payment in the Retained Increment the request shall conform to the requirements of subsection (f) below and also be accompanied by the following documents related to such additional costs of the construction of such Improvement if not done so with the written request for payment of the Base Increment: (1) each construction contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, and (4) evidence of payment of each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the DSD Director.

(d) Documentation. Any payment request submitted by Developer shall be properly executed and shall include copies of all supporting documents required by subsection (c)(i) or (c)(ii), as applicable.

(e) Review of Payment Request for an Improvement. The DSD Director or his designee shall review each payment request and the supporting documentation accompanying such payment request. If the DSD Director finds that any such payment request is incomplete, improper or otherwise not suitable for approval, the DSD Director shall inform Developer in writing within twenty (20) working days after receipt thereof, the reasons for his finding. Developer shall have the right to respond to this finding by submitting further documentation after receipt of the denial. The DSD Director shall review any further documentation received from the Developer in support of a payment request and inform Developer of his approval or denial of the payment request as supplemented in accordance with this Section within ten (10) working days after receipt of the supplemental documentation. A resubmittal of a payment request shall be deemed a new payment request for purposes of this Section.

Subject to the limitations set forth herein, costs incurred under a construction contract for the Improvement entered into pursuant to the requirements of this Agreement and Approved

Change Orders shall be deemed to be reasonable and, subject to the other provisions of this Agreement, shall be included in the Purchase Price for such Improvement.

The DSD Director shall, after his or her approval of a payment request, immediately forward a request to the Director of Finance of the City notifying the Director of Finance of his or her approval of the payment request and requesting that such payment be made to the appropriate payee from “Eligible Improvement Proceeds” (defined below), when available. The Director of Finance shall process any such request of the DSD Director pursuant to the applicable procedures of the Finance Department and shall make or authorize such payment pursuant to such procedures and subsection (h) below.

(f) Payment.

- (i) Priority of Payment of Purchase Price for Improvement. The City and the Developer acknowledge and agree that the Purchase Price of the Improvement may exceed the aggregate amount of Eligible Improvement Proceeds available for the payment of the Purchase Price.
- (ii) Timing of the Payment of the Purchase Price for an Improvement. Subject to the limitations contained in (i) above and (iii) and (iv) below, the increment of the Purchase Price for the Improvement shall be paid to Developer within thirty (30) days after the date of the DSD Director’s approval of the payment request for any such increment; provided, however, no Retained Increment for the Improvement shall be paid earlier than thirty-five (35) days after the recording of a Notice of Completion for the Improvement.
- (iii) Sources of Payment. Prior to the issuance of the first series of Bonds, the City agrees to levy the Special Taxes on Developed Property at 100% of the Assigned Special Tax rate pursuant to, and as defined in, the Rate and Method. Such Special Taxes levied and collected prior to the issuance of the Bonds that are not required to pay Administrative Expenses (as defined in the Rate and Method), including any prepayment of Special Taxes prior to the issuance of Bonds, shall be referred to as “Available Special Taxes” and shall be deposited in a fund or account of the City (the “CFD No. 2024 1 Project Account”). Funds may be disbursed from the CFD No. 2024 1 Project Account in the following priority:
 - (i) First, to pay or reimburse the Sewer Capacity Charges obligation, PFDIF obligation and Park DIF obligation of the Development Project, as determined by the City; and
 - (ii) Second, to pay the Purchase Price of the Improvement.

Following the issuance of Bonds, the City shall levy Special Taxes to meet the Special Tax Requirement in the Rate and Method, provided, however, Special Taxes shall not then be levied to pay for eligible development impact fees and the acquisition or construction of eligible facilities.

The Purchase Price or any increment thereof for the Improvement shall be payable to the Developer from (a) those proceeds of the sale of each series of Bonds deposited in the acquisition account (“Acquisition Account”) of the project fund (the “Project Fund”) established pursuant to the indenture or fiscal agent agreement for the Bonds (the “Indenture”) and (b) funds in the CFD No. 2024 1 Project Account, if any, pursuant to the priority set forth above. The funds deposited in the Project Fund and the CFD No. 2024 1 Project Account shall be referred to as “Eligible Improvement Proceeds.” The Eligible Improvement Proceeds available from the sale of Bonds shall be the amount in excess of (i) all costs of formation of CFD No. 2024-1 and all costs of issuance of such Bonds, (ii) deposits of accrued and capitalized interest to the redemption fund, (iii) deposits of amounts equal to the Development Project’s Sewer Capacity Charges obligation, Park DIF obligation and the PFDIF obligation to the Acquisition Account, respectively, of the Project Fund and (iv) the initial deposit to the reserve fund. Upon the issuance of Bonds, any funds then remaining in the CFD No. 2024 1 Project Account shall be transferred to the applicable accounts of the Project Fund.

