

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Chula Vista
276 Fourth Avenue
Chula Vista CA 91910
Attn: City Clerk

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

FIRST AMENDMENT TO
BALANCED COMMUNITIES AFFORDABLE HOUSING AGREEMENT
[OTAY RANCH VILLAGE 3]

THIS FIRST AMENDMENT to the Balanced Communities Affordable Housing Agreement [Otay Ranch Village 3] ("Affordable Housing Agreement Amendment") is entered into on the _____ day of _____, 2022 ("Effective Date"), by and between the City of Chula Vista, a California municipal corporation, ("City") and HomeFed Village III Master, LLC, a Delaware limited liability company, Flat Rock Land Company, LLC, a Delaware limited liability company (collectively referred to as "Owner/Developer") HomeFed Otay Land II, LLC, a Delaware limited liability company, a Delaware limited liability company ("Village 8 East Owner"). City, Developer and Village 8 East Owner may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, City and HomeFed Village III Master, LLC entered into Balanced Communities Affordable Housing Agreement [Otay Ranch Village 3] dated December 6, 2016, recorded December 21, 2016, as Document No. 2016-0700046 of Official Records, County of San Diego, State of California ("Affordable Housing Agreement"), which has also been the subject of a transfer agreement also dated December 6, 2016, and filed December 6, 2026; and

WHEREAS, on June 15, 2021, City approved the Village 3 and a Portion of Village 4 Sectional Planning Area ("SPA") Amendment ("project") by Resolution No. 2021-122 of the City Council which authorized amendments to the land use designations within neighborhoods R-6, R-19 and R-20, resulting in an increase in the number of residential units planned for the project; and

WHEREAS, the Affordable Housing Agreement provides that Developer's affordable housing obligation to provide 64 units for low income households and 64 units for moderate income households will be modified if Developer builds in excess of 1,270 units within the project; and

WHEREAS, based on the increase in the number of residential units planned for the project described above, Developer is required to provide a total of 38 additional units as follows: 19 additional units for low income households and 19 additional units for moderate income households (“Remaining Village 3 Affordable Housing Obligation”); and

WHEREAS, HomeFed Village III Master, LLC owns Village 3 Parcels R-6 and R-19, and Flat Rock Land Company, LLC owns Village 3 Parcel R-20 as described in Exhibit “A” attached hereto (“Village 3 Owner Property”); and

WHEREAS, HomeFed Otay Land II, LLC owns Village 8 East; and

WHEREAS, Section 11(e) of the Affordable Housing Agreement (“Release”) provides that, upon the recordation of a City-approved Regulatory Agreement imposing affordable housing covenants, the Affordable Housing Agreement shall no longer be applicable to the project to the extent of the obligations set forth in such Regulatory Agreement and the recordation of a Regulatory Agreement shall operate to automatically release the Project from the terms of the Affordable Housing Agreement to the extent of the obligations set forth in such Regulatory Agreement; and

WHEREAS the Parties thereto wish to amend the Affordable Housing Agreement as provided herein.

NOW THEREFORE, by Agreement of the parties hereto, the Affordable Housing Agreement is hereby amended as follows:

Section 1. Amendments to Affordable Housing Agreement

A. HomeFed Village III Master, LLC, and City agree that HomeFed Otay Land II, LLC and Flat Rock Land Company, LLC shall be a party to the Affordable Housing Agreement to the extent provided for in this Affordable Housing Agreement Amendment. HomeFed Otay Land II, LLC, agrees to be a Party to the Agreement, as amended, and to also undertake all the terms required under this Amendment.

B. Section 1.d. “Developer’s Affordable Housing Obligation” is revised to provide that, in addition to Developer’s affordable housing obligation to provide 64 units for low income households and 63 units for moderate income households, under the Affordable Housing Agreement, Developer shall satisfy the Remaining Village 3 Affordable Housing Obligation to provide an additional 38 units as follows: 19 units for moderate income households and an additional 19 units for low income households.

