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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

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THIS SPACE ABOVE FOR RECORDER'S USE

**BALANCED COMMUNITIES AFFORDABLE HOUSING AGREEMENT  
[OTAY RANCH VILLAGE THREE]**

This Balanced Communities Affordable Housing Agreement (“Agreement”) is made as of \_\_\_\_\_, 2016, by and between HomeFed Village III Master, LLC, a Delaware limited liability company, referred to herein as “Developer”, and the City of Chula Vista, a California 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 3, as shown on Exhibit “A”, and located in the City of Chula Vista (referred to herein collectively as “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 2, 2014, the City approved the Otay Ranch Village 3 North and a portion of Village 4 Sectional Planning Area (SPA) Plan for the Project by Resolution Number 2014-234. 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 3 for purposes of further implementing its affordable housing obligation for the Project, as such is defined in the Affordable Housing Plan of the SPA Plan. Such Agreement shall be in accordance with the Chula Vista Housing Element, the Ranch Wide Affordable Housing Plan, and the Village 3 Affordable Housing Plan. The SPA Plan currently provides for the construction of approximately 1,002 single-family residential units and 595 multi-family residential units 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 80 low-income and 80 moderate-income units at the above approved build-out, but may change based upon final build-out.

D. On December 2, 2014, the City approved the Tentative Subdivision Map CVT-13-02 for Otay Ranch Village 3 North and a portion of Village 4 (“Tentative Map”) by Resolution Number 2014-237 (“Project Tentative Map”). Tentative Map Condition No. 29 requires that the Developer enter into an Affordable Housing Agreement (“Agreement”) with the City of Chula Vista prior to approval of Developer’s first Final Map for Village 3.

E. On December 2, 2014, the City approved the Otay Ranch Village 3 North and a portion of Village 4 Affordable Housing Program for the Project by Resolution Number 2014-234.

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. 2014-234, and Tentative Map Condition of Approval No. 29 of City Council Resolution No. 2014-237. This Agreement represents the Affordable Housing Agreement and shall be executed and recorded against Village 3 prior to the first Final Map in Village 3.

G. While approved for 1597 units, consisting of 160 affordable units, as set forth above, Developer’s most recent map for the Project shows that it is expected to build 1265 units, with a corresponding affordable housing obligation of 127 affordable housing units (consisting 64 low income units and 63 moderate income units) for the Project. Should Developer build in excess of 1270 units, then its affordable housing obligation shall be modified accordingly, as set forth in Section 2(a)(5) [Additional Affordable Housing Units].

H. 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 3 cause an unreasonable hardship for Developer to construct of all of the units required to satisfy all of its Affordable Housing Obligations within Village 3. As set forth in the Village 3 SPA Plan, the Village 3 Affordable Housing Obligation may be deferred to a future village or location owned by Developer or its affiliate. Accordingly, Developer may transfer 64 low income housing units and 33 moderate income housing units (“Transferred Affordable Housing Obligation) to properties owned by Otay Land Company, LLC, a Delaware Limited Liability Company, and HomeFed Otay Land II, LLC, a Delaware limited liability company (collectively, “Village 8 Owner”), each an affiliate of Developer, within Otay Ranch Villages Eight West and Eight East, located in the City of Chula Vista (collectively, “Village 8”). The City and Village 8 Owner shall concurrently enter into an Affordable Housing Transfer Agreement to transfer the aforementioned affordable units (64 low income and 33 moderate income housing units) to Village 8 (“Transfer Agreement”), which shall be recorded against Village 8. The Transferred Affordable Housing Obligation shall be in addition to affordable housing obligations that Village 8 Owner otherwise has within Village 8 and shall not reduce the Village 8 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 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 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,”** for affordable housing requirements under this Agreement, means housing for which the rent, when not precluded by state law, 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: thirty percent (30%) or thirty-three percent (33%) of the gross monthly income, adjusted for household size, at thirty (30%) percent of the county median income for rental and for-sale units, respectively;
2. Very low-income: thirty percent (30%) or thirty-three percent (33%) of the gross monthly income, adjusted for household size, at fifty (50%) percent of the county median income for rental and for-sale units, respectively;
3. Low-income: thirty percent (30%) or thirty-three percent (33%) of the gross monthly income, adjusted for household size, at sixty (60%) and seventy (70%) percent of the county median income for rental and for-sale units, respectively; and,
4. Moderate-Income: thirty percent (30%) or thirty-three percent (33%) of the gross monthly income, adjusted for household size, at one hundred ten (110%) percent of the county median income for rental and for-sale units, respectively.

Should subsidized financing and/or other offsets to development costs from a public agency or program be proposed and obtained, the affordable housing cost/affordable rent shall be dictated by such program or granting Agency and the more restrictive shall apply. If no affordable housing expense is specified by such program or granting Agency, the affordable housing cost/affordable rent shall be established in accordance with Section 50053 and 50052.5 of the California Health and Safety Code, respectively.

