

RECORDING REQUESTED BY:

City of Chula Vista

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**

THIS SPACE ABOVE FOR RECORDER'S USE

**BALANCED COMMUNITIES AFFORDABLE HOUSING AGREEMENT
[OTAY RANCH VILLAGE EIGHT WEST]**

This Balanced Communities Affordable Housing Agreement (**Agreement**) is made as of July____, 2020, by and between HomeFed Village 8, LLC, a Delaware limited liability company and Otay Land Company, LLC, a Delaware limited liability company, (collectively, the **Developer**), and the City of Chula Vista, a California chartered municipal corporation (**City**), with reference to the following facts:

- A. The City of Chula Vista Housing Element established the City's "Balanced Communities Affordable Housing Policy" (Policy 5.1.1) which requires 10% of each housing development of 50 or more units to be affordable to low and moderate-income households, with at least one half of those units (5% of project total units) being designated for low-income households (the "**Affordable Housing Obligation**").
- B. Developer is the owner of certain real property generally known as Otay Ranch Village Eight West (Village 8 West), as shown on **Exhibit "A"** and located in the City of Chula Vista (referred to herein as "**Village 8 West**" or the "**Project**"). The Project is more particularly described in **Exhibit "B"** (Legal Description) which is attached hereto and incorporated herein by this reference.
- C. On December 17, 2013, the City approved the Otay Ranch Village 8 West Sectional Planning Area (SPA) Plan for the Project by Resolution Number 2013-270, as modified on February 18, 2020, pursuant to Resolution No. 2020-033 adopting the Otay Ranch Village 8 West SPA Plan Amendment (MPA19-0011). Condition Number 7 of the Project's SPA Plan requires that Developer enter into an affordable housing agreement with the City prior to Developer's first Final Map for Village 8 West for purposes of further implementing the affordable housing obligation for the Project, as such affordable housing obligation is defined in the Affordable Housing Program portion of the SPA Plan. The SPA Plan further required that the affordable housing agreement shall be in accordance with the Chula Vista Housing Element, the Ranch Wide Affordable Housing Plan, and the Village 8 West Affordable Housing Program. This Agreement is the affordable housing agreement required by the Affordable Housing Program

portion of the SPA Plan. The SPA Plan currently provides for the construction of approximately 561 single-family residential units and 1,773 multi-family residential units, or 2,334 total dwelling units within the Project, with a requirement for five percent of these units being designated for low-income households and five percent for moderate-income households, amounting to 117 low-income and 117 moderate-income units at the above approved build-out, but may change based upon final build-out.

- D. On February 18, 2020, the City approved the Tentative Map for Otay Ranch, Village 8 West, Chula Vista Tract No. 19-03 (**Tentative Map**) by Resolution Number 2020-034. Tentative Map Condition No. 22 requires that the Developer enter into an affordable housing agreement (i.e., this Agreement) with the City of Chula Vista prior to approval of Developer's' first Final Map for Village 8 West.
- E. On February 18, 2020, the City approved the Otay Ranch Village 8 West Affordable Housing Program for the Project by Resolution Number 2020-033.
- F. Developer is required to enter into a Balanced Communities Affordable Housing Agreement acceptable to the City in satisfaction of the Balanced Communities Affordable Housing Policy of the City's Housing Element of the General Plan, Condition of Approval No. 7 of City Council Resolution No. 2020-033, and Tentative Map Condition of Approval No. 22 of City Council Resolution No. 2020-034. This Agreement represents the Affordable Housing Agreement and shall be executed and recorded against Village 8 West prior to the first Final Map in Village 8 West.
- G. The Tentative Map and other approvals contemplate that 2,334 units will be developed as part of the Project, with a corresponding affordable housing obligation of 234 affordable housing units (consisting 117 low income units and 117 moderate income units) for the Project. Should Developer build in excess of 2,334 units, then its affordable housing obligation shall be modified accordingly, as set forth in Section 2(a)(5) [Additional Affordable Housing Units].
- H. Otay Land Company, LLC, a Delaware limited liability company, and HomeFed Otay Land II, LLC, a Delaware limited liability company, and the City entered into an Affordable Housing Transfer Agreement (the "**Village 3 Transfer Agreement**") dated as of December 6, 2016 (Document No. 2016-070046). Pursuant to the Village 3 Transfer Agreement, the obligation to provide 64 Low Income and 33 Moderate Income affordable housing units was transferred from Village 3 to Village 8 West and Village 8 East ("**Transferred Village 3 Affordable Units**"). Increasing the Project's total affordable housing obligation to 181 Low Income units and 150 Moderate Income units.
- I. Meta Housing Corporation or its affiliate (**Meta**) intends to construct and operate an affordable housing project within Village 8 West consisting of 122 low income units (including the two on-site manager/maintenance staff units), and 53 Very Low-Income units (the "**Meta Project**"). The Meta Project intends to provide the Transferred Village 3 Affordable Units and partially satisfying the remaining affordable housing obligation for Village 8 West as set forth in this Agreement.
- J. Consistent with Policy 3.1 of the City's Housing Element of the General Plan, the City has determined that the unique conditions of Village 8 West cause an unreasonable hardship for

