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VILLAGE 8 EAST AFFORDABLE HOUSING TRANSFER AGREEMENT

THIS AFFORDABLE HOUSING TRANSFER AGREEMENT ("Agreement") is entered into as of _____, 2022, by and between, HOMEFED OTAY LAND II, LLC, a Delaware limited liability company ("Village 8 East Owner") and the City of Chula Vista, a California municipal corporation ("City"), with reference to the following facts:

RECITALS

WHEREAS, the Housing Element of the City of Chula Vista's General Plan contains an affordable housing policy which requires that residential development with fifty (50) or more dwelling units provide a minimum of 10% of the total dwelling units for low and moderate income households, one-half of these units (5% of the total project) being designated to low income and the remaining five percent (5%) to moderate income households.

WHEREAS, HomeFed Village III Master, LLC and Flat Rock Land Company, LLC (collectively, "Village 3 Owner") own the property known as Otay Ranch Village 3, Parcels R-6, R-19 and R-20 of Otay Ranch. On June 15, 2021, the City approved the Tentative Subdivision Map CVT-20-0004 for Otay Ranch Village 3 R-19 ("R-19 Tentative Map") by Resolution No. 2021-123 and Tentative Subdivision Map CVT-20-0005 for Otay Ranch Village 3 R-6 and R-20 ("R-6 and R-20 Tentative Map") by Resolution Number 2021-124. R-19 Tentative Map, Condition No. 10 and R-6 and R-20 Tentative Map Condition No. 15 require that the Village 3 Owner enter into an amended Balanced Communities Affordable Housing Agreement ("Amended Village 3 Agreement") with the City of Chula Vista. The Village 3 Owner is required to build 82 low income housing units and 82 moderate income housing units ("Village 3 Affordable Housing Obligation") based upon 10% of the total number of residential units of 1,638 within Village 3. In satisfaction of a portion of the Village 3 Affordable Housing Obligation, Village 3 Owner provided 30-moderate income housing units in Village 3 and 33-moderate income housing units and 64 low-income housing units in Village 8 West, pursuant to the Affordable Housing Transfer Agreement recorded December 21, 2016, as Document No. 2016-0700047 of Official Records, County of San Diego, State of California. Village 3 Owner and the City are entering into the Amended Village 3 Agreement that requires Village 3 Owner to provide an additional 38 units as follows: 19-low

income housing units and 19-moderate income housing units (“Remaining Village 3 Affordable Housing Obligation”).

WHEREAS, consistent with Policy 3.4 of the City’s Housing Element of the General Plan, the City has determined that the unique conditions for the development of Village 3 provide an unreasonable hardship for the new construction of units within said Village. The City finds that such new construction of units would present an “unreasonable hardship to the developer” in light of such factors as the difficulty in integrating due to significant price and product disparity. As described in the Village 3 SPA Plan, the residential neighborhoods are predominately single family and low-density neighborhoods.

WHEREAS, as set forth in the Village 3 SPA Plan, the Village 3 Affordable Housing Obligation may be deferred to a future village or location within Otay Ranch Planning owned by Village 3 Owner or its affiliate. It is the intent of Village 8 East Owner and the City, by execution of this Agreement, to allow the transfer of the Remaining Village 3 Affordable Housing Obligation for 38 units (19 low income housing units and 19 moderate income housing units) (“Transferred Affordable Housing Obligation”) to the development of Otay Ranch Village 8 East (“Village East 8”) as shown on Exhibit A attached and more particularly described on Exhibit B attached (the “Property”). Village 8 East Owner owns the property known as Village 8 East and is an affiliate of Village 3 Owner.

WHEREAS, Village 3 Owner is otherwise required to develop those Village 3 affordable housing units not transferred from Village 3 to Village 8 East, owned by HomeFed Otay Land II, LLC, a Delaware Limited Liability Company (“Village 8 East Owner”), by this Agreement as set forth in the Village 3 Agreement.

WHEREAS, on February 18, 2020, the City approved the Otay Ranch Village 8 East Sectional Planning Area (SPA) Plan amendment for the Project by Resolution No. 2020-036. Condition Number 7 of the Project's SPA Plan requires the Village 8 East Owner to comply with the City’s Affordable Housing Plan. The SPA Plan currently provides for the construction of approximately 3,276 total dwelling units within Village 8 East, with a requirement for five percent of these units being designated for low-income households and five percent for moderate-income households, consisting of 328 affordable units.

WHEREAS, on February 18, 2020, the City approved the Tentative Subdivision Map for Chula Vista Tract No. 13-03 for Otay Ranch Village 8 East by Resolution No. 2020-037. Tentative Map Condition No. 32 requires that the Village 8 East Owner enter into an Affordable Housing Agreement with the City of Chula Vista prior to approval of Village 8 East Owner’s first Final Map for Village 8 East.

