

**NO CHARGE ON THIS DOCUMENT  
PER CALIFORNIA GOVERNMENT  
CODE SECTION 6103**

**Recording Requested By  
And When Recorded Mail To:**

City Clerk  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(TENANT RESTRICTIONS)  
(Lots 824 and 852 of Map No. 16160 Otay Ranch Village Three)**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (“Declaration”) is dated as of the \_\_\_ day of \_\_\_\_\_, 2019, by VILLAGE OF ESCAYA APARTMENTS, LLC, a Delaware limited liability company (“Owner”), and VILLAGE OF ESCAYA MIXED USE, LLC, a Delaware limited liability company (“Master Tenant”) (Owner and Master Tenant shall collectively be referred to in the singular as “Declarant”) in connection with that certain parcel of real property (“Property”) located in the City of Chula Vista (“City”), County of San Diego, California, described in Exhibit “A” attached hereto and incorporated herein by reference.

**RECITALS**

A. The City of Chula Vista Housing Element established Policy 5.1.1 of the City's Housing Element of the General Plan ("Balanced Community Policy"), which requires the occupancy and affordability of ten percent (10%) of each housing development of 50 or more units for 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”). The Balanced Community Policy also allows, under specified circumstances, alternative means of compliance.

B. The Property is located within Otay Ranch Village 3 in Chula Vista, California (as more particularly described on the Property Legal Description attached hereto as Exhibit “A”, the “Property”). Declarant has acquired title to the Property and will be constructing a two hundred seventy-two (272) unit housing project and related improvements (the “Project”).

C. The City and HomeFed Village III Master, LLC, a Delaware limited liability company (“Original Developer”) entered into a Balanced Communities Affordable Housing Agreement for Otay Ranch Village 3 (“Affordable Housing Agreement”).

D. In accordance with Policy 5.1.1, Developer is obligated to meet the Affordable Housing Obligation of 127 affordable units of which 63 units are to be for moderate income households and 64 units are to be for low income households. Sixty-four of the required low income units and 33 moderate income housing units required for Otay Ranch Village 3 have been satisfied by transfer of low-income moderate income affordable housing units to Otay Ranch Village 8 pursuant to an Affordable Housing Transfer Agreement among the City, Otay Land Company, LLC, a Delaware Limited Liability Company, HomeFed Otay Land II, LLC, a Delaware limited liability company, and Original Developer, leaving 30 moderate income units remaining to be satisfied within the Project.

E. To meet the requirements of the Balanced Community Policy, the Declarant has agreed to enter into and record this Declaration to provide thirty (30) units within the Project to be operated as affordable rental housing for moderate income households (the "Affordable Units") in accordance with the Affordable Housing Agreement.

F. The purpose of this Declaration is to regulate and restrict the rents and occupancy of the Affordable Units and to implement controls on the ownership, operation, and management of the Affordable Units. The covenants in this Declaration are intended to run with the land and be binding on the Declarant and its successors and assigns in the Property. This Declaration is the "Regulatory Agreement" described in the Affordable Housing Agreement.

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be subject to the covenants, conditions and restrictions set forth below:

1. Restrictive Covenants. Declarant agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that at all times during the term of this Declaration set forth herein thirty (30) units at the Property shall be set aside and reserved as "Affordable Units." As used herein the term "Affordable Units" shall refer to those residential units at the Property which are leased strictly in accordance with the terms and conditions set forth below.

(a) Affordable Unit Restrictions. The following restrictions shall apply to the thirty (30) Affordable Units. The restrictions set forth in the Table below shall establish the maximum rental rate, when not precluded by state law, from which a utility allowance, as approved by the City, shall be deducted:

**TABLE 1: RENT, INCOME AND OCCUPANCY RESTRICTION CRITERIA**

1	2	3	4	5	6
UNIT DESCRIPTION	NUMBER OF AFFORDABLE UNITS	MAXIMUM % OF AREA MEDIAN INCOME OF ELIGIBLE TENANTS "Income Limit"	MAXIMUM MONTHLY RENTS AS PERCENTAGE OF AREA MEDIAN INCOME ADJUSTED FOR FAMILY SIZE APPROPRIATE FOR THE UNIT	YEARS OF RENT RESTRICTION	MINIMUM UNIT OCCUPANCY
1 br/1 ba	15	120% of AMI	1/12 <sup>th</sup> of 30% of 110% of AMI	20	1 person
2 br/2 ba	14	120% of AMI	1/12 <sup>th</sup> of 30% of 110% of AMI	20	2 persons
3 br/2 ba	1	120% of AMI	1/12 <sup>th</sup> of 30% of 110% of AMI	20	3 persons