Developer to construct of all of the units required to satisfy all of its Affordable Housing Obligations within Village 8 West. As set forth in the Village 8 West SPA Plan, the Village 8 West Affordable Housing Obligation may be deferred to a future village or location owned by Developer or its affiliate. Accordingly, Developer may transfer 68 Moderate Income housing units (**Transferred Affordable Housing Obligation**) to properties owned by HomeFed Otay Land II, LLC, a Delaware limited liability company (the “**Other Owner**”), an affiliate of Developer, within Otay Ranch Village Eight East, located in the City of Chula Vista (**Village 8 East**). As provided in Section 2(a)(3), the City and Other Owner shall enter into an Affordable Housing Transfer Agreement to transfer the aforementioned 68 Moderate Income housing units to Village 8 East (**Village 8 West Transfer Agreement**), which shall be recorded against Village 8 East. The Transferred Affordable Housing Obligation shall be in addition to affordable housing obligations that Other Owner otherwise has within Village 8 East and shall not reduce the Village 8 East obligation in any respect.

NOW THEREFORE, in consideration of the mutual promises described herein, and other good and valuable consideration, the parties agree as follows:

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

- a. “**Low Income Housing**” means housing which is restricted for 55 years via a Regulatory Agreement, as defined below, as affordable to and occupied by a household of persons who claim primary residency at the same dwelling 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 which is restricted for 55 years via a Regulatory Agreement, as defined below, as affordable to and occupied by a household of persons who claim primary residency at the same dwelling 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.

The range of income levels described in the above defined terms may change from time to time in accordance with changes to federal and/or state laws as provided in California Health and Safety Code Sections 50079.5(b) and 50093.

- c. “**Affordable Housing**” means housing for which the rent or housing payment paid by an income qualified household does not exceed a specified fraction of the gross monthly income, adjusted for household size in conformance with applicable financing and assistance programs or California Health and Safety Code Sections 50052.5(b) and 50053(b), for the following classes of housing:

1. Extremely low-income: For extremely low-income households the product of thirty percent (30%) times thirty percent (30%) of the area median income, adjusted for family size appropriate for the unit;
2. Very low-income: For very low-income households the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit;
3. Low-income: For low income households the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit; For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed seventy percent (70%) of area median income adjusted for family size, the product of thirty percent (30%) times seventy percent (70%) of the area median income adjusted for family size appropriate for the unit; and
4. Moderate-Income: For moderate-income households, affordable housing cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten (110%) percent of area median income adjusted for family size appropriate for the unit.

Should subsidized financing and/or other offsets to development costs from a public agency or program be proposed and obtained, the more restrictive of this Agreement or the affordable housing cost/affordable rent dictated by such program or granting agency shall apply. If no affordable housing expense is specified by such program or granting agency, the affordable housing cost/affordable rent shall be as set forth in this Agreement.

- d. **“Developer’s Affordable Housing Obligation”** means collectively, the (i) Developer’s obligation to provide 10% of the total number of residential units allocated to the Project as Low and Moderate-Income Housing, with at least 5% consisting of Low Income Housing, and as more particularly set forth in the applicable GDP, SPA, Affordable Housing Program and this Agreement; and (ii) Developer’s obligation to provide 64 Low Income and 33 Moderate Income affordable housing units at the Project pursuant to the Village 3 Transfer Agreement. Provided, however, if the Village 8 West Transfer Agreement is entered into, the remaining affordable housing obligation for Village 8 West will be decreased by 68 Moderate Income housing units. Based upon the total number of units authorized within Village 8 West as set forth in the SPA Plan, the 5% Low Income Housing requirement will be 117 Low-Income Housing units and the 5% Moderate-Income Housing requirement will be 117 Moderate-Income Housing units. The actual requirements will be adjusted based on the total number of residential units in the Project as shown on the recorded final map(s) for the Project.