WHEREAS, the City finds that the public interest would be served by allowing the Transferred Affordable Housing Obligation to be produced or operated within Village 8 East based upon: (1) proximity to public transit; (2) proximity to employment; (3) proximity to services and entertainment; and (4) proximity to the proposed University, which would provide access to university services for the residents and affordable units for students and faculty. Additionally, the provision of the Transferred Affordable Housing Obligation within the Property will not be significantly detrimental to achieving balanced residential communities and will provide at a

minimum the equivalent number of required affordable units with comparable rent and occupancy restrictions.

WHEREAS, Village 8 East Owner and City wish by this Agreement to assure the satisfaction of the Village 3 Transferred Affordable Housing Obligation, on the terms described below.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, City and Village 8 East Owner agree as follows:

1. **Definitions.** Unless otherwise indicated, for purposes of this Agreement, the following terms shall have the following meanings:

a. “low income housing” means housing for a household of persons who claim primary residency at the same unit with combined incomes that do not exceed 80% of the area median income (adjusted annually) based on household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD) and published or adopted by the State of California Department of Housing and Community Development.

b. “moderate income housing” means housing for a household of persons who claim primary residency at the same unit with combined incomes between 80% and 120% of the area median income (adjusted annually) based on household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD) and published or adopted by the State of California Department of Housing and Community Development.

2. **Village 8 East Affordable Housing Obligations.** Village 8 East Owner’s obligation for low and moderate income housing units arising out of the development of the Property shall be the following:

a. **Moderate income housing units.** Village 8 East Owner’s obligation with regard to moderate income housing shall be five percent (5%) of the total number residential units built on the Property (the “Moderate Income Housing Obligation”).

b. **Low income housing units.** Village 8 East Owner’s obligation with regard to low income housing shall be five percent (5%) of the total number residential units built on the Property (the “Low Income Housing Obligation”).

c. **Transferred Affordable Housing Obligation.** In addition to the above obligations arising out of the development of the Property, Village 8 East Owner hereby assumes the Village 3 Transferred Affordable Housing Obligation of 38 additional units (19 Low Income units and 19 Moderate Income units). If Village 3 ultimately includes less than 1,638 residential units, then the Village 3 Transferred Affordable Housing Obligation will be adjusted to reflect the decrease in the Village 3 Affordable Housing Obligation.

The Low-Income Housing Obligation, the Moderate Income Housing Obligation, and the Village 3 Transferred Affordable Housing Obligation shall be collectively referred to as the “Village 8 East Affordable Housing Obligation.”

3. **Transfer and Satisfaction of Affordable Housing Obligation.**

a. Transfer of Obligation. The Transferred Affordable Housing Obligation is hereby transferred to Village 8 East Owner's Property. Village 8 East Owner shall satisfy the Village 3 Transferred Affordable Housing Obligation in connection with the development of Village 8 East Owner's Property (the "Project") as described below.

b. Village 8 East Affordable Housing Agreement. Prior to or concurrently with the approval of the first final subdivision map covering a residentially-zoned portion of Village 8 East Owner's Village 8 East Property which would permit residential development without a further subdivision map (the "First Residential Map"), Village 8 East Owner and City shall enter into an a Balanced Communities Affordable Housing Agreement (the "Village 8 East Affordable Housing Agreement") regarding (i) the Transferred Affordable Housing Obligation, and (ii) the affordable housing obligations arising out of the development of Village 8 East Owner's Village 8 East Property (the "Village 8 East Affordable Housing Obligation").

The Village 8 East Affordable Housing Agreement shall be consistent with the terms and conditions contained herein and the adopted Affordable Housing Programs of the appropriate GDP and SPA documents, all of which are incorporated herein by this reference. The Village 8 East Affordable Housing Agreement shall be filed and recorded as a restriction on all residentially-zoned portions of Village 8 East Owner's Village 8 East Property as designated in the applicable SPA Plan, and those portions of Village 8 East Owner's Village 8 East Property not designated as residential in the applicable SPA Plan shall be released from this Agreement (and any affordable housing obligation

4. **Duty to Implement Affordable Housing Program.** Village 8 East Owner shall cause all affordable units developed pursuant to this Agreement and the Village 8 East Affordable Housing Agreement, including the Transferred Affordable Housing Obligation, to be developed, marketed, rented/sold in accordance with the City's goals, policies and programs, including but not limited to the Housing Element of the General Plan, the Consolidated Plan, and the Affordable Housing Program Implementation Guidelines, as they may be adopted and amended from time to time, the terms and conditions of which are hereby incorporated by this reference; provided, however, that nothing shall increase the number or change the mix of affordable housing units comprising Village 8 East Owner's Village 8 Affordable Housing Obligation.