1	2	3	4	5	6
UNIT DESCRIPTION	NUMBER OF AFFORDABLE UNITS	MAXIMUM % OF AREA MEDIAN INCOME OF ELIGIBLE TENANTS "Income Limit"	MAXIMUM MONTHLY RENTS AS PERCENTAGE OF AREA MEDIAN INCOME ADJUSTED FOR FAMILY SIZE APPROPRIATE FOR THE UNIT	YEARS OF RENT RESTRICTION	MINIMUM UNIT OCCUPANCY
TOTAL AFFORDABLE UNITS	30				

(b) "Eligible Tenants" are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in Table 1 above of the annual median income, as adjusted for household size. Full-time students who entirely occupy an Affordable Unit shall only be considered Eligible Tenants if such students meet the requirements of Section 142(d)(2)(C) of the Internal Revenue Code. All the units shall be Affordable Units as referenced in the Table. For purposes of this Declaration, the current annual median income shall be the median income defined by the State Department of Housing and Community Development ("HCD") as the then current median income for the San Diego Standard Metropolitan Statistical Area, established periodically by HCD, as adjusted for household size. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HCD or any successor agency. In the event HCD ceases to publish an established median income as aforesaid, the City may, in their sole discretions, use any other reasonably comparable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.

(c) An adjustment of rents may be performed annually in accordance with the rents contained in the HCD rent schedules published by the City for the affected unit type and updated from time to time. Further, the rents charged shall be further limited as set forth in Section 14, hereof.

2. Affordable Marketing Plan Compliance; Selection of Residents. Declarant shall utilize the City's standardized management and marketing plan for rental of all of the Affordable Units. Declarant's marketing of the Affordable Units shall be in compliance with federal and state fair housing laws. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Units within the City, such as notices in any City-sponsored newsletter, advertising in local newspapers, and notice in City offices. In the event the City implements a master waiting list for affordable housing in the City ("Master List"), then Developer shall provide notices to persons on the Master List of the availability of the Affordable Units, prior to undertaking other forms of marketing. Developer shall give the persons on the Master List not fewer than fifteen (15) days after receipt of such notice to respond by submitting application forms for rental of the Affordable Units. Selection of residents shall be made based upon the Master List, rather than on a first-come, first-serve basis. Provided, however, (i) all tenants of each Affordable Unit shall meet the income requirements set forth herein and tenancy and eligibility shall be in conformance with the terms and standards set forth in the management marketing plan and no preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household; and (ii) nothing herein shall restrict Declarant from screening tenants

through the application of criteria which is lawful and customary in apartment management in San Diego County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

3. Determination; Annual Requalification. Declarant shall obtain from each person to whom Declarant leases an Affordable Unit a “Supplemental Rental Application” (“Application”) in the form of Exhibit “B”, attached hereto (or such other reasonable form as City may from time to time adopt). Declarant shall be entitled to rely on the Application and supporting documents thereto in determining whether a household is an “Eligible Tenant” as may be established in Declarant’s application review guidelines. Declarant shall retain the Application and supporting documents for a period of not less than three (3) years after the applicant ceases to occupy an Affordable Unit. An Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant’s income demonstrates that such tenant no longer qualifies as an “Eligible Tenant.”

Declarant is required to recertify existing Moderate-Income Households for continuing eligibility within 90 days of the annual renewal of each tenant lease. Declarant shall require all existing Moderate-Income Households to complete a Recertification Application and review such Application to determine eligibility for occupancy of a Moderate-Income Unit.

4. Increased Income of Tenants.

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Declarant determines that such Tenant’s income exceeds 140 percent of the AMI, such Tenant may be permitted to continue to occupy the unit at the then current market rate rent or be provided with a sixty (60) day notice of the lease non-renewal. Declarant shall rent the next available unit of comparable size to a Moderate-Income Household, as applicable, to meet the requirements of Section 1 above. Declarant shall maintain the occupancy requirements set forth in Section 1(a) above and shall also be reported annually in accordance with monitoring requirements set forth in Section 9.