If Developer sells portions of Village 8 West that include a residential development providing Affordable Housing to any third party, then either such third party will enter into a Regulatory Agreement or Developer and such third parties shall each be a Developer under this Agreement. The Affordable Housing Obligation of each

Developer shall, subject to City approval, be allocated to each Developer based upon the total number of Affordable Housing residential units to be constructed within each Developer's ownership interest. Such obligation will be satisfied by each Developer implementing the requirements set forth in this Agreement. The City may require an additional agreement with the added Developer to effectuate this Agreement. The obligations of each Developer will be separate so that no default under this Agreement by any Developer will affect any other Developer or the property owned by such other Developer, except that the City will have the right to withhold the issuance of building permits as expressly provided in this Agreement.

- e. **“Regulatory Agreement”** means a City-approved agreement or other similar binding instrument executed by the City and Developer imposing certain covenants, terms, and conditions on all or any portion of Village 8 West relating to the acquisition, construction, equipping, operation, and occupancy of a residential development providing Affordable Housing for low and/or moderate-income households to ensure that such development will be developed, owned, and operated in accordance with this Agreement and the Affordable Housing Program portion of the SPA Plan to the benefit of the City and/or Chula Vista Housing Authority. Such restrictions shall be recorded against that real property containing the Low and the Moderate-Income Housing, senior to all monetary liens, as covenants running with land and shall be enforceable by the City and/or Chula Vista Housing Authority against the applicable Developer and all future owners or successors-in-interest.

2. **Duty to Build.** Developer's Affordable Housing Obligation shall be satisfied with respect to the Project if the following conditions are met: (a) Developer constructs, equips, and operates all of the Low and Moderate-Income Housing units required by this Agreement, in compliance with the schedule set forth in Section 2.a below; (b) Developer records Regulatory Agreements against the portions of the Project which will satisfy the Affordable Housing Obligation; or (c) if applicable, Developer, meets its obligation through an alternative method of compliance as set forth in Section 4 below.

- a. **Schedule for Implementing the Affordable Housing Obligations.** Developer shall provide the Low and the Moderate-Income Housing units pursuant to the following schedule:

1. **Village 8 West Regulatory Agreement required.** Prior to issuance of the first Final Map in Village 8 West, this Agreement or a Regulatory Agreement shall be duly executed by the City and Developer and recorded against the Project, senior to all monetary liens. Currently, 2,334 units may be built in Village 8 West, with a corresponding number of 234 affordable housing units consisting of 117 Low Income and 117 Moderate Income units allocable to the Project as stated in the Developer's Affordable Housing Obligation. Should Developer build in excess of 2,334 units, then its affordable housing obligation shall be modified accordingly, as set forth in paragraph 5 [Additional Affordable Housing Units] below.
2. The Meta Project intends to provide 122 Low Income units and 53 Very Low-Income units. Under the City's Guidelines to the Balanced Communities Policy,

the Developer proposes to apply Very Low-Income Unit credits to the Low Income and Moderate-Income obligation as shown in Exhibit “C”.

3. Transfer from Village 8 West to Village 8 East Permitted. Consistent with Section 4.b below, Developer may provide for 68 of the Moderate-Income Housing units associated with the Project to be produced or operated at a site other than within Village 8 West. Accordingly, Developer may transfer 68 Moderate Income housing units of the Developer’s Affordable Housing Obligation to the development of the Other Owner’s property within Village 8 East. The Village 8 West Transfer Agreement shall be executed by the City and all Village 8 East property owners, when the Developer advises the City in writing that they Developer is exercising the option to meet the Village 8 West remaining obligation (see Exhibit C) to Village 8 East. The Village 8 West Transfer Agreement shall be recorded against Village 8 East. When said Village 8 West Transfer Agreement is executed by all parties and recorded, the Other Owner(s) shall be obligated to build those 68 Moderate Income transferred affordable units within Village 8 East and any additional units necessary to satisfy the affordable housing obligation of Village 8 East, that are otherwise required to be produced. Recordation of the Village 8 West Transfer Agreement with the County of San Diego Recorder’s Office, will satisfy the Affordable Housing Obligation of Village 8 West with respect to 68 Moderate Income housing units. If Developer determines that it is feasible to provide some or all of the Transferred Affordable Housing Obligation within Village 8 West itself, Developer may elect to provide the affordable units within Village 8 West. In such case, the Village 8 West Transfer Agreement will be adjusted by the Developer for the remaining units, if any.
4. Transferred Units to 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 Other Owner’s Property in Village 8 East, which would permit residential development without a further subdivision map (the “**First Residential Map**”), Other Owner and City shall enter into an affordable housing agreement regarding (i) up to 68 Moderate Income housing units (as the same may be adjusted above) resulting from the Transferred Affordable Housing Obligation, and (ii) the affordable housing obligations arising out of the development of Village 8 East.
5. Commencement of Village 8 West Initial Affordable Housing Unit Construction. Prior to the issuance of the production building permit for the residential unit representing the 1,167th residential production unit to be constructed within the Project, Developer shall commence construction of the 122 Low Income Housing units and 53 Very Low Income Housing units (**Village 8 West Initial Affordable Units**) or no less than the total equivalent number of Low Income Housing units located within Village 8 West (as the same may be modified). Commencement of construction shall mean the Developer has obtained a building permit for that first building providing units affordable to and restricted for occupancy by low income households. Developer shall thereafter diligently pursue completion of construction of the Village 8 West Initial Affordable Units. Construction of the Village 8 West Initial Affordable Units to be completed no later than two (2) years

