

**COMMUNITY PURPOSE FACILITIES AGREEMENT
[OTAY RANCH VILLAGE THREE]**

This Community Purpose Facilities Agreement (“**Agreement**”) is made as of _____, 20____ (“**Effective Date**”), by and between HomeFed Village III Master, LLC, a Delaware limited liability company (“**Developer**”), and the City of Chula Vista, a California municipal corporation (“**City**”), with reference to the following facts:

A. Developer owns certain real property generally known as Otay Ranch Village 3 (the “**Project**”).

B. The City of Chula Vista Municipal Code (the “**Code**”) requires that all land in each P-C zone provide adequate land designated as community purpose facilities (the “**CPF**”).

C. The City and SSBT LCRE V, LLC (“**SSBT**”) entered into a Restated and Amended Land Offer Agreement dated July 8, 2014 (“**Land Offer Agreement**”). The Land Offer Agreement provides that the obligation to provide CPF is deemed satisfied with respect to the Project except that, subject to the approval of the Development Services Director, four (4) acres of CPF uses will be provided within the Project. The Development Services Director may waive the four acre CPF requirement in his/her discretion. Developer previously proposed to satisfy the CPF requirement for the Project by providing two private park sites containing a total of 1.8 acres (with a CPF credit of 1.4 acres) and a 2.6 acre CPF site within the mixed-use areas of the Project (“**Existing CPF Site**”).

D. Section 19.48.025(B)(3) of the Code allows, subject to the discretion of the Development Services Director and recommendation from the Planning Commission, an alternative compliance mechanism to provide CPF, provided such alternative mechanism meets all of the following requirements: (i) the City Council finds that the alternative compliance mechanism proposed is equivalent to the provision of the CPF acreage otherwise required by Section 19.48.025(B) of the Code; (ii) the alternative meets the definition of a CPF use in Section 19.48.025(C) of the Code; (iii) the alternative compliance mechanism is guaranteed in perpetuity; and (iv) at the time of the consideration by the Planning Commission, the applicant has executed a binding agreement, reviewed and approved as to form by the City Attorney, which ensures the availability of the alternative compliance mechanism in perpetuity.

E. In order to create a viable mixed use area within the Project, Developer and the City desire to enter into this Agreement to provide for an alternative compliance mechanism for the Existing CPF Site.

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

1. Alternative Compliance Mechanism. Developer owns the MU-2 parcel as described on **Exhibit “A”** attached hereto (“**MU-2 Parcel**”). Developer agrees to provide a CPF project (“**CPF Project**”) within the MU-2 Parcel as generally depicted on **Exhibit “B”** attached hereto and agrees to provide all CPF Site Improvements and related Soft Costs, and construct the

CPF Project consisting of a lot or parcel containing 0.94 acres (“**CPF Parcel**”) and a building containing at least 10,000 square feet as described on **Exhibit “C”** attached hereto to be delivered in a Turnkey Condition. Of the 10,000 square feet within the building, approximately 3,500 square feet will be located within the second floor. Prior to a request for final inspection for a building within the MU-2 Parcel, Developer will record a lot line adjustment, parcel map or final map to create the CPF Parcel as a separate legal parcel and the owner of the CPF Parcel and the owner of the MU-2 Parcel will grant each other reciprocal easements as required for access and other purposes, conformed copies of which shall be provided to City. The Developer will charge rent for the use of the CPF Project of no more than 2/3rds of market rate rent for comparable space in adjacent retail project within the MU-2 Parcel. The City finds that this alternative compliance mechanism more than satisfies the requirement of 2.6 acres of CPF acreage as follows: 0.94 acre CPF land credit, credit of 1.0 acre for the construction of the 10,000 square foot or more building and a credit of 0.66 acres for the rent reduction and the construction of the on-site improvements for the CPF Project and related soft costs. **Exhibit “D”** demonstrates a numerical summary of the alternative compliance.

2. Perpetual Use. Developer agrees that the CPF Project will be used in perpetuity for the CPF purposes permitted by Section 19.48.025(C) of the Code. Prior to any conveyance of the CPF Project to a third party, Developer will record in the Official Records of San Diego County an instrument approved by the Development Services Director that restricts the use of the CPF Project to CPF uses in perpetuity and provide City with a conformed copy of the same. The initial use of the CPF Project may be a non-profit daycare facility or preschool. Other potential future CPF uses are shown in **Exhibit “E”**.