5. **Duty to Build Transferred Affordable Housing Obligation on the Property (Village 8).** Village 8 East Owner shall have the obligation to build the Village 3 Transferred Affordable Housing Obligation within Village 8 East. This Transferred Affordable Housing Obligation shall be in addition to any other Village 8 East affordable housing obligations. This Agreement shall be recorded against the Village 8 East Property and shall ensure that the Transferred Affordable Housing Obligation is developed and marketed as affordable housing with Village 8 East.

6. **Development Permits, Maps and Documents for Village 8 East Owner's Property.** Village 8 East Owner shall at its sole expense, prepare and diligently process all permits, agreements, plans, maps, and other documents, including but not limited to any amendments to the General Development Plan and Sectional Planning Area Plan (including an

Affordable Housing Plan) for Village 8 East Owner's Property that may be necessary to meet the Village 8 East Owner's obligation

7. **Right to Withhold Permits.** The City has the absolute and unfettered right to withhold the issuance of any building permit for any residential development within Village 8 East Owner's Property if the Village 8 East Owner is not in compliance with the terms and/or obligations of this Agreement and the Village 8 East Affordable Housing Agreement, including completion of the Transferred Affordable Housing Obligation.

8. **Subordination and Notice.**

a. Subordination. Village 8 East Owner represents that there are no deeds of trust encumbering Village 8 East. If any deeds of trust are recorded prior to any Regulatory Agreement, Village 8 East Owner shall deliver to the City the fully executed subordination agreements in a form acceptable to the City Attorney and suitable for recording.

b. Notice. Village 8 East Owner shall provide written notice of the terms of this Agreement (which could be a copy of this Agreement) to all purchasers and potential purchasers of real property within the Village 8 East Owner's Property, excluding however, a buyer of an individual housing unit.

9. **General Provisions.**

a. Authority of Signatories. The individuals signing this Agreement on behalf of the City warrant that (i) he or she is duly authorized to sign and deliver this Agreement on behalf of the City in accordance with a duly adopted resolution of the City Council of the City and (ii) this Agreement is binding upon the City in accordance with its terms. Village 8 East Owner warrants that each individual signing this Agreement on behalf of Village 8 East Owner (i) is duly authorized to sign and deliver this Agreement on behalf of Village 8 East Owner, and (ii) this Agreement is binding upon the company in accordance with its terms.

b. Successors. All terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective affiliates, administrators or executors, successors, and assigns. Village 8 East Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. The Village East Owner and the City hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the developer's successors in title to the Project; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

c. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought in Federal or State courts located in San Diego County,

State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement and performance thereunder shall be the City of Chula Vista.

d. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

e. Modifications. No modification, waiver or discharge of this Agreement will be valid unless the same is in writing and signed by the parties to this Agreement.

f. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

g. Attorney's Fees and Costs. If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission hereof, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.

h. Exhibits. All exhibits referred to in this Agreement are attached, and are a part of, this Agreement.

i. Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement.

j. Recording. The parties hereto shall cause this Agreement to be recorded in the Official Records of the County of San Diego.

k. No Third Party Beneficiary. No claim as a third-party beneficiary under this Agreement by any person, corporation or any other entity, shall be made valid against Village 8 East Owner or City, except that Village 3 Owner is a third party beneficiary to the extent that this Agreement satisfies the Transferred Affordable Housing Obligation.

l. Incorporation of Recitals. The recitals set forth herein are part of this Agreement.

m. Assignment. The rights and obligations of Village 8 East Owner under this Agreement shall not be assigned in whole or apart, without the express written consent of the City's Development Services Director, in the Director's sole discretion and whose consent shall not be unreasonably withheld or delayed. Any unapproved assignment shall be null and void.

SIGNATURE PAGE TO AFFORDABLE HOUSING TRANSFER AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first set forth above.

FOR VILLAGE 8 EAST OWNER:
HOMEFED OTAY LAND II, LLC, a
Delaware limited liability company

By: _____

Title _____

CITY OF CHULA VISTA

By: _____

Title _____

ATTEST:

By: _____

Title _____

APPROVED AS TO FORM:

CITY ATTORNEY

By: _____

Title _____

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.

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 _____

Exhibit A

Map of Village and 8 East

TBP

Exhibit B

Legal Description

Village 8 East

PARCELS 1 AND 2 OF PARCEL MAP NO. 21215, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JANUARY 29, 2015.