- (iii) Withholding of Payment. In addition to the foregoing, the City shall have the right to withhold payment of the Purchase Price or any increment thereof of the Improvement if (a) the Developer is delinquent in the payment of any assessment installments or special taxes levied by the City or a community facilities district established by the City on properties then owned by the Developer within CFD No. 2024-1, (b) the DSD Director reasonably determines that the Developer is not then in substantial compliance with all applicable conditions and obligations imposed upon the Developer hereunder or upon the Development Project pursuant to the land use entitlements approved by the City for the Development Project, including but not limited to, the Park Construction Agreement, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction of all applicable public improvements (the “Conditions of Approval”). The DSD Director shall provide written notice to the Developer of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of assessment installments or special taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. If the payment is withheld as a result of substantial non-compliance with a Condition of Approval, the notice shall specify such Condition of Approval and what action will be necessary by the Developer to substantially comply with such Condition of Approval. Upon receipt by the DSD Director of evidence reasonably satisfactory to the DSD Director of the payment of the delinquent special taxes or assessments or upon the determination by the DSD Director that the Developer has substantially complied with the subject Condition of Approval, the City shall forthwith make any payment which has been withheld pursuant to the provisions of this paragraph.

SECTION 8. Audit. The authorized representatives of City shall have the right, upon two (2) days prior written notice to Developer and during normal business hours, to review all books and

records of Developer pertaining to costs and expenses incurred by Developer in construction of the Improvement.

SECTION 9. Ownership and Transfer of Improvement. The conveyance of the Improvement by Developer to City shall be in accordance with the following procedures:

- (a) Improvements Constructed on Land not Owned by City. As a condition to the payment of the Retained Increment of the Purchase Price, Developer shall cause an irrevocable offer of dedication to be made to City or an outright grant of a fee interest or easement interest as appropriate, in the sole discretion of the City of the appropriate right, title and interest in and to the portion of the applicable property owned by the Developer related to the applicable Improvement, including any temporary construction or access easements. Developer, whether or not it is the entity constructing the Improvement, agrees to execute and deliver to the City the documents required to complete the transfer of Acceptable Title for property owned by the Developer upon or within which such Improvement is to be located. For purposes of this Agreement, the term “Acceptable Title” shall mean title to the portion of the property to be conveyed free and clear of all taxes, liens, encumbrances, assessments, easements, leases, whether any such item is recorded or unrecorded, except (i) non-delinquent taxes and assessments and (ii) those non-monetary encumbrances and easements which are reasonably determined by the City not to interfere with the intended use of the portion of the property. As a further condition to the payment of the Retained Increment of the Purchase Price for any Improvement, Developer at its sole initial cost and expense, subject to reimbursement pursuant to Section 7, shall cause to be issued a policy of title insurance for such portion of the property in an amount not to exceed the Purchase Price and in the form normally required by City in connection with the dedication of land for subdivision improvements and containing such title endorsements as may be reasonably requested by City. City’s final acceptance of the portion of the property and the Improvement constructed thereon shall not be unreasonably withheld or delayed.
- (b) Improvement Constructed on Land Owned by City. If Developer is authorized to construct an Improvement on land owned in fee by City or on land over which the City owns an easement Developer shall obtain the necessary encroachment permits to enter such land for purposes of constructing such Improvement. City shall cooperate with Developer in issuing such encroachment permits. The Improvement shall be inspected by City on an ongoing basis.

SECTION 10. Grading and Subdivision Improvement Bonds. Except as provided below, Developer shall be required to post or cause the posting of bonds or other security acceptable to the City to guarantee completion of the Improvement in accordance with City’s standard subdivision requirements and the Conditions of Approval. Labor and materials bonds shall also be required to be provided by the Developer’s contractor for the Improvement. Such bonds shall name the City of Chula Vista as additional obligee and shall remain in effect until the final acceptance of the Improvement by the DSD Director . The presence of Bond proceeds shall not relieve the Developer of requiring this obligation of the Developer’s contractor.