C. Section 2.a.1. “Village 3 Regulatory Agreement required” shall be revised to read as follows:

Prior to issuance of the first Final Map in Otay Ranch Village 3, this Agreement or a Regulatory Agreement shall be duly executed by the city and all property owner(s) of the Project and recorded against the Project. Currently, 1,638 units may be built in Otay

Ranch Village 3, with a corresponding number of 164 affordable housing units, 82 units for low income households and 82 units for moderate income households. While approved for 1,638 units, consisting of 164 affordable units, as set forth above, Developer's most recent maps for the Project show that it is expected to build 1,632 units, with a corresponding affordable housing obligation of 164 affordable housing units, 82 units for low income households and 82 units for moderate income households. Should Developer build in excess of 1,632 units, then its affordable housing obligation shall be modified accordingly, as set forth in paragraph 5 [Additional Affordable Housing Units] below.

Section 2. Transfer Agreement

A. Consistent with Section 5.b of the Affordable Housing Agreement, Developer may provide for some of the Low and/or Moderate-Income Housing units associated with the Project to be produced or operated at a site other than within Otay Ranch Village 3, also known as an Off-Site Alternative. Accordingly, Developer shall transfer the Otay Ranch Village 3 Remaining Affordable Housing Obligation of a total of 38 affordable units, consisting of 19 units for low income households and 19 units for moderate income households to Otay Ranch Village 8 East.

B. A Transfer Agreement shall be executed by the City and Developer and Otay Ranch Village 8 East Owner concurrently with the execution of this First Amendment and said Transfer Agreement recorded against the portion of Otay Ranch Village 8 East owned by Otay Ranch Village 8 East Owner. With such Transfer Agreement, the Otay Ranch Village 8 East Owner shall be obligated to build those transferred affordable units within Otay Ranch Village 8 East in addition to any other affordable housing obligation for Otay Ranch Village 8 East is otherwise required to produce.

C. The Transfer Agreement satisfies the Otay Ranch Village 3 Remaining Affordable Housing Obligation with respect to the Transferred Affordable Housing Obligation. If the Developer determines that it is feasible to provide some or all of the Transferred Affordable Housing Obligation within Otay Ranch Village 3 itself, the Developer may elect to provide such affordable units within Otay Ranch Village 3. In such case, the Transferred Affordable Housing Obligation will be reduced by those number of affordable units provided within Otay Ranch Village 3.

D. Prior to or concurrent with the approval of the first final subdivision map covering a residentially-zoned portion of Otay Ranch Village 8 East Owner's Property in Otay Ranch Village 8 East which would permit residential development without a further subdivision map (the "First Residential Map"), Otay Ranch Village 8 East Owner and City shall enter into an affordable housing agreement (the "Village 8 Affordable Housing Agreement") regarding (i) 19 units for low income households and 19 units for moderate income households resulting from the Transferred Affordable Housing Obligation, and (ii) the affordable housing obligation arising out of the development of Otay Ranch Village 8 East (the "Village 8 Affordable Housing Obligation").

Section 3. Release

A. Pursuant to Sections 11(a) and (e) of the Affordable Housing Agreement and upon approval and execution of the Village 8 East Transfer Agreement, City hereby releases Village 3 Owner from its obligation to provide Remaining Village 3 Affordable Housing Obligation.

Section 4. Miscellaneous

A. Except as expressly provided herein, all other terms and conditions of the Affordable Housing Agreement shall remain in full force and effect.

B. Each Party represents that it has full right, power and authority to execute this Affordable Housing Agreement Amendment and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Affordable Housing Agreement Amendment on the behalf of such party are duly authorized agents with authority to do so.

C. This Affordable Housing Agreement Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Affordable Housing Agreement Amendment after each Party has signed such a counterpart.

D. The captions and heading of this Affordable Housing Agreement Amendment are for convenience only and shall not define or limit the provisions hereof.