5. Relationship with Declarant. The term “Eligible Tenant” shall not include Declarant or any individuals who are partners or shareholders in Declarant or in any entity having an interest in Declarant or in the Property, or officer, employee, agent or consultant of the owner, developer or sponsor.

6. Income of Co-tenants, etc. The income of all co-tenants and/or non-dependent occupants shall be taken into account in determining whether a household is an Eligible Tenant hereunder.

7. Eviction/Any Reason Other Than Over Income. In the event that a tenant who was properly certified as an Eligible Tenant at the commencement of such tenant’s occupancy ceases to be eligible or defaults under its lease, for any reason other than Annual Income exceeding the maximum qualifying income for a Moderate Household, Declarant shall have the right to pursue all legal remedies available under such tenant’s lease to cause such tenant to vacate the Affordable Unit. The vacated Affordable Unit shall thereafter be rented to an Eligible Tenant.

8. Maintenance/Physical Condition of Affordable Units. After completion of the Affordable Units, Declarant shall continually maintain the Affordable Units in a condition which satisfies the Housing Quality Standards promulgated by HUD under its Section 8 Program, as such standards are interpreted and enforced by City under their normal policies and procedures. City shall have the right to inspect the Affordable Units from time to time, on reasonable notice and at reasonable times, in order to verify compliance with the foregoing maintenance covenant. Further, each Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in Section 3 above. Any deficiencies in the physical condition of an Affordable Unit shall be corrected by Declarant at Declarant's expense within thirty (30) days of the identification of such deficiency by City and delivery of written notice of the same to Declarant (unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as City determines is needed, not to exceed one hundred twenty (120) days, provided Declarant commences cure within such thirty (30) day period and continues to diligently pursue cure).

9. Monitoring. It is contemplated that, during the term of this Declaration, the City will perform the following monitoring functions: (a) preparing and making available to Declarant any general information that the City possess regarding income limitations and restrictions which are applicable to the Affordable Units; (b) reviewing the documentation submitted by Declarant in connection with the annual certification process for Eligible Tenants described in Section 3, above; and (c) inspecting the Affordable Units to verify that they are being maintained in accordance with Section 8, above. All Moderate-Income Units shall be monitored on an annual basis to determine compliance with the occupancy requirements set forth in Section 1(a) above. Declarant is required to submit an annual monitoring report in a form, on a date and at a location determined by City. Declarant shall cooperate with and utilize such forms, software, websites and third-party vendors as may be required by City. Notwithstanding the foregoing description of City functions, Declarant shall have no claim or right of action against the City based on any alleged failure to perform such function.

10. Declarant Required to Pay Monitoring Fees. Declarant shall pay the City Housing Division a set-up fee of One Thousand Nine Hundred Fifty Dollars (\$1950.00) which shall be paid by Declarant to City within ten (10) days of written demand for the same. Thereafter, in each subsequent year during the term of this Declaration, Declarant shall pay to City an annual monitoring fee, in an amount equal to the set-up fee, increased by three percent (3%) cumulative each year. The annual monitoring fee shall be paid to City annually within ten (10) days after City provides a written invoice for the same. Failure to timely pay such fees, if such failure continues for more than ten (10) days after Developer receives written notice of such failure, shall constitute a material default under the terms and conditions of this Declaration. Both the set-up fee and annual monitoring fee shall be paid to City as a consideration for the lending of funds by Agency to Declarant.

11. Lease Provisions. Declarant agrees that it will include in all of its leases for the Affordable Units, and cause its successors in interest to include in all of their leases for the Affordable Units, the following provision:

Lessee agrees, upon written request from the Landlord, City of Chula Vista ("City"), to certify under penalty of perjury the accuracy of all information provided in connection with the examination or reexamination of annual income of the

tenant's household. Further, tenant agrees that the annual income and other eligibility requirements are substantial and material obligations of the tenancy and that the tenant will comply promptly with all requests for information with respect to the tenancy from the Landlord or City. Further, tenant acknowledges that tenant's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or the refusal to comply with the request for information with respect thereto, shall be deemed a violation of this lease provision, and a material breach of the tenancy and shall constitute cause for immediate termination of the tenancy.

12. Non-Discrimination.

(a) Obligation to Refrain from Discrimination. Declarant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Declarant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or the rental, lease sale of the Property and any dwelling unit thereon. The foregoing covenants shall run with the Property.