from the date of issuance of the first building permit for the Village 8 West Initial Affordable Units.

Once building permits have been issued and the foundations for the Village 8 West Initial Affordable Units are completed, inspected, and approved by the City, building permits up to the 2,100th production unit for the Project may be released by the City.

6. Additional Affordable Housing Units. Upon the issuance of the production building permit for the residential unit representing the 2,333rd residential production unit to be constructed within the Project, Developer shall commence construction of any additional (above the 175 identified in the above paragraph) qualified Low or Moderate Housing units required of Village 8 West. Commencement of construction shall mean the Developer has obtained a building permit for that building providing units affordable to and restricted for occupancy by low and moderate-income households. Developer shall thereafter diligently pursue completion of construction of the aforementioned Low and Moderate Housing units, with construction to be completed no later than two (2) years from the date of issuance of the first building permit for such Low and Moderate Housing units. The affordable housing requirement under this Paragraph may also be transferred to Village 8 East, subject to City approval.

Upon issuance of temporary certificates of occupancy for the Village 8 West Initial Affordable Units, a partial release shall be recorded releasing 2,100 of the residential product units to be constructed within the Project from the burden of this Agreement. Upon issuance of temporary certificates of occupancy for the remaining affordable housing units within the Project, the Project shall be released of the burden of this Agreement as specified in Section 10 below. However, the aforementioned release shall not affect the obligations of Other Owner to satisfy the Transferred Affordable Housing Obligation, as they are subject to the requirements of the Village 8 East Affordable Housing Agreement.

- b. **Progress report.** Every six (6) months, the Developer shall provide the City with a report documenting progress made toward meeting Developer's Affordable Housing Obligation, including identification of sites, financing, and submittal of entitlement applications for the Low and Moderate-Income Housing units, in a form to be determined by the City Manager, or designee. No further reports shall be required upon satisfaction of this obligation.
- c. **Completion of construction.** For purposes of this Agreement, construction shall be deemed complete upon issuance of a temporary certificate of occupancy for the applicable Low or Moderate-Income Housing by the City.
- d. **Minor delays.** The thresholds described herein for commencing construction of Low and Moderate-Income Housing units are based upon the current phasing proposals for the Project as shown on the Tentative Map. City and Developer acknowledge that changes to the Project may be required from time to time which could have a minor or insubstantial impact on the timing of construction of the Low or Moderate-Income

Housing units. Accordingly, changes to the Project that could result in a delay in the construction of such units may, in the City's sole discretion, be considered minor or insubstantial by the City's Development Services Director and made without amendment to this Agreement. In addition, if Developer is delayed for unexpected or unforeseen reasons and which are beyond its reasonable control, the schedule above may be extended to the extent of such delay, upon approval of the Development Services Director. All other changes shall require a written amendment to this Agreement.

3. **Incentive Credit.** The City has a greater need for housing affordable to very low and low-income households. Therefore, to encourage Developer to provide for these households, the City will reduce the Developer's Affordable Housing Obligation, when the Developer provides Affordable Housing Units for very low or low-income households. The Developer's Affordable Housing Obligation set forth in Section 2 of this Agreement will be reduced as set forth in the City's Guidelines to the Balanced Communities Policy as set forth in Exhibit C and as follows:
 - a. A credit of two (2) Moderate-Income units for every-one (1) Very Low-Income unit.
 - b. A credit of 1.5 Moderate-Income units for every-one (1) Low-Income unit.
 - c. A credit of 0.5 Low-Income unit for every-one (1) Very Low-Income unit.
4. **Alternative Methods of Compliance.** Based upon the attributes of those properties of related ownership interests, such as size, density and location, the applicable Affordable Housing Obligation, difficulty in integrating Low and/or Moderate-Income Housing due to price and product disparity, developer capability, the new construction of the Low and/or Moderate-Income Housing within residential development on such properties may present a hardship and alternative methods of compliance may be required. Such alternative(s) may represent a more effective and feasible means of implementing the Affordable Housing Obligation and the goals of City's Housing Element for the benefit of the public.