3. Binding Agreement. As provided in Section 19.48.025(B)(3)(d) of the Code, this Agreement is a binding agreement which ensures the availability of the alternative compliance mechanism in perpetuity.

4. City Approval. The City hereby determines that such alternative mechanism meets all of the requirements of Section 19.48.025(B)(3) of the Code and the Land Offer Agreement.

5. Definitions. The following terms used herein will have the meanings set forth below:

a. “Soft Costs” means all design, permit and other soft costs in connection with the CPF Site Improvements.

b. “CPF Site Improvements” means the on-site improvements for the CPF Project, including onsite finish grading, sewer, water, storm drain and dry utilities, landscaping and irrigation, paving, curb and gutter for parking areas.

c. “Turnkey Condition” means ready for tenant improvements. The building and materials shall be of a quality and design consistent with the surrounding buildings.

6. 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. Developer warrants that (i) the individual executing this Agreement on behalf of such party is duly authorized to sign and deliver this Agreement on behalf of such party, and (ii) this Agreement is binding upon the company 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.

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. 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).

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

l. Assignment. Developer may assign this Agreement in whole or in part to any fee owner of all or any portion of Project so long as such assignee agrees in writing to assume the obligations of Developer with respect to portion of the Project acquired by the assignee.

m. 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.

n. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as 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 City in the implementation of same. Upon request by the City, Developer shall meet and confer in good faith with the City for the purpose of resolving any dispute over the terms of this Agreement.

o. Remedies. Notwithstanding section 1 herein, City shall retain the right to withhold the issuance of building permits for buildings within the MU-2 Parcel should Developer not have recorded a lot line adjustment, parcel map or final map to create the CPF Parcel as a separate legal parcel and should the owner of the CPF Parcel and the owner of the MU-2 Parcel not have granted each other reciprocal easements as required for access and other purposes and provided conformed copies of the same to the City prior to issuance of the first certificate of occupancy for a building within the MU-2 Parcel.

[Next page is Signature Page]

SIGNATURE PAGE TO COMMUNITY PURPOSE FACILITIES AGREEMENT OTAY
RANCH VILLAGE THREE

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

CITY OF CHULA VISTA

HomeFed Village III MASTER, LLC, a
Delaware limited liability company

By: _____

By: HomeFed Village III, LLC, a Delaware
limited liability company, its Managing
Member

By: _____

Name: _____

Its: _____

Attest:

By: _____

Donna Norris
City Clerk

Approved as to form by:

City Attorney

Approved as to form by:

Attorney for Developer

J:\Attorney\MichaelSh\Village 3\CPF Agreement\Village3CPF Agrmt-11.28.16-REVFINAL.docx

EXHIBIT "A"
MU-2 Parcel

LOT 825 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. _____, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON _____, 2016.

DOUGLAS B. STROUP P.L.S. 8553
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