(b) Nondiscrimination Covenants. Declarant shall refrain from restricting the rental, lease and sale of the Property and any dwelling unit thereon on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) Deeds. In deeds "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) Leases. In leases "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.”

(3) Contracts. In contracts “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

13. Successors Bound. Declarant covenants, for itself and its successors and assigns, not to sell, transfer, assign or otherwise dispose of ownership of the Property, without the express written consent of the City, whose consent shall not be unreasonably withheld, unless to an affiliate of Declarant. Any prospective purchaser, transferee or assignee (including any affiliate of Declarant) shall expressly promise in writing to be bound by all of the provisions hereof, including the covenant in this Section 13 to require successors to expressly assume the obligations herein.

Upon any such transfer, Declarant shall be released from any obligations required to be performed under this Agreement from and after the date of transfer with respect to the portion of the Property so transferred; provided, Declarant and each transferee or assignee (including any affiliate of Declarant) will remain responsible for its obligations under this Agreement for its period of ownership of the Property (or part thereof). Following any transfer, a default under this Agreement by a Party (i.e., the Declarant or any transferee or assignee) shall not constitute a default by any other Party under this Agreement and shall have no effect upon the non-defaulting Party’s rights and obligations under this Agreement with respect to their portions of the Property.

14. Maximum Rent To Be Collected by Declarant. In no event, shall all of the rent, including the portion paid by the Eligible Tenant and any other person or entity, and collected by Declarant (the “Total Rent”) for an Affordable Unit exceed the amount of rent set forth in Table 1. Total Rent includes all payments made by the Eligible Tenant and all subsidies received by Declarant. In the case of persons receiving Section 8 benefits, who are Eligible Tenants, Declarant acknowledges that it shall not accept any subsidy or payment that would cause the Total Rent received for any restricted unit to exceed the maximum rents allowed in Table 1 for any Affordable Unit. Should Declarant receive Total Rent in excess of the allowable maximum rent set forth in Table 1, Declarant agrees to immediately notify City and reimburse the City for any such overpayment. Acceptance by Declarant or its successor in interest, of Total Rent in excess of the

maximum rent set forth in Table 1 shall constitute a material breach of this Declaration. The City, in its sole and unfettered discretion, may waive a breach of this paragraph if it determines and informs Declarant in writing that Declarant's actions to immediately notify City of the overpayment and reimbursement to City for such overpayment has satisfactorily cured the breach of this paragraph.

15. Term. This Declaration and the covenants and restrictions contained herein shall be effective on the date this Declaration is recorded and shall remain in full force and effect for a period of twenty (20) years from the date of issuance of the certificate of occupancy for the first residential unit at the Property. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

16. Enforcement. Declarant expressly agrees and declares that the City or any successor public entity or agency is a proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such default may have actually been suffered by some other person or the public at large. Further, the City or any successor public entity or agency shall be the proper party to waive, relinquish, release or modify the rights, covenants, obligations or restrictions contained in or arising under this Declaration.

17. Attorneys' Fees. In the event that any litigation for the enforcement or interpretation of this Declaration, whether an action at law or arbitration or any manner of non-judicial dispute resolution to this Declaration by reason of the breach of any condition or covenant, representation or warranty in this Declaration, or otherwise arising out of this Declaration, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees to be fixed by the court which shall render a judgment, as well as the costs of suit.

18. Severability. In the event that any provision or covenant of this Declaration is held by a court of competent jurisdiction to be invalid or unenforceable, then it shall be severed from the remaining portions of this Declaration which shall remain in full force and effect.

19. Covenants to Run With the Land. The covenants contained herein shall constitute "covenants running with the land," and shall bind the Property and every person having an interest therein during the term of this Declaration. Declarant agrees for itself and its successors that, in the event that, for any reason whatsoever, a court of competent jurisdiction determines that the foregoing covenants do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

20. Recordation; Waiver and Amendment; Payment of Fees. This Declaration shall be recorded in the Office of County Recorder of San Diego, California. No provision of this Declaration, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach



of the same or other provision. Except as otherwise provided herein, this Declaration may be amended, modified or rescinded only in writing signed by Declarant and the City and such amendment or memorandum thereof recorded in the Office of County Recorder of San Diego, California. In the event the City consents to such an amendment, modification or rescission, the same shall be conditioned upon Declarant's payment of all fees and costs incurred by the City with respect to the same, including without limitation attorney's fees. The City may waive the aforementioned costs and fees if the amendment, modification, or rescission is required solely because of City action.