In lieu of including Low and/or Moderate-Income Housing in the Project, Developer may request to satisfy the Affordable Housing Obligation through one or more of the alternatives set forth in this Section and in accordance with procedures and standards set forth in the Guidelines of the Balanced Communities Policy adopted by the City. Approval of satisfaction of the Affordable Housing Obligations, in whole, in part or any combination, through an alternative method of compliance shall be at the sole discretion of the City.

- a. **In Lieu Housing Fee.** With the consent of the City in its sole discretion, Developer may make payment of a fee in lieu of providing all or some of the Low and/or Moderate-Income Housing units. With the consent of the City in its sole discretion and prior to the issuance of the residential building permit (excluding models) representing 35 percent of the total units to be constructed at the Project, Developer shall execute an agreement with the City acknowledging and agreeing to the satisfaction (or partial satisfaction) of the Developer's Affordable Housing Obligation through payment to the City of an in lieu housing fee. The in-lieu fee shall be paid prior to issuance of the building permit for the

residential unit representing 50 percent of the total units to be constructed at the Project. The amount of any in-lieu fee shall be the fee in effect at that time payment is made.

- b. **Off-Site.** With the consent of the City in its sole discretion, Developer may construct affordable units, convert existing non-restricted dwelling units, acquire and rehabilitate existing non-restricted dwelling units, at property outside of Village 8 West or acquire and use another developer's affordable housing credits to satisfy the Affordable Housing Obligation. With the consent of the City in its sole discretion, the Developer's Affordable Housing Obligation as set forth in this Agreement shall be satisfied (or partially satisfied) if the following conditions are met: (i) the property owner records a Regulatory Agreement against that real property providing for affordable Low and/or Moderate-Income Housing; and (ii) the Low and/or Moderate-Income Housing units are constructed or rehabilitated, as applicable, and operated in compliance with that Regulatory Agreement. The City's agreement to allow some or all of the Low and/or Moderate-Income Housing units associated with the Project to be produced or operated at a site other than within Village 8 West shall only be given if the same will advance the City's housing goals and the relative advantages of the alternative methods of compliance substantially outweigh the disadvantages as determined by the City in its sole discretion. Notwithstanding the foregoing, the City agrees that it will not unreasonably withhold approval of Developer's request to satisfy all or part of the Affordable Housing Obligation by including Low and/or Moderate-Income Housing within the property owned by Developer or Developer's affiliates in the areas within Otay Ranch Village 8.
5. **Duty to Identify.** This Agreement identifies potential sites for the construction of both the Low and Moderate-Income Housing within Village 8 West. Final identification of sites for Low and Moderate-Income Housing shall be based upon their proximity to and availability of existing and proposed public transit facilities and services, community facilities and services, urban services and employment opportunities and that are compatible with adjacent land uses. Identification of potential target sites in this Agreement describes one way in which the Affordable Housing Obligation might be met, and is not meant to require that affordable units be constructed on any specific sites nor to preclude other alternatives, including those methods identified in Section 4. Such alternatives might include, by way of example, the aggregation of rental housing affordable to Low and/or Moderate-Income households within one particular development site. A final determination as to the location and type of affordable housing sites will occur with subsequent entitlements, approvals and agreements. The City agrees that the Affordable Housing Obligations may be met through any combination of for sale and/or rental units for Low and Moderate Income Housing.
6. **Duty to Implement Affordable Housing Program.** Developer shall cause the Low and Moderate-Income Housing to be developed, marketed, rented in accordance with the City's goals, policies and programs contained in the Housing Element of the General Plan and the Guidelines to the Balanced Communities Policy, and the Project's Sectional Planning Area (SPA) Affordable Housing Program, as they may be adopted and amended from time to time, the terms and conditions of which are hereby incorporated by this reference. In the event that there is an inconsistency between this Agreement and the City's affordable housing policies, this Agreement shall control.