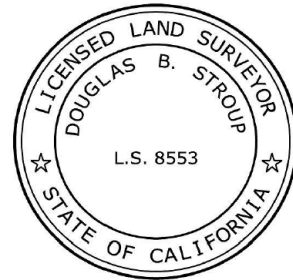
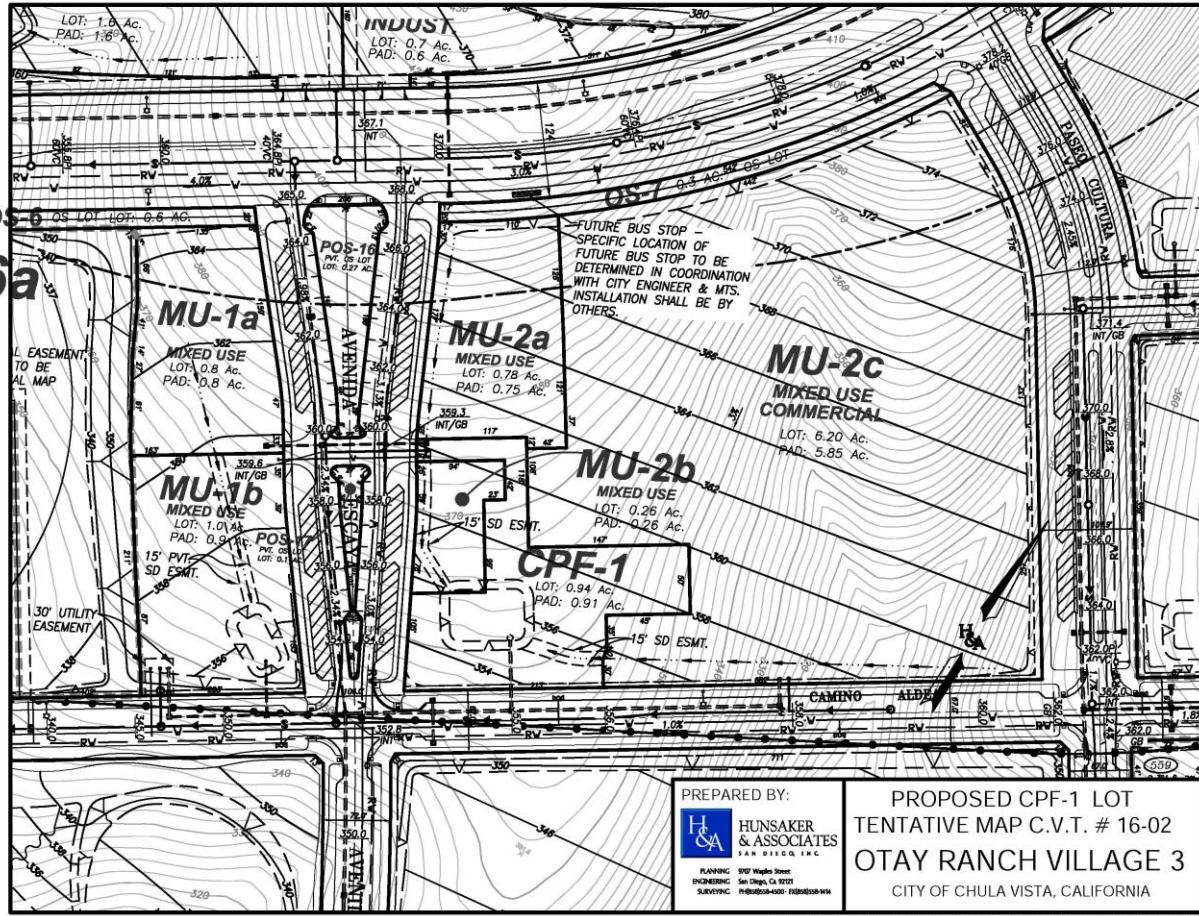


EXHIBIT "B"
LOCATION OF CPF PROJECT



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EXHIBIT "C"
SITE PLAN FOR CPF PROJECT