Performance and labor and material bonds for the Improvement shall not be required or may be released if: (1) such Improvement constitutes a portion of the required subdivision improvements, (2) Bond proceeds equal to 125% of the estimated cost to construct or acquire such Improvement are available and set aside for such purpose, and (3) the Improvement is to be constructed or acquired entirely with the Eligible Improvement Proceeds. Provided that conditions (1) and (2) are satisfied, if the Improvement is to be constructed or acquired only in part with the Eligible Improvement Proceeds, performance and labor and material bonds shall not be required for that portion of the Improvement to be so constructed or acquired except with respect to the portion that will not be acquired or constructed with Eligible Improvement Proceeds. In the event that the Eligible Improvement Proceeds that are available and may be set aside to fund the cost to construct or acquire the Improvement are less than 125% of the estimated cost thereof, the Developer shall be required to provide a performance and labor and material bond or other security satisfactory to the DSD Director and the City Attorney in the amount of such deficiency. City will cooperate with Developer in the termination or exoneration of any performance and labor and material bonds assuring completion of the Improvement. The DSD Director shall be the sole judge of determining release of such bonds.

SECTION 11. Indemnification by Developer. Developer shall defend, indemnify and hold harmless all Indemnified Parties from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the design, engineering, solicitation of bids, award of contracts, administration of contracts and construction of the Improvement by the Developer, its employees, agents, independent contractors and/or representatives; provided that any claims for personal injury or property damage which relate to the Improvement shall be limited to those arising out of personal injury or property damage caused by actions or omissions by Developer or Developer's employees, agents, independent contractors or representatives which occurred during the period prior to the transfer of title to the Improvement by City, whether or not a claim is filed prior to the date of acceptance of the Improvement. Nothing in this Section 11 shall limit in any manner the rights of the City and/or CFD No. 2024-1 against any of the architects, engineers, contractors or other consultants employed by the Developer which has performed work in connection with construction or financing of the Improvement. Notwithstanding the foregoing, Developer shall have no obligation to defend, indemnify or hold harmless the Indemnified Parties from and against any claims, liabilities, losses or damages (including court costs and attorneys' fees) which result from or arise out of the sole negligence or willful misconduct of an Indemnified Party.

Except as set forth in this Section 11, no provision of this Agreement shall in any way limit the extent of the responsibility of Developer for payment of damages resulting from the operations of the Developer, its agents, employees or contractors.

SECTION 12. Obligation of City. Neither the City nor CFD No. 2024-1 has a legal or financial obligation to construct or finance the actual construction of the Improvement. All costs incurred for actual construction of the Improvement, including all incidentals thereto, shall be borne by Developer, and the obligations of the City and CFD No. 2024-1 are limited to the acquisition of the Improvement and the financing of the Fees pursuant to the provisions of this Agreement.

SECTION 13. Failure by Developer to Construct Improvements. At any time following commencement of the construction of the Improvement by the Developer the City determines that such construction is not progressing within a reasonable time in accordance with the Conditions of Approval or the Developer fails to demonstrate a continuing ability to complete the construction of such Improvement in accordance with the Conditions of Approval, the City may give written notice of such failure of performance to the Developer. Developer shall have sixty (60) days from the date of receipt of such notice to either (i) cure such failure of performance by demonstrating to the satisfaction of the City during such cure period reasonable progress in the construction of the Improvement and a continuing ability to complete the construction of such Improvement in accordance with the Conditions of Approval or (ii) reasonably demonstrate that such failure of performance is due to circumstances or conditions beyond Developer's reasonable control ("Force Majeure") including, without limitation, the City's actions, omissions or inaction which result in a delay of performance by Developer, labor disputes, acts of God, war, riots, insurrections, civil commotions, moratoriums, inability to obtain labor or materials or reasonable substitutes for either, fire, unusual delay in transportation, and adverse weather conditions. Should Developer fail to reasonably demonstrate such reasonable progress or such continuing ability to complete the construction of such Improvement or Force Majeure, the obligation of the City to pay the Purchase Price for the acquisition of such Improvement pursuant to this agreement may be terminated by the City by providing ten (10) days written notice to the Developer. Upon termination, the City may in its sole discretion then proceed to advertise and bid the balance of the construction of such Improvement, and there will be no further obligation on the part of the City for payment of the Purchase Price for such Improvement due to Developer pursuant to this Agreement.