7. **Demand to Build.** Notwithstanding the provisions of paragraph 2 of this Agreement, if the City reasonably believes that Developer will not reach the building permit thresholds described in paragraph 2 (which would trigger the construction of the Low Income Housing units) or that Developer will not complete construction of the Low and/or Moderate-Income Housing units, the City shall have the right to demand that Developer construct a proportional amount of Low and/or Moderate-Income Housing units relative to the total number of residential building permits that have been issued for the Project. The City shall provide Developer with the written demand to construct the units which written demand shall include a reasonable period of time for Developer to commence construction of said units. Developer shall complete construction of the Low and/or Moderate-Income Housing units, as required by this paragraph, within two years of the commencement of construction of the units so demanded, subject to extension for delay's that are unexpected or unforeseen and beyond Developer's reasonable control. The duty to build contained in this paragraph is non-cumulative to the duty in paragraph 2 with the City providing Developer with the appropriate amount of credit for completed construction.
8. **Right to Withhold Permits.** The City has the absolute and unfettered right to withhold the issuance of any building permit for any residential unit within the Project that has not been released in accordance with paragraph 10 herein, if the Developer of that residential development is not in compliance with the terms and/or obligations of this Agreement if, after issuance of such permit, the total number of building permits issued for residential production units constructed within the Project would exceed 1,167 prior to commencement of construction on the Meta Project or other affordable housing units (subject to adjustment of such building permit thresholds pursuant to paragraph 7).
9. **Development Permits, Maps and Documents.** Developer shall at its sole expense, cause the preparation and diligent processing of all permits, agreements, plans, maps, and other documents, including but not limited to, market strategy plans, design development plan, and any amendments to the Project's General Development Plan and Section Planning Area Plan that may be necessary to meet the Developer's Affordable Housing Obligation in the time frames set forth herein, or shall cause such actions to occur. City and Developer agree to cooperate with each other in processing permits for the Developer's Affordable Housing Obligation. Any unreasonable delay caused by City in this regard that is not caused by the fault of Developer shall not be a default hereunder, and the implementation schedule may be extended for a reasonable number of permits based upon recent absorption over a period of time equal to such delay, provided that Developer has used, and continues to use, its best efforts to cause the Developer's Affordable Housing Obligation to be completed in a timely manner.
10. **Release.**
 - a. This Agreement shall run with the Project and bind any future owner to the Developer's Affordable Housing Obligation. If Developer transfers any portion of the Project that is subject to the burden of this Agreement, the City, at its sole discretion, may release the portion so transferred of the burden of this Agreement as to such transferred portion, if the Development Services Director determines that: 1) such portion has complied with the requirements of this Agreement; or 2) other land within Village 8 West will accommodate Developer's duty to satisfy the Developer's Affordable Housing Obligation.

- b. Upon the sale of any individual unit to a homebuyer, the parties agree that such unit shall be automatically released from the provisions of this Agreement. Such release shall not limit or modify in any way Developer's obligations hereunder.
- c. City further agrees to timely consider any request for release by Developer pursuant to (a) above. If any such release is granted, Developer and City shall identify other sites to accommodate the affordable housing units in place of the sites originally identified and subsequently released of such burden. Said amendment shall be completed administratively and shall require no further action by the City Council and/or Chula Vista Housing Authority.
- d. In the event that a parcel is requested to be released pursuant to the provisions of paragraphs (a) or (b) above, the parties agree to execute and record such documentation as is reasonably required by a reputable title insurance company, Owner, Developer or its assignee; City shall have no responsibility for any costs resulting from such release.
- e. Upon the recordation of a City-approved Regulatory Agreement imposing affordable housing covenants, this 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 hereof to the extent of the obligations set forth in such Regulatory Agreement. In addition, upon payment to the City of the applicable in lieu housing fee for any part of the Project, the provisions of this Agreement shall no longer be applicable to the extent of such payment.
- f. The release of a portion of the Project from the terms of this Agreement shall in no way alter the obligations of Developer under this Agreement with respect to other portions of the Project, which shall continue in full force and effect until such time as Developer satisfies, in full, Developer's obligation hereunder.

11. **Subordination and Notice.**

- a. **Subordination.** This Agreement shall be recorded against the Project senior to all monetary liens. Developer shall enter into subordination agreements with all lien holders having any interest in the Project, if any, to ensure that the provisions of this Agreement bind such lien holders should they take title to all or part of the Project through quitclaim deed, sale, foreclosure or any other means of transfer of the Project. Developer shall deliver to the City the fully executed subordination agreements in a form acceptable to the City Attorney and suitable for recording on or before the issuance of the first building permit for the Project if any deeds of trust or mortgages encumber Village 8 West at that time.
- b. **Notice.** Developer 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 Project, excluding however, a buyer of an individual housing unit.