21. Remedies.

(a) Contract Governed by Laws of State of California. This Declaration, its performance, and all suits and special proceedings under this Declaration, shall be constituted in accordance with the laws of the State of California and Federal law, to the extent applicable. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Declaration, the laws of the State of California and the United States, to the extent applicable, shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Standing, Equitable Remedies; Cumulative Remedies. Declarant expressly agrees and declares that City or any successor or public entity or agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Declarant expressly agrees that injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, and to assure compliance with this Declaration. The remedies set forth in this Section are cumulative and not mutually exclusive, except the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(c) Remedies at Law for Breach of Tenant Restrictions. In the event of any material default under Sections 1 through 15 hereof regarding restrictions on the operation and the leasing of the Property, the City shall be entitled to, in addition to any and all other remedies available at law or in equity, recover compensatory damages. If the default in question involves the collection of rents in excess of the rents permitted hereunder, the amount of such compensatory damages shall be the product of multiplying: (a) the number of months that the default in question has continued until the time of trial by (b) the result of subtracting the rents properly chargeable hereunder for the Affordable Units in question from the amount actually charged for those Affordable Units. Declarant and the City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to City as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. The City shall be entitled to seek and to recover damages in separate actions for successive and separate breaches which may occur. Further, interest shall accrue on the amount of such damages from the date of the breach in question at the rate of ten percent (10%) per annum or the maximum rate than allowed by law, whichever is less.

(d) Expert Witness, Attorneys' Fees, and Costs. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Declaration shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") §1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP §998.

22. Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Declaration shall defeat or render invalid or in any way impair the lien or charge of any deed of trust or mortgage recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Declaration, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. However, no beneficiary under any such deed of trust or any purchaser at a foreclosure sale of such deed of trust shall be obligated to cure any of the payment defaults of the property's previous owner unless such obligation is expressly assumed in writing.

23. Entire Agreement. This Declaration 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. No claim as a third-party beneficiary under this Declaration by any person, corporation or any other entity, shall be made or be valid against City or Developer.

24. Noticing Requirements Prior to Termination. Prior to termination of this Declaration, Declarant shall comply with any and all noticing requirements required under any applicable laws or regulations, including without limitation, the requirements of California Government Code Sections 65863.10 and 65863.11.

25. Signature Authority. 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.

(Signature Page to follow.)

**SIGNATURE PAGE TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(TENANT RESTRICTIONS)  
(Lots 824 and 852 of Map No. 16160 Otay Ranch Village Three)**

**Declarant:**

VILLAGE OF ESCAYA APARTMENTS, LLC,  
a Delaware limited liability company

By: HomeFed Village III, LLC, a Delaware limited liability company,  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

VILLAGE OF ESCAYA MIXED USE, LLC,  
a Delaware limited liability company

By: Rampage Vineyard, LLC, a Delaware limited liability company,  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

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.

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"**

**Property Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CHULA VISTA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 824 AND 825 OF ALL OF CHULA VISTA TRACT NO. 16-02, OTAY RANCH VILLAGE 3 NORTH, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16160, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 21, 2016.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER FIVE HUNDRED (500) FEET OF THE SUBSURFACE OF THE PROPERTY, AS RESERVED BY HOMEFED VILLAGE III, LLC, A DELAWARE LIMITED LIABILITY COMPANY IN GRANT DEED RECORDED APRIL 25, 2016, AS INSTRUMENT NO. 2016- 0190316 OF OFFICIAL RECORDS.

APN 644-061-08 AND 09

**Exhibit “B”**

**Supplemental Rental Application**

**Exhibit B**  
**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**Insert Name Apartments**  
**Supplemental Application**

**Insert Name** Apartments offers apartments located at **Insert Address**. The units consist of 1, 2 and 3 bedroom units.

**For more information about **Insert Name** Apartments, the units, floorplans, etc, please stop by the Rental Office at \_\_\_\_\_, Chula Vista, CA 9191\_.**

The purpose of this program is to provide affordable rental opportunities for low-income households and to ensure that City of Chula Vista meet the goals set forth in the City's Housing Element and HUD approved Consolidated Plan.