In the event that the City chooses not to advertise and bid the balance of the construction of any such Improvement following such a termination, any Eligible Improvement Proceeds remaining and set aside for the acquisition of such Improvement shall be transferred to the redemption fund established by the Indenture and used to call outstanding Bonds.

SECTION 14. Agreement Contingent. As a precondition to the sale of each series of the Bonds of CFD No. 2024-1, Developer shall pay in cash to City an origination charge of 1.0% of the amount of the principal amount of such series of the Bonds ("Origination Payment"). Each such Origination Payment shall be at Developer's own expense and not recoverable from the proceeds of the Special Taxes or from the proceeds of the Bonds. In the event that any series of the Bonds are, for any reason, not sold, the amount of the Origination Payment made for such series of the Bonds shall be returned to the Developer.

The City may, at its option, suspend the performance of its obligations under this Agreement if any legal challenge is filed relating to the validity or enforceability of this Agreement, CFD No. 2024-1 proceedings or the issuance of the Bonds. The obligations of the City and CFD No. 2024-1 hereunder shall be reinstated upon the entry of a final judgment in any such proceedings upholding the validity and enforceability of the Agreement, CFD No. 2024-1 proceedings and the issuance of the Bonds. In the event that a final judgment or other final and non-appealable resolution is entered invalidating or declaring unenforceable this Agreement,

CFD No. 2024-1 proceedings or the issuance of the Bonds, the City and CFD No. 2024-1 may, at their option, terminate this Agreement.

SECTION 15. Notice of Special Tax. Developer, or the successor or assigns of the Developer, including but not limited to all Builders (as such term is defined in Section 16 below), shall provide written notice to all potential purchasers of lots in the form required pursuant to Government Code Section 53341.5 and/or such additional requirements as may be established by the City so advising the potential owner of the fact of CFD No. 2024-1, with said document being executed by the potential purchaser. Such notice shall be provided to the potential purchaser a reasonable time before the potential purchaser becomes contractually committed to purchase the lot so that the potential purchaser may knowingly consider the impact of the special tax in the decision to purchase the lot. A copy of all such notices executed by actual purchasers shall be sent to the DSD Director.

SECTION 16. Limitation of Aggregate Taxes and Assessments. Developer agrees to include in any future agreement to sell all or any portion of the property to any person or entity for the purpose of constructing and marketing owner-occupied residential dwelling units (each, a “Builder”) provisions requiring the inclusion of the following “escrow instructions” in all sales by such Builder to residential home owners agrees to the inclusion of such escrow instructions in all sales by each such Builder to residential home owners:

- (a). At or prior to the close of each such escrow with a residential homeowner, the escrow company shall apply a “calculation formula” previously approved by the DSD Director and deposited with the escrow company by the Builder to determine the aggregate of all annual ad valorem property taxes, all special taxes authorized to be levied to finance the construction or acquisition of public facilities and all assessment installments authorized to be levied to finance the construction or acquisition of public facilities (the “Total Annual Taxes and Assessments”) applicable to the parcel subject to such escrow (the “Applicable Parcel”).
- (b). If the Total Annual Taxes and Assessments exceed 2% of the sales price of the Applicable Parcel, the Escrow Company will make immediate written demand upon the Builder for deposit into the escrow of the funds necessary to partially prepay the special tax obligation for CFD No. 2024-1 or any other community facilities district so that the Total Annual Taxes and Assessments will thereafter be equal to or less than 2% of the sales price of the Applicable Parcel. Such funds must be received by the escrow company prior to the close of escrow of the sale of the Applicable Parcel. The calculation of the prepayment amount for CFD No. 2024-1 shall be in accordance with the method of prepayment of special tax as set forth in the Rate and Method. Upon closing of such escrow, the amount so deposited by the Builder pursuant to this escrow instruction shall be sent by the escrow company to the Director of Finance, together with written instructions that such amount is to be used to partially prepay the special tax obligation of the Applicable Parcel for CFD No. 2024-1 or shall be sent to the other community facilities district for which the special tax obligation has been prepaid with similar written instructions.

The provisions of this Section 16 related to sales by Builders to residential homeowners shall also apply to any sale by Developer of a parcel to a residential home owner.

