

**FIRST AMENDMENT TO ACQUISITION/FINANCING AGREEMENT
CALIFORNIA MUNICIPAL FINANCE AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 2021-11
(CITY OF CHULA VISTA – OTAY RANCH VILLAGE 8 WEST)**

THIS FIRST AMENDMENT TO ACQUISITION/FINANCING AGREEMENT (the “First Amendment”), dated as of _____, 2024 (the “Effective Date”), is made and entered into by and between the CITY OF CHULA VISTA, a chartered municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, (the “City”), the CALIFORNIA MUNICIPAL FINANCE AUTHORITY (the “Authority”), on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 2021-11 (City of Chula Vista Otay Ranch Village 8 West), a community facilities district formed and existing pursuant to the laws of the State of California (the “CFD”), and HOMEFED VILLAGE 8, LLC, a Delaware limited liability company (the “Developer”).

WHEREAS, the Authority, City and Developer have entered into an Acquisition/Financing Agreement dated as of October 1, 2021 (the “Original A/F Agreement”) relating to the CFD; and

WHEREAS, the CFD has issued a first series of bonds (the “2022 Bonds”) pursuant to an Indenture of Trust between the Authority and U.S. Bank Trust Company, National Association, as Trustee, dated as of July 1, 2022 (the “Indenture”); and

WHEREAS, the City and Developer have identified several changes to the Original A/F Agreement and Indenture that are mutually desirable.

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

SECTION 1. Recitals and Defined Terms. The above recitals are all true and correct. Capitalized terms used in this First Amendment that are not otherwise defined shall have the meanings ascribed to them in the Original A/F Agreement.

SECTION 2. Amendments to Original A/F Agreement and Indenture.

(a) Each of the three Acquisition Improvements identified in the Exhibit “B” to the Original A/F Agreement will be constructed in two separate phases (each, a “Discrete Phase”) consisting of (1) grading, drainage, sewer, surface improvements, traffic signals, environmental mitigation, and associated soft costs; and (2) landscape and irrigation, and associated soft costs. Exhibit “B” to the Original A/F Agreement is hereby amended and restated in its entirety to read as attached as Attachment No. 1 to this First Amendment in order to identify each Discrete Phase of each Acquisition Improvement. In addition, Sections 7(b) and (c) of the Original A/F Agreement are hereby restated in their entirety to read as follows:

“(b) Incremental Payment of Purchase Price of an Acquisition Improvement. The Purchase Price for any Acquisition Improvement constructed by the Developer shall be payable in not to exceed four increments: (i) the “Base Increment” of each Discrete Phase which shall be an amount equal to 75% of its 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 of Development Services of the City, or his or her designee (the “DSD Director”); and (ii) the “Retained Increment” of each Discrete Phase which shall be an amount not to exceed the remaining, unpaid portion of the Purchase Price for such Discrete Phase determined pursuant to the provisions of (a) above.

(c) Requisition for Incremental Payment of Purchase Price of an Acquisition 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 each Discrete Phase of an Acquisition Improvement constructed by the Developer upon the substantial completion of the construction of such Discrete Phase in accordance with the approved Plans and Specifications. The criteria for determining “substantial completion” of each such Discrete Phase is described in Exhibit “C” and shall mean generally that construction, or work with respect to such Discrete Phase has progressed to the point where it is sufficiently complete so that such Discrete Phase can be utilized for the purpose for which it was intended. Substantial completion of such a Discrete Phase shall also mean that all components of such Discrete Phase are substantially complete, e.g., in the case of the Discrete Phase including streets and surface improvements, the components are described in Exhibit “C,” items A-G and in the case of the Discrete Phase that includes landscape and irrigation, the components are included in items H and I. Each Base Increment payment request must be in the form attached hereto as Exhibit “E,” which is incorporated herein by this reference, and conform to the requirements of (f) below. The request for payment of the Base Increment for a Discrete Phase shall be accompanied by a copy of the following documents related to the construction of such Acquisition 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 City Engineer, 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 Discrete Phase.