12. 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. The individuals signing this Agreement on behalf of the Developer warrant that (i) the individual executing this Agreement on behalf of the Developer is duly authorized to sign and deliver this Agreement on behalf of the Developer, and (ii) this Agreement is binding upon the Developer in accordance with its terms.
- b. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.
- c. **Applicable Law.** This Agreement will be construed and enforced in accordance with the laws of the State of California. The venue for any and all causes of actions or claims shall be the state or federal court, as applicable, in San Diego County closest to the City of Chula Vista, unless the cause of action or claim is filed by the City of Chula Vista and/or Housing Authority for the City of Chula Vista, in which case the City retains its discretion as to venue or otherwise agreed upon by the City of Chula Vista and/or Housing Authority for the City of Chula Vista.
- d. **Successors.** All terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns. Developer hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. Developer 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 or release 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.
- 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 and No Presumption Against the Drafter.** 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. Furthermore, for purposes of this Agreement, each party waives any rule of construction that requires ambiguities in the Agreement be construed against the drafter. Both parties reviewed and prepared this Agreement.

- 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 senior to all monetary liens.
- 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 or be valid against City or Developer(s).
- l. **Incorporation of Recitals.** The recitals set forth herein are part of this Agreement.
- m. **Assignment.** The obligations Developer under this Agreement shall not be assigned in whole or in part to any fee owner of all or any portion of Village 8 West, without the express written consent of the City in its sole discretion, whose consent shall not be unreasonably withheld or delayed. Any unapproved assignment shall be null and void.
- n. **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- o. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against the City or the Chula Vista Housing Authority unless a claim has first been presented in writing and filed with the City and the Chula Vista Housing Authority and acted upon by the City and/or Chula Vista Housing Authority in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as the same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the Chula Vista Housing Authority and/or the City to implement of same. Upon request by the Chula Vista Housing Authority and/or City, Developer shall meet and confer in good faith with the Chula Vista Housing Authority and/or City for the purpose of resolving any dispute over the terms of this Agreement.

13. **Notices.**

Notices under this Agreement shall be in writing and sent (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). All notices shall be delivered to the following addresses:

City: City of Chula Vista and the Chula Vista Housing Authority
276 Fourth Avenue
Chula Vista, California, 91910
Attention: Development Services Department - Housing Division

Copy to: City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Attorney

Developer: HomeFed Village 8, LLC
Erin Ruhe, Vice President
1903 Wright Place, Suite 220
Carlsbad, CA 92008

Otay Land Company, LLC
Erin Ruhe, Vice President
1903 Wright Place, Suite 220
Carlsbad, CA 92008

[Remainder of page intentionally left blank]


SIGNATURE PAGE TO AFFORDABLE
HOUSING AGREEMENT OTAY RANCH
VILLAGE EIGHT WEST

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.


CITY OF CHULA VISTA

HomeFed Village 8, LLC, a Delaware limited liability company

By: _____
Maria Kachadoorian,
City Manager

By:  _____
Erin Ruhe, Vice President
1903 Wright Place, Suite 220
Carlsbad, CA 92008

Otay Land Company, LLC, a Delaware limited liability company

By:  _____
Erin Ruhe, Vice President
1903 Wright Place, Suite 220
Carlsbad, CA 92008

Approved as to form by:

Glen Googins, City Attorney

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.

of State of California)
County of San Diego)

On 7/30/2020, before me, Tristan Manoff, a Notary Public, personally appeared Eric N. Rube, 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 Tristan Manoff



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.

of State of California)
County of San Diego)

On 7/30/2020, before me, Tristan Manoff, a Notary Public, personally appeared Erin N. Duke, 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 of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Tristan Manoff



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.

of 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 of 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.

of 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 of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