In addition to any other remedy provided for by law or in equity, the City may enforce the provisions of this Section 16 by an action for specific performance or injunctive relief or both.

SECTION 17. Relationship to Public Works. This Agreement is for, among other things, the construction and acquisition of the Improvement by City and the levy of Special Taxes and sale of the Bonds for the payment of construction and acquisition costs for such Improvement and such other amounts as are herein provided, and is not intended to be a public works contract. In performing its obligations under this Agreement, Developer is an independent contractor and not the agent of City. City shall have no responsibility for payment to any contractor or supplier of Developer. Notwithstanding the foregoing, Developer may be subject to certain public contract requirements as provided in Section 3 of this Agreement.

SECTION 18. Sale of Bonds. At the request of Developer, the City shall proceed with the issuance and sale of Bonds, in one or more series as tax-exempt and taxable. The Bonds shall be sized so that as of the date of issuance of such series of the Bonds the aggregate appraised value of all taxable properties within CFD No. 2024-1 for which such Bonds are being issued shall comply with the value-to-lien standards set forth in the Goals and Policies or as otherwise approved by the City Council pursuant to the Goals and Policies. In addition, as to any subsequent series of Bonds, the issuance of such Bonds shall comply with such parity bonds test as may be set forth in the Bond Indenture. The appraised value of taxable property for purposes of this paragraph shall be determined by an independent appraisal undertaken for the City utilizing appraisal assumptions approved by the City and, as to each subsequent series of the Bonds, consistent with the applicable parity bonds requirements.

The proceeds of each series of the Bonds shall be used in the following priority to (i) fund a reserve fund for the payment of principal and interest with respect to such Bonds; (ii) fund capitalized interest on such Bonds in an amount not to exceed the amount required to pay interest on such Bonds until sufficient special taxes may be placed on the tax roll to pay the scheduled debt service on such Bonds; (iii) pay for costs of issuance of such Bonds including, without limitation, underwriter's discount, bond counsel fees, printing, and paying agent fees; (iv) pay for the costs of forming CFD No. 2024-1, including reimbursement of advances of funds to the City by Developer to pay for the City's legal, engineering, financial, special tax, appraisal and market absorption consulting expenses incurred relating to the formation of CFD No. 2024-1 and issuance of the Bonds; (v) pay the costs of the acquisition or construction of the Improvement to be financed from the proceeds of the Bonds, and (vi) pay the Fees as detailed in Exhibit A.

The timing of the issuance and sale of each series of the Bonds, the terms and conditions upon which such Bonds shall be issued and sold, the method of sale of such Bonds and the pricing thereof shall be determined solely by the City and shall conform to the Goals and Policies and this Agreement. The sale of each series of the Bonds shall be subject to receipt by the City of a competitively bid or negotiated bond purchase agreement which is acceptable to the City. The

sale of each series of the Bonds shall also be conditional upon the preparation of an official statement that is, in the sole judgment of the City, “deemed final” as such term is used in Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”).

The principal amount of each series of the Bonds to be issued shall be determined in accordance with the Goals and Policies such that the maximum projected annual special tax revenues securing such Bonds and all outstanding parity Bonds, equals at least 110% of the projected annual gross debt service on all of the Bonds following the issuance of such series of the Bonds. The Bonds shall be issued as tax-exempt and taxable bonds in the amounts determined by the City in consultation with its bond counsel and municipal advisor.

Developer, on behalf of itself, any affiliates of the Developer and any successor or assign of the Developer including but not limited to the Builder, agrees (a) to provide all information regarding the development of the property within CFD No. 2024-1, including the financing plan for such development, which are necessary to ensure that the official statement for each series of the Bonds complies with the requirements of the Rule and all other applicable federal and state securities laws; (b) to enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to CFD No. 2024-1, the development thereof and the Developer as necessary to ensure ongoing compliance with the continuing disclosure requirements of the Rule and (c) to cause its counsel to provide an opinion of such counsel in a form satisfactory to the underwriter of such series of the Bonds and underwriter’s counsel or disclosure counsel, as applicable.

SECTION 19. Development Impact Fee Credit, Payment and Reimbursement.