(ii) Retained Increment. The Developer may submit only one (1) written request to the DSD Director for the payment of the Retained Increment for each Discrete Phase of an Acquisition Improvement in the form attached hereto as Exhibit “F,” 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 Discrete Phase in a form reasonably acceptable to the City, (2) evidence that the Developer has posted a maintenance bond for such Acquisition Improvement as required

by Section 5 hereinabove, (3) evidence of the satisfaction of the requirements of Section 9 hereinbelow directly related to such Acquisition Improvement and (4) written unconditional lien releases from all contractors, subcontractors and materialmen satisfactory to the City Attorney for such Acquisition 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 (f) below and also be accompanied by the following documents related to such additional costs of the construction of such Discrete Phase 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."

(b) The Authority shall amend the Indenture, with the consent of the Trustee, to create three separate accounts within the Project Fund to be designated as the "City Construction Account," the "DIF Acquisition Account" and the "Non-DIF Acquisition Account." Following such amendment, the Authority shall instruct the Trustee to transfer \$8,000,000 in proceeds of the 2022 Bonds from the Project Fund to the City Construction Account, \$18,200,000 (less amounts disbursed pursuant to Payment Request No. 4) from the Project Fund to the DIF Acquisition Account and the remaining amount in the Project Fund to the Non-DIF Acquisition Account. The Indenture shall also be amended to (i) permit funds to be transferred from the DIF Acquisition Account to the Non-DIF Acquisition Account and vice versa at the request of the Authority following a written request from the Developer and (ii) permit funds to be transferred from either Acquisition Account to the City Construction Account at the request of the Authority following the written request of the City and Developer. Section 7(f)(iii) shall also be restated in its entirety to read as follows:

"(iii) Source of Payment. The Purchase Price or any increment thereof for an Acquisition Improvement shall be payable to the Developer from (i) those proceeds of the sale of each series of Bonds deposited in the project fund (the "Project Fund") established pursuant to the indenture or fiscal agent agreement for the Bonds (the "Indenture") and (ii) the Special Taxes of the CFD that have been levied directly to pay for Facilities and collected by the CFD, including prepayments allocable to Facilities (the "Available Special Taxes"). The funds deposited in the Project Fund and the Available Special Taxes shall be referred to as the "Available Amount." The Project Fund shall consist of three separate accounts designated as the "City Construction Account," the "DIF Acquisition Account" and the "Non-DIF Acquisition Account." Exhibit "B" identifies two of the Acquisition Improvements as TDIF Facilities. The Third Acquisition Improvement is a non TDIF Facility. The City will calculate through a separate process the amount of TDIF credit granted for each TDIF Facility, which is expected to be different than the Purchase Price of each TDIF Facility. The portion of the Purchase Price of an Acquisition Improvement identified as a TDIF Facility that is equal to the amount of the approved TDIF credit is to be paid only from the DIF Acquisition Account and any remaining, unpaid portion of the Purchase Price for the TDIF Facility shall be paid

from the Non-DIF Acquisition Account. The Purchase Price of the third Acquisition Improvement that is a non TDIF Facility is to be paid only from the Non DIF Acquisition Account.

The Authority agrees to levy the Special Taxes on Developed Property at 100% of the Assigned Special Tax rate pursuant to the Rate and Method until the earlier of (i) payment in full of all of the Facilities; (ii) the issuance of the final series of Bonds; or (iii) July 1, 2028. The Authority agrees to provide an annual certificate in the form attached hereto as Attachment “3”. The Indenture shall also provide that all Available Special Taxes collected prior to the issuance of the final series of Bonds shall be deposited in the Project Fund until all Facilities have been fully funded. For purposes of this Agreement, the “final series of Bonds” shall mean the final series issued to generate additional funding for Facilities based on new development since the prior issuance of any series, but shall not include refunding bonds. As shown on Attachment “3”, no debt service savings achieved from refunding outstanding Bonds shall be used to generate additional funding for Facilities.

(c) Exhibit “B” to the Original A/F Agreement shall be restated in its entirety as attached hereto as Attachment No. 1.

SECTION 3. Use of DIF Credits Based on October 2022 DIF Rates.

Notwithstanding anything in the Original A/F Agreement to the contrary, as a result of the deposit of \$8,000,000 in proceeds of the 2022 Bonds in the City Construction Account, the Developer shall receive a credit against the PFDIF fees otherwise payable for new development within the CFD in the amount of \$8,000,000 to be applied using the October 2022 rate of the PFDIF fee until the credit is exhausted. Attachment No. 2 is the City’s October 2022 Master Fee Schedule.