The City of Chula Vista and **Insert Ownership Name** welcomes your interest in **Insert Name** Apartments and requests that you read this information in its entirety. It is very important that you understand ALL of the program requirements. Once you agree to rent an affordable unit you are bound by all of the requirements.

**AFFORDABLE HOUSING UNITS – MODERATE INCOME**

In order to qualify to rent an Affordable Housing Unit, applicants must meet **ALL** of the requirements outlined within this document.

Income restrictions apply. Please refer to the chart below for the **MAXIMUM** gross income based upon household size, which is defined as the total number of people residing within the household. You must be able to provide evidence that the people you list as household occupants will reside in the affordable unit. Gross income is the total amount of income earned by all persons, over the age of 18, within the household before all standard withdrawals (including federal tax, state tax, social security, etc.)

**Affordable Unit Restrictions**

The restrictions set forth in the Table below shall establish the maximum rental rate, which shall be adjusted for family size appropriate for the Affordable Unit, from which a utility allowance as approved by the City Manager shall be deducted. The family size appropriate for the Affordable Unit for purposes of establishing the maximum rental rate shall be calculated at one person per bedroom plus one.

**Exhibit B**

**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**TABLE OF RENT AND INCOME RESTRICTION CRITERIA**

UNIT TYPE	MAXIMUM MONTHLY RENTS	MAXIMUM INCOME OF ELIGIBLE TENANTS
1-Bedroom	1/12 <sup>th</sup> of 30% of 110% of AMI	120% of AMI
2-Bedroom	1/12 <sup>th</sup> of 30% of 110% of AMI	120% of AMI
3-Bedroom	1/12 <sup>th</sup> of 30% of 110% of AMI	120% of AMI

“Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in Table 1 above of the annual median income, as adjusted for household size. Full-time students who entirely occupy an Affordable Unit shall only be considered Eligible Tenants if such students meet the requirements of Section 142(d)(2)(C) of the Internal Revenue Code. All the units shall be Affordable Units as referenced in the Table. For purposes of this Declaration, the current annual median income shall be the median income defined by the State Department of Housing and Community Development (“HCD”) as the then current median income for the San Diego Standard Metropolitan Statistical Area, established periodically by HCD, as adjusted for household size. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HCD or any successor agency. In the event HCD ceases to publish an established median income as aforesaid, the City may, in their sole discretions, use any other reasonably comparable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.



**Exhibit B**  
**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**ADDITIONAL AFFORDABLE HOUSING PROGRAM REQUIREMENTS**

**RENT SELECTION CRITERIA**

[Insert if Applicable]

The Property Management Company will use the following criteria in order to determine priority for rental of an Affordable Unit. A point system has been established so that applicants with a higher number of points will receive preference for units.

[Insert Point System if Applicable]

**Exhibit B**  
**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**AFFORDABLE HOUSING RESTRICTIONS**

**APPLICATION REVIEW PROCESS**

- Applicants will be contacted by the rental office staff via U.S. mail acknowledging receipt of complete application and supporting documentation. The property manager and the City will review all applications to determine eligibility.
- Eligible applications will be forwarded to \_\_\_\_\_ to be reviewed for eligibility. Please be advised that your financial information will be reviewed for two different purposes:
  - To determine that your household annual income does NOT exceed the maximum allowed by the City of Chula Vista for the Affordable Housing. ALL income will be considered for all persons living in the home who are 18 years or older, even if the income is not taxable income.
  - To determine if your income, employment history and credit rating are sufficient to qualify for a rental.

**Before you submit your complete application and supporting documentation please ask yourself the following questions. Do you:**

- Meet ALL the program requirements?
- Have a good credit rating?
- Have stable income?

**If you have answered yes to ALL the above questions.....**

Fill out the attached application and submit it plus ALL required documentation and MAIL to:

**ATTN: Insert Ownership Name, LP  
Insert Name Apartments**

\_\_\_\_\_  
\_\_\_\_\_



**Exhibit B**  
**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**HOUSEHOLD INFORMATION:**

List **ALL** household members **Including Applicant(s)** that will reside in the Affordable Housing Unit. Attach proof of this information.