Proceeds of the Bonds in an amount equal to the PFDIF obligation of the Development Project (the “PFDIF Bond Proceeds”) shall be deposited and set aside in the Acquisition Account of the Project Fund. The PFDIF obligation amount shall be established as the then PFDIF at the time of payment. The use of such proceeds shall be for any lawful purpose of the PFDIF. Upon the deposit of the PFDIF Bond Proceeds in such account, such amount shall be credited against the Development Project’s PFDIF obligation. If and to the extent that the Development Project’s actual PFDIF obligation exceeds the amount of the PFDIF Bond Proceeds, the balance of the PFDIF obligation shall be payable pursuant to the provisions of the Municipal Code. If and to the extent that the Development Project’s actual PFDIF obligation is less than the PFDIF Bond Proceeds, such surplus shall remain in the Acquisition Account of the Project Fund and used for any lawful purpose pursuant to the Indenture. PFDIF Bond Proceeds may be drawn by the City at any time.

Proceeds of the Bonds in an amount equal to the Development Project’s Sewer Capacity Charges obligation (the “Sewer Capacity Charges Bond Proceeds”) shall be deposited and set aside in the Acquisition Account of the Project Fund. The Sewer Capacity Charges obligation amount shall be established as the then Sewer Capacity Charge fee at the time of payment. The use of such proceeds shall be for any lawful purpose of the Sewer Capacity Charges. Upon the deposit of the Sewer Capacity Charges Bond Proceeds in such account, such amount shall be credited against the Development Project’s Sewer Capacity Charges obligation. If and to the

extent that the Development Project's actual Sewer Capacity Charges obligation exceeds the amount of the Sewer Capacity Charges Bond Proceeds, the balance of the Development Project's Sewer Capacity Charges obligation shall be payable pursuant to the provisions of the Chula Vista Municipal Code. If and to the extent that the Development Project's actual Sewer Capacity Charges obligation is less than the Sewer Capacity Charges Bond Proceeds, such surplus shall remain in the Acquisition Account of the Project Fund and used for any lawful pursuant to the Indenture. Sewer Capacity Charges Bond Proceeds may be drawn by the City at any time.

Proceeds of the Bonds in an amount equal to the Development Project's Park DIF obligation (the "Park DIF Bond Proceeds") shall be deposited and set aside in the Acquisition Account of the Project Fund. The Park DIF obligation amount shall be established as the then Park DIF fee at the time of payment. Except as otherwise provided in this paragraph, the use of such proceeds shall be for any lawful purpose of the Park DIF. Upon the deposit of the Park DIF Bond Proceeds in such account, such amount shall be credited against the Development Project's remaining Park DIF Obligation. If and to the extent that the Development Project's actual Park DIF obligation exceeds the amount of the Park DIF Bond Proceeds, the balance of the Park DIF obligation shall be payable pursuant to the provisions of Municipal Code. If and to the extent that the Development Project's actual Park DIF obligation is less than the Park DIF Bond Proceeds, such surplus shall remain in the Acquisition Account of the Project Fund and used for any lawful purpose pursuant to the Indenture. Park DIF Bond Proceeds may be drawn by the City at any time.

SECTION 20. Supplemental Bill for Payment of Special Taxes. Developer acknowledges that the Rate and Method provides that the annual Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that CFD No. 2024-1, may directly bill the Special Tax, or may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. The City has represented to the Developer that delinquencies in the payment of special taxes intended to be collected on property tax bills have occurred in other community facilities districts formed by the City as a result of difficulties experienced by the office of the Treasurer-Tax Collector of the County of San Diego (the "Tax Collector") in the timely billing and collection of such special taxes. If and to the extent that the Tax Collector fails, for whatever reason, to timely bill the full amount of the Special Taxes levied on properties owned by the Developer or any affiliate of the Developer within CFD No. 2024-1, the City, on behalf of CFD No. 2024-1, may elect to directly and separately bill ("Direct Bill") the Developer for such deficiency and Developer agrees to (a) pay such deficiency within the time period specified in such Direct Bill which shall be no less than thirty calendar days from the date of mailing of such Direct Bill or (b) provide the Director of Finance with proof of payment to the Tax Collector of such deficiency in a form satisfactory to the Director of Finance. Should the Developer pay such deficiency directly to the City pursuant to a Direct Bill, the City agrees upon receipt of such payment to timely submit an amendment of the Special Tax levy on the Developer's property to the Tax Collector to reduce such levy by the amount of such payment.