SECTION 4. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original.

SECTION 5. Construction of Agreement. This First Amendment has been reviewed by legal counsel for the City, the Authority and the Developer and shall be deemed for all purposes to have been jointly drafted by the City, the Authority 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 First Amendment. The language in all parts of this First Amendment, 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 First Amendment are for convenience only and shall not be considered or referred to in resolving questions of construction.

SECTION 6. Recitals; Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this First Amendment.

SECTION 7. 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 First Amendment, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this First Amendment.

Signature Page to
First Amendment to Acquisition/Financing Agreement by and between
the City of Chula Vista, California Municipal Finance Authority, Community Facilities District
No. 2021-11 (City of Chula Vista Otay Ranch Village 8 West)

IN WITNESS WHEREOF, City, Authority and Developer have executed this First Amendment as of the Effective Date thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms.

“CITY”

CITY OF CHULA VISTA

MARIA V. KACHADOORIAN,
CITY MANAGER
CITY OF CHULA VISTA
STATE OF CALIFORNIA

APPROVED AS TO FORM:

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

“DEVELOPER”

HOMEFED VILLAGE 8, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

“AUTHORITY”

CALIFORNIA MUNICIPAL FINANCE
AUTHORITY, a joint powers authority

By: _____
Name: _____
Its: Authorized Signatory

ATTACHMENT NO. 1 TO FIRST AMENDMENT

EXHIBIT “B”

DESCRIPTION OF FACILITIES

A. CITY FEES

1. Sewer Capacity Charge
2. Salt Creek Sewer Basin Fee
3. Traffic Signal Fee
4. Eastern Transportation Development Impact Fee (“TDIF”)
5. Parkland Acquisition and Development Fee (“PAD”) (Community Park obligation only)
6. Public Facilities Development Impact Fees (“PFDIF”)
7. Possible Future Fee for Vehicle Miles Traveled (“VMT”)

B. ACQUISITION IMPROVEMENTS

1. **La Media Parkway (Town Center Arterial and 4 Lane Major) – (TDIF Facility)**

City TDIF Road: Portion of 53A, portion of 56C

Limits: From north Village 8 West boundary, south and east ending at east Village 8 West boundary

Discrete Phase Includes: Grading, drainage, sewer, surface improvements, traffic signals, environmental mitigation, associated soft costs

Discrete Phase Includes: Drainage and Irrigation, associated soft costs

2. **Main Street (Town Center Arterial) – (TDIF Facility)**

City TDIF Road: 53B

Limits: From west Village 8 West boundary to east Village 8 West boundary

Discrete Phase Includes: Grading, drainage, sewer, surface improvements, traffic signals, environmental mitigation, associated soft costs

Discrete Phase Includes: Drainage and Irrigation, associated soft costs

3. **Avenida Caprise (Residential Collector) – (Non-TDIF Facility)**

Limits: From westbound Main Street to southerly terminus of road

Discrete Phase Includes: Grading, drainage, sewer, surface improvements, traffic signals, environmental mitigation, associated soft costs

Discrete Phase Includes: Drainage and Irrigation, associated soft costs

ATTACHMENT NO. 2 TO FIRST AMENDMENT

CITY MASTER FEE SCHEDULE, OCTOBER 2022

**ATTACHMENT NO. 3 TO FIRST AMENDMENT
ANNUAL TAX CERTIFICATE**

**Tax Roll: 20__-__
Special Tax Requirement**

Amount

Debt Service on Series 2022 Bonds*
Debt Service on Series 20__ Bonds
Replenish Reserve Fund
Cure Bond Payment Delinquency
Administrative Expenses
Pay-Go Authorized Facilities (through tax roll 2027-28 only)
Credits for Earnings/Funds on Hand***
Credit for Delinquent Tax Collections***
Total Special Tax Levy

Maximum Special Tax Levy
Credit of savings as a result of Refunding Series 2022 Bonds*
Allowable Special Tax Levy**

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- * If Series 2022 Bonds are refinanced, include refunding debt service on first line and deduct savings from Maximum Tax Levy.
** Refunding savings are not available for Pay-Go Authorized Facilities.
*** Through the earlier of FY 2027-28 or the FY in which the final series of Bonds are issued, credits would only be applied if Special Taxes would otherwise need to be levied on Final Map or Undeveloped Property.