CITY OF
CHULA VISTA

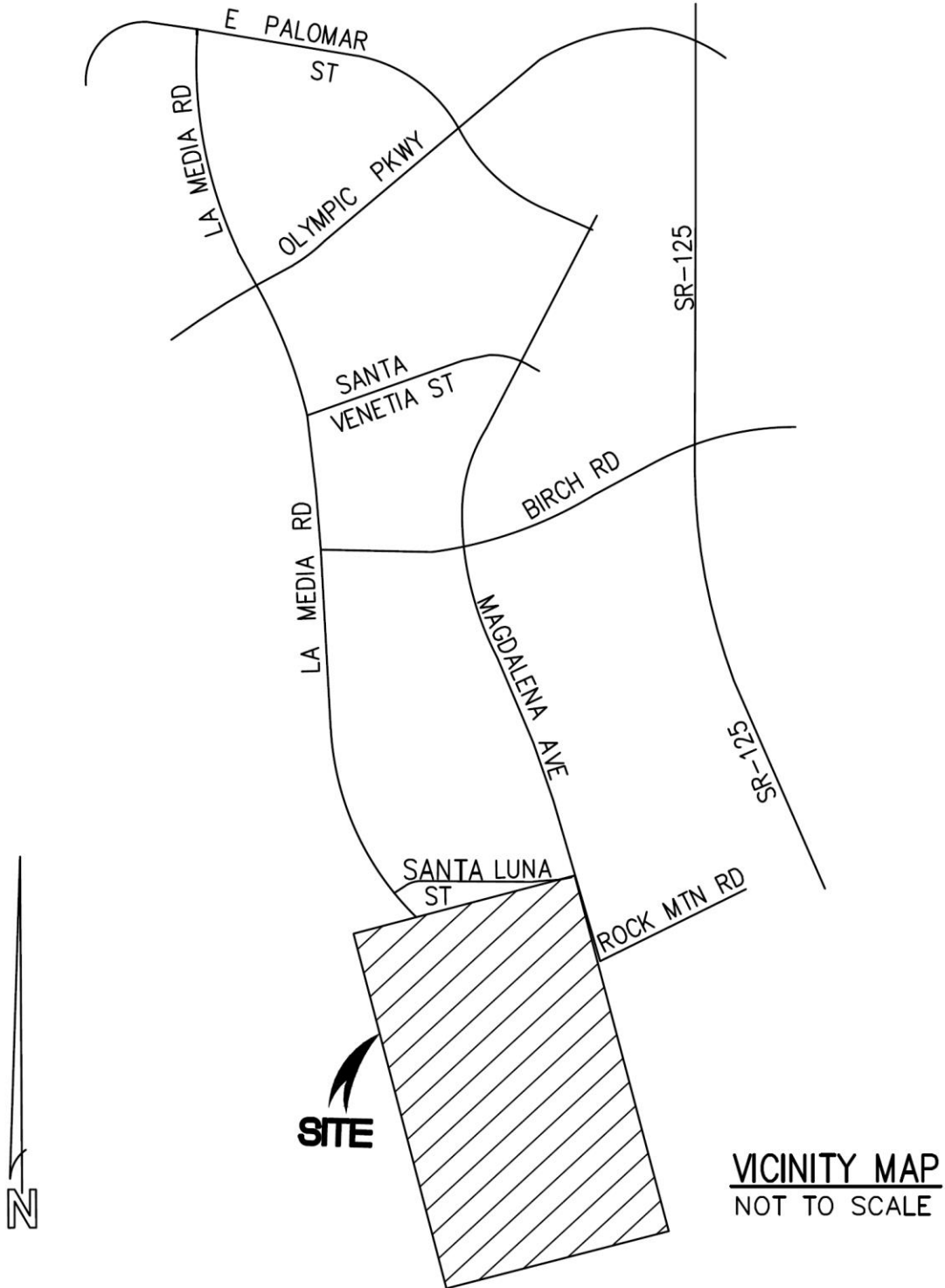


EXHIBIT B

LEGAL DESCRIPTION

BEING A SUBDIVISION, KNOWN AS CHULA VISTA TRACT NO. 19-03 OTAY RANCH VILLAGE 8 WEST, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. _____, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON _____, 2020.

EXHIBIT C

Otay Ranch Village 8 West Affordable Housing Obligation

Description	Total Dus	Low Income DUs	Moderate Income DUs
HOMEFED			
Balanced Communities Low Income Housing			
<i>DEV07-02 / OTAY RANCH V8 WEST</i>	2334	117	117
<i>OTR V3 Transfer Agreement</i>		64	33
TOTAL Affordable Housing Obligation	2334	181	150
Affordable Housing Provided			
Meta Housing Development		175	-
Aff DU Housing Surplus/(Deficit)		(6.0)	(150)
Available Aff Housing Credits - Meta Housing		6.0	82.0
Remaining Affordable Housing Surplus/(Deficit)		-	(68)

AFFORDABLE HOUSING CREDITS –Low Income					
Income	No. of Units Proposed	No. of Units to be Credited	Credit Factor*	Available Credits	Difference (Proposed-Credit)
Very Low	53	12	0.5	6.0	
Low	122			0.0	
Moderate/Non-Restricted	-			0.0	
TOTAL	175	12		6.0	(6.0)
AFFORDABLE HOUSING CREDITS – Moderate Income					
Income	No. of Units Proposed	No. of Units to be Credited	Credit Factor*	Available Credits	Difference (Proposed-Credit)
Very Low	53	41	2.0	82.0	
Low	122			0.0	
Moderate/Non-Restricted	-			0.0	
TOTAL	175	41		82.0	41.0

Note:

Calculating Incentive Credit The Incentive credit shall be calculated as follows:
 2.0 unit credit for every very low income unit in lieu of a moderate income unit
 1.5 unit credit for every low income unit in lieu of a moderate income unit.
 .5 unit credit for every very low income unit in lieu of a low income unit.