Delinquency in the payment of a Direct Bill sent pursuant to the preceding paragraph shall not be enforceable as a personal obligation of the Developer but shall be enforceable in the

same manner as if such delinquency had been for the payment of special taxes billed on the property tax bill.

SECTION 21. Conflict with Other Agreements. Except as specifically provided herein, nothing contained herein shall be construed as releasing Developer or the Builder from any condition of development or requirement imposed by any other agreement with City.

SECTION 22. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

SECTION 23. Entire Agreement; Amendment. This Agreement and the agreements expressly referred to herein contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understandings, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waiver, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

SECTION 24. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

Developer: CWC Broadway CV 256 LLC
5927 Priestly Drive, Suite 110
Carlsbad, CA 92008
Attn: Lisa Albanez

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

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

SECTION 25. Severability. If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

SECTION 26. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Developer may not assign its rights or obligations hereunder except upon written notice to City within ten (10) days of the date of such

assignment indicating the name and address of the assignee. Upon such notice and the assumption by the assignee of the rights, duties and obligations of the Developer arising under or from this Agreement, Developer shall be released by City from all future duties or obligations rising under or from this Agreement. Notwithstanding the preceding sentence, Developer may assign its rights and obligations hereunder as security to lenders for the purpose of obtaining loans to finance development within CFD No. 2024-1, but no such assignment shall release Developer from its obligations hereunder to City.

SECTION 27. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California, Additionally, this Agreement and the construction of the Improvement shall be subject to all City ordinances and regulations relating to the requirement of improvement agreements, land division, improvement security or other applicable development requirements.

SECTION 28. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights under the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by any other party with the terms of this Agreement thereafter.

SECTION 29. Singular and Plural; Gender. As used herein, the singular of any work includes the plural, and terms in the masculine gender shall include the feminine.

SECTION 30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

SECTION 31. Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and the Developer and shall be deemed for all purposes to have been jointly drafted by the City and the Developer. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

SECTION 32. Recitals; Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

SECTION 33. Authority of Signatories. Each signatory and party hereto hereby represents and warrants to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this Agreement.

SECTION 34. Recordation. The parties shall execute, acknowledge and cause this Agreement, or a memorandum of this Agreement in a form satisfactory to the parties hereto, to be recorded against the Property in the Official Records of San Diego County.

[End of page. Next page is signature page.]

Signature Page to
Acquisition/Financing Agreement by and between
the City of Chula Vista and
CWC Broadway CV 256 LLC

EXECUTED by and between the parties hereto on the day and year first hereinabove written.

“CITY”

CITY OF CHULA VISTA

JOHN MCCANN, MAYOR
CITY OF CHULA VISTA
STATE OF CALIFORNIA

ATTEST:

APPROVED AS TO FORM:

KERRY K. BIGELOW, CITY CLERK

CITY OF CHULA VISTA
STATE OF CALIFORNIA

MARCO A. VERDUGO, CITY
ATTORNEY
CITY OF CHULA VISTA
STATE OF CALIFORNIA

“DEVELOPER”

CWC BROADWAY CV 256 LLC, a Delaware
limited liability company

By: CW BROAD 256 MGMT LP,
a California limited partnership
Its Managing Member

By: CW PROJ MGMT LLC, a California
limited liability company
Its General Partner

By: _____
Matthew Thorne, Chief Operating Officer

EXHIBIT “A”

**ACQUISITION AND FINANCING AGREEMENT
FOR CFD 2024-1 (CITRUS BAY)
IMPROVEMENT DESCRIPTION AND ESTIMATED COSTS**

DEVELOPMENT IMPACT FEES

<u>Fee Category</u>	<u>Estimated Fees</u>
Public Facilities Development Impact Fee (“PFDIF”) ⁽¹⁾⁽²⁾	\$3,028,398.00
Parkland Acquisition Fee (“PAD A”) ⁽²⁾⁽³⁾	192,764.00
Parkland Development Fee (“PAD D”) ⁽²⁾⁽³⁾	367,952.00
Sewer Capacity Charges ⁽¹⁾	<u>862,547.00</u>
TOTAL:	\$4,451,661.00

¹ Amount is net of expected, available previous use credit.

² Estimated, subject to increase each October 1 per City Municipal Code until paid.

³ Based on credits net of the Park Budget, as described in the Park Construction Agreement.