See Attached

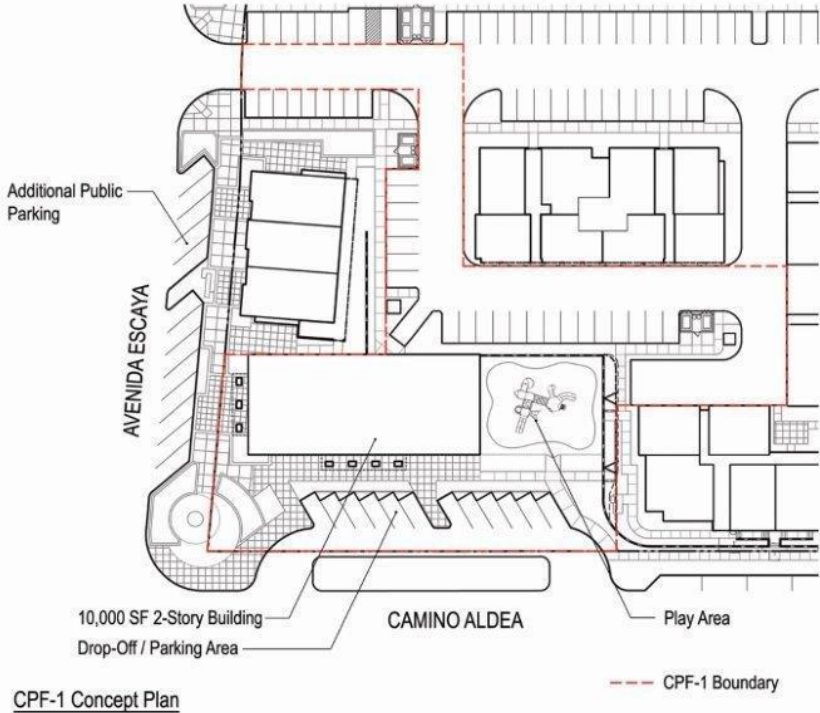


EXHIBIT "D"
 NUMERICAL SUMMARY OF THE ALTERNATIVE COMPLIANCE

CPF Alternative Compliance Financial Analysis				
October 18, 2016				
	<u>2.6 Acre Site - Financial Impact</u>		<u>Alternative Compliance - Financial Impact</u>	
		Amount		Amount
Cost of land, grading, util., & infra.	2.6 Ac	\$ 1,000,000 /Ac	\$ (2,600,000)	0.94 Ac \$ 1,000,000 /Ac \$ (940,000)
Construction of Building	NA	\$ -		10,000 SF \$ 150 /SF \$ (1,500,000)
Private Sitework: Lndscp, hrdscp, prkng	NA	\$ -		0.71 Ac \$ 300,000 /Ac \$ (213,129)
Subsidized Rent (33% below Market)*	NA	\$ -		10,000 SF \$ (1,090,003)
		TOTAL:	\$ (2,600,000)	TOTAL: \$ (3,743,133)

* Subsidized Rent Calculations	
Market Rent/Mo	\$ 2.25 SF
33% Subsidized Rent	\$ (0.74) SF
Mo. Subsidy on 10,000 SF	\$ (7,425)
Annual Subsidy	\$ (89,100)
Subsidy Value (NPV @8%, 50 years)	\$ (1,090,003)

EXHIBIT "E"
POTENTIAL FUTURE USES

Use	Land Use District -- CPF	Parking Requirement Source	Parking Requirement	Total Required Parking Spaces
Public and Semi-Public Uses:				
Recreation facilities (i.e. private swim clubs and parks) owned and maintained by non-profit organizations serving the local community (i.e. Little League ballfields)	P	PCDR - TBD by DDS and Park & Rec Dir.	Varies/ Estimated	24
Community Meeting Facilities	C	CVMC	1/50 sf	200*
Day nursery, daycare school or nursery school (for-profit)	C	PCDR/ CVMC	1/staff + 1/10 students	24
Day nursery, daycare school or nursery school (non-profit)**	C	PCDR/ CVMC	1/staff + 1/10 students	24
Educational institution	C	PCDR	1/employee + 5 spaces	10
Essential public services, including but not limited to, library, museum, public works facility, post office and other civic uses as determined by the Zoning Administrator	A	None	Varies/ Estimated	24
Group facility and/or residential retirement hotel	C	CVMC	1/3 beds	N/A

Use	Land Use District -- CPF	Parking Requirement Source	Parking Requirement	Total Required Parking Spaces
Public safety facility such as a police or fire station	A	None	Varies/ Estimated	24
Public utility and/or public service sub-station, reservoir, pumping plant and similar installation, except those regulated by the State of California	A	TBD by DDS	Varies/ Estimated	15
Worship, spiritual growth and development	C	PCDR / CVMC	1/3.5 fixed seats or 1/45 SF	87* (6,500 sf x .6/45)
Schools ancillary to uses below:				
Senior care and recreation	P	None	Varies/ Estimated	24
Social and human services	C	None	Varies/ Estimated	24
Services for the homeless	C	None	Varies/ Estimated	24
Services for the military	C	None	Varies/ Estimated	24
Worship, spiritual growth and development	P	See above	Varies/ Estimated	See above
Youth organizations	C	None	Varies/ Estimated	24
General Commercial Uses:				
Recycling drop-off center	a	None		24
Snack bar or refreshment stand	a	CVMC	15 minimum	15

Use	Land Use District -- CPF	Parking Requirement Source	Parking Requirement	Total Required Parking Spaces
contained within a building				
Temporary uses as described in "Temporary Use Section:	P	Varies	Varies	Varies
Theater, movie or live show	A	PCDR	1/3/5 seats	87*

*Requires additional parking by agreement with adjacent use, such as commercial, office, industrial or school

**Proposed initial use