Total # of persons in Household \_\_\_\_\_ Total yearly Household Income \$ \_\_\_\_\_

Total Household Assets \$ \_\_\_\_\_

\_\_\_\_\_  
Name Age Relationship to Applicant

\_\_\_\_\_  
Name Age Relationship to Applicant

\_\_\_\_\_  
Name Age Relationship to Applicant

\_\_\_\_\_  
Name Age Relationship to Applicant

\_\_\_\_\_  
Name Age Relationship to Applicant

\_\_\_\_\_  
Name Age Relationship to Applicant

**Exhibit B**  
**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**RENTER SELECTION CRITERIA INFORMATION:**

*Selection of Tenants:* Absent a Master List described above, selection of tenants shall be made randomly by lottery within the following levels of priority, subject in all circumstances to applicable limitations imposed by law, including, without limitation, the Fair Housing Act under Federal law:

***If you respond YES to any of the questions below, you MUST provide written evidence with your application satisfactory to the City of Chula Vista or you may not receive all eligible points.***

- 1) Did you have to leave your most recent PRIMARY residence due to either: Being displaced from your primary residence as a result of an action of City or Agency, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least two years prior to such action or event.

Yes                       No

How long has this home been your primary residence?

2+ years                       1 year                       Less than 1 year

- 2) Does your Household meet one of the following criteria: (i) households which are displaced from their primary residence as a result of an action of City or Agency, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least one year but less than two years prior to such action or event; (ii) households with at least one member who resides within the City, as that person's primary place of residence; (iii) households with at least one member who works or has been hired to work within the City, as that person's principal place of full-time employment; or (iv) households with at least one member who is expected to live within the City as a result of a bona fide offer of employment within the City.

Yes                       No

No discrimination herein may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of the applicant.
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**Exhibit B**

**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**AFFORDABLE HOUSING APPLICATION CHECKLIST**

This checklist contains a list of documents that you are **REQUIRED** to submit, along with the completed Application as part of the application review process. Please review the list carefully and include **COPIES** of all documents that you are submitting. If there are any documents listed that you do not believe you are required to submit please indicate N/A and state the reason why the information is not attached. You must attach this signed checklist as part of your application packet. **APPLICATIONS THAT ARE MISSING DOCUMENTATION WILL NOT BE CONSIDERED.**

- Two months of most current and consecutive bank/investment/retirement statements for ALL accounts (all pages)
- Most recent paycheck stubs covering a 30-day period for each borrower
- Most recent one (1) year W-2s and/or 1099s for each borrower
- Most recent one (1) year Federal Tax Returns for each borrower (all schedules)
- Complete divorce decree(s) with all attachments, if applicable
- Complete bankruptcy papers with all schedules and discharge papers for bankruptcies within the last 7 years, if applicable
- Copy of Resident Alien Card, front and back, if applicable or other appropriate proof of legal U.S. residency

**If you are self-employed, also provide the following:**

- Most recent three (3) years tax returns and copies of 1040s, W-2s, 1099s and/or K-1s for each borrower
- Limited or General Partnership returns (if ownership interest is 25% or greater)-copies of form 1065
- Sub Chapter S Corporation returns (if ownership interest is 25% or greater)-copies of form 1120 S
- U.S. Corporation returns (if ownership interest is 25% or greater)- copies of form 1120
- YTD Profit and Loss Statement (in some cases this may need to be audited)

**Exhibit B**

**SAMPLE SUPPLEMENTAL RENTAL APPLICATION**

**AFFORDABLE HOUSING UNIT AFFIDAVIT**

By signing below each applicant makes the following certifications:

I understand and agree with the answers I have provided, and do furthermore certify the following:

1. That those people who I expect to share occupancy of the Residence with me are listed under the Household Information section of the Application.
2. That my spouse is an Applicant for the Program and must sign this Application.
3. That I will submit true and complete copies of all requested documentation.
4. That the Residence will be occupied and used as my principal place of residence.
5. That my income does not exceed the program income limits.

**AFFORDABLE HOUSING UNIT CERTIFICATION**

I acknowledge and understand that this Affidavit, as completed above, will be relied on for determining my eligibility for An Affordable Housing Unit. I acknowledge that a material misstatement negligently made by me in this Affidavit or in any other connection with my Application for an Affordable Housing Unit will constitute a violation punishable by a fine and possible criminal penalties imposed by law, and will result in the cancellation or revocation of the Loan. I acknowledge that any false statement or misrepresentation or the fraudulent use of any instrument, facility, article, or other valuable thing or service pursuant to my participation in the Program is punishable by fine.

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RENTER

DATE

---

RENTER

DATE