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SIGNATURE PAGE TO
FIRST AMENDMENT TO
BALANCED COMMUNITIES AFFORDABLE HOUSING AGREEMENT
[OTAY RANCH VILLAGE 3]

For Village 3, HOMEFED VILLAGE III
MASTER, LLC, a Delaware limited
liability company:

BY: _____
NAME: _____
ITS: _____

CITY OF CHULA VISTA, a California
charter city and municipal corporation:

BY: _____
Maria Kachadoorian
City Manager

For Village 3, FLAT ROCK LAND
COMPANY, LLC, a Delaware limited
liability company:

BY: _____
NAME: _____
ITS: _____

ATTEST:

BY: _____
Kerry Bigelow
City Clerk

For Village 8 East, HOMEFED OTAY
LAND II, LLC, a Delaware Limited
Liability Company:

BY: _____
NAME: _____
ITS: _____

APPROVED AS TO FORM:

BY: _____
Glen R. Googins
City Attorney

EXHIBIT A

Legal Description of the Village 3 Property

PARCEL R-6:

LOTS 770 THROUGH 813, INCLUSIVE, AND LETTERED LOTS M, N AND BB OF CHULA VISTA TRACT NO. 16-02, OTAY RANCH VILLAGE 3 NORTH, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16160, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 21, 2016.

TOGETHER WITH AVENIDA SENECA, CALLE MARIN, AND PASEO LUMINOSO AS SHOWN ON SAID MAP.

PARCEL R-19:

PARCEL A OF THAT CERTAIN QUITCLAIM DEED TO HOMEFED VILLAGE III, LLC, IN THE CITY OF CHULA VISTA, RECORDED MAY 10, 2022 AS DOCUMENT NO. 2022-0201880 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 826 AND 827 OF CHULA VISTA TRACT NO. 16-02 OTAY RANCH VILLAGE 3 NORTH, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16160, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 21, 2016.

PARCEL R-20:

PARCEL A OF LOT LINE ADJUSTMENT DEED RECORDED DECEMBER 9, 2004 AS INSTRUMENT NO. 2004-1159742, OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 44 IN THE OTAY RANCHO IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 862, FILED FEBRUARY 7, 1900 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 44; THENCE ALONG THE EASTERLY LINE OF SAID LOT 44, SOUTH 18°37'56" EAST, A DISTANCE OF 1868.17 FEET; THENCE LEAVING SAID EASTERLY LINE, NORTH 75°14'35" WEST, A DISTANCE OF 1093.04 FEET; THENCE NORTH 66°35'10" WEST, A DISTANCE OF 1928.12 FEET TO THE NORTHERLY LINE OF SAID LOT 44; THENCE ALONG SAID NORTHERLY LINE, NORTH 71°58'14" EAST, A DISTANCE OF 2344.60 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID PARCEL “A” BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY POINT OF SAID PARCEL “A”; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL “A” NORTH 75°14’29” WEST, A DISTANCE OF 1093.14 FEET (RECORD N 75°14’35” W, 1093.04 FEET PER SAID LOT LINE ADJUSTMENT DEED); THENCE NORTH 66°35’04” WEST, A DISTANCE OF 1460.21 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 22°38’23” EAST, A DISTANCE OF 91.84 FEET; THENCE SOUTH 67°11’26” EAST, A DISTANCE OF 1782.72 FEET; THENCE SOUTH 73°13’35” EAST, A DISTANCE OF 398.22 FEET; THENCE SOUTH 84°20’21” EAST, A DISTANCE OF 282.71 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL “A”; THENCE SOUTHERLY ALONG SAID EASTERLY LINE SOUTH 18°37’59” EAST, A DISTANCE OF 174.53 FEET TO THE POINT OF BEGINNING.

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

State of California)
County of San Diego)

On _____, before me, _____, a Notary Public, personally appeared _____, 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 _____

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

State of California)
County of San Diego)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

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WITNESS my hand and official seal.

Signature _____