Acquisition Improvement

Park Improvements – estimated Park Budget of \$2,070,336.00 pursuant to the Park Construction Agreement. Half acre park and improvements as specified in the Park Construction Agreement.

EXHIBIT “B”

[INTENTIONALLY OMITTED]

EXHIBIT “C”

[Omitted]

Exhibit “D”

**City of Chula Vista
Community Facilities District No. 2024-1
(Citrus Bay)**

**Base Increment
Payment Request No. _____**

The undersigned (the “Developer”) hereby requests payment in the total amount of \$_____ for the Base Increment for the Improvement (as defined in the Acquisition/Financing Agreement by and among the City of Chula Vista (the “City”) and Developer and described in Exhibit A to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she is a duly authorized representative or signatory of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.
- B. The Improvement that is the subject of this Payment Request has been substantially completed in accordance with Exhibits B and C of the Agreement.
- C. This request for payment of the Base Increment for the Improvement has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Base Increment for which payment is requested has not been the subject of any prior payment request paid by the City.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIF’s) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third party invoices, change orders and checks) is attached with respect to each cost for which payment is requested.
- F. The Improvement for which payment is requested were constructed in accordance with the requirements of the Agreement.
- G. Developer is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Developer, after due inquiry, will attach to the Improvement.

I. A cop(ies) of the letter(s) of unconditional lien release for the Improvement for which payment is requested is included this request. Alternatively, a copy of a letter of conditional lien release for the Improvement for which payment is requested together with a letter from the contractor(s) stating that they have been paid in full by the Developer for the Improvements for which payment is requested is also included in this request.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

CWC BROADWAY CV 256 LLC, a Delaware
limited liability company

By: CW BROAD 256 MGMT LP,
a California limited partnership
Its Managing Member

By: CW PROJ MGMT LLC, a California
limited liability company
Its General Partner

By: _____
Matthew Thorne, Chief Operating Officer

CITY OF CHULA VISTA

Payment Request Approved for Submission to
Director of Finance

Director of Engineering

Dated: _____

ATTACHMENT 1

SUMMARY OF IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

<u>Improvement</u>	<u>Cost Estimate</u>	<u>Base Increment</u>	<u>Disbursement Requested</u>

[List here all Improvements for which payment is requested,
and attach supporting documentation]

Exhibit “E”

**City of Chula Vista
Community Facilities District No. 2024-1
(Citrus Bay)**

**Retained Increment
Payment Request No. _____**

The undersigned (the “Developer”) hereby requests payment in the total amount of \$_____ for the Retained Increment of the Purchase Price of the Improvement (as defined in the Acquisition/Financing Agreement by and among the City of Chula Vista (the “City”) and Developer and described in Exhibit A to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she is a duly authorized representative or signatory of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.
- B. Developer has submitted or submits herein to the City, if applicable, as-built drawings or similar plans and specifications for the Improvements and such drawings or plans and specifications, as applicable, are true, correct and complete.
- C. The Purchase Price for the Improvement has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Retained Increment for which payment is requested has not been the subject of any prior payment request paid by the City.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIF’s) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third party invoices, change orders, lien releases and checks) is attached with respect to each cost for which payment is requested.
- F. The Improvement for which payment is requested were constructed in accordance with the requirements of the Agreement.
- G. Developer is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Developer, after one inquiry, will attach to the Improvement.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

CWC BROADWAY CV 256 LLC, a Delaware
limited liability company

By: CW BROAD 256 MGMT LP,
a California limited partnership
Its Managing Member

By: CW PROJ MGMT LLC, a California
limited liability company
Its General Partner

By: _____
Matthew Thorne, Chief Operating Officer

Dated: _____

CITY OF CHULA VISTA

Payment Request Approved for Submission to
Director of Finance

Development Services Director

Dated: _____

ATTACHMENT 1

SUMMARY OF IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

<u>Improvement</u>	<u>Purchase price</u>	<u>Base Increment</u>	<u>Retained Increment</u>	<u>Disbursement Requested</u>

[List here all Improvements for which payment is requested,
and attach supporting documentation]

EXHIBIT "F"

LEGAL DESCRIPTION OF PROPERTY

The property located in the City of Chula Vista, County of San Diego, State of California, identified by San Diego County Assessor's Parcel Numbers: a portion of 572-010-44-00.