**d. “Developer’s Affordable Housing Obligation”** means 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 Plan, and this Agreement. Based upon the total number of units in the SPA Plan within Developer’s ownership, the Affordable Housing Obligation for this Project is determined to be eighty low-income units and eighty moderate-income units (1,597 total number of the Project’s residential units times five percent as low income and five percent as moderate income housing units). The actual requirements will be based on the total number of residential units in the Project as shown on the recorded final map(s) for the Project. Such obligation will be satisfied by applying the requirements set forth in this Agreement.

If Developer sells to any third parties portions of Village 3 that include a residential development providing Affordable Housing, then 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 by Developer based upon the total number of Affordable Housing residential units to be constructed within each Developer’s related 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 3 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 SPA Affordable Housing Plan to the benefit of the City of Chula Vista and/or Chula Vista Housing Authority. Such restrictions shall be recorded against that real property containing the Low and the Moderate-Income Housing as covenants running with land and shall be enforceable by the City against the applicable Developer and all future owners or successors-in-interest.

**2. Duty to Build.** Developer’s Affordable Housing Obligation as applied to the land covered by the Otay Ranch Village 3 SPA Plan and as set forth in this Agreement shall be satisfied with respect to the Project if the following conditions are met: (a) Developer agrees to construct, equip, and operate a number of Low and Moderate-Income Housing units equal to ten (10%) of the total number of residential units allocated to the Project, with Low Income Housing units equal to at least five percent (5%) of the total number of those residential units, in

compliance with the schedule set forth in Section 2.a below; (b) Developer records a Regulatory Agreement against the property satisfying the Affordable Housing Obligation; or (c) if applicable, Developer, meets its obligation through an alternative method of compliance as set forth in Section 5 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 3 Regulatory Agreement required. Prior to issuance of the first Final Map in Village 3, this Agreement or a Regulatory Agreement shall be duly executed by the City and all property owner(s) of the Project and recorded against the Project. Currently, 1597 units may be built in Village 3, with a corresponding number of 160 affordable housing units, 80 low income and 80 moderate income units. While approved for 1597 units, consisting of 160 affordable units, as set forth above, Developer's most recent map for the Project shows that it is expected to build 1265 units, with a corresponding affordable housing obligation of 127 affordable housing units (consisting of 64 low income units and 63 moderate income units) for the Project. Should Developer build in excess of 1270 units, then its affordable housing obligation shall be modified accordingly, as set forth in in paragraph 5 [Additional Affordable Housing Units] below.
2. Transfer from Village 3 to Village 8 Permitted. Consistent with Section 5.b below, Developer may provide for some 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 3, also known as an Off-Site Alternative. Accordingly, Developer shall transfer 64 low income housing units and 34 moderate income housing units of the Village 3 Affordable Housing Obligation to the development of the Village 8 Owner's property within Village 8. A Transfer Agreement shall be executed by the City and all property owners for Villages 3 and 8 concurrently with the execution of this Agreement and said Transfer Agreement recorded against Village 8. With such Transfer Agreement, the Village 8 Owner shall be obligated to build those transferred affordable units within Village 8 in addition to any other affordable housing obligation Village 8 is otherwise required to produce. The Transfer Agreement satisfies the Affordable Housing Obligation of Village 3 with respect to the Transferred Affordable Housing Obligation. If Developer determines that it is feasible to provide some or all of the Transferred Affordable Housing Obligation within Village 3 itself, Developer may elect to provide such affordable units within Village 3. In such case, the Transferred Affordable Housing Obligation will be reduced by those number of affordable units provided within Village 3.
3. Transferred Units to Village 8 added to Village 8 Affordable Housing 8 Agreement. Prior to or concurrently with the approval of the first final subdivision map covering a residentially-zoned portion of Village 8

Owner's Property in Village 8 which would permit residential development without a further subdivision map (the "First Residential Map"), Village 8 Owner and City shall enter into an affordable housing agreement (the "Village 8 Affordable Housing Agreement") regarding (i) 64 low income housing units and 33 moderate income housing units resulting from the Transferred Affordable Housing Obligation, and (ii) the affordable housing obligations arising out of the development of Village 8 (the "Village 8 Affordable Housing Obligation").

4. Commencement of Affordable Housing Construction in Village 3. Prior to the issuance of the production building permit for the residential unit representing the 798th residential production unit constructed by the Developer within the Project, Developer shall commence construction of at least 30 moderate income housing units ("Village 3 Units") within the portions of the Project identified as MU-1 and MU-2 on the Project Tentative Map (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 moderate income households. Developer shall thereafter diligently pursue completion of construction of the Village 3 Units, with construction of the Village 3 Units to be completed no later than two (2) years from the date of commencement of construction of said units.

Once building permits have been issued and the foundations for the Village 3 Units are completed, inspected and approved by the City, building permits up to the 1270<sup>th</sup> unit for the Project may be released by the City.

5. Additional Affordable Housing Units. At the issuance of the production building permit for the residential unit representing the 1271st residential production unit constructed by the Developer within the Project, Developer shall commence construction of any additional (above the thirty (30) identified in the above paragraph) qualified low or moderate housing units required of Village 3. 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 Village 3 Units, with construction of the Village 3 Units to be completed no later than two (2) years from the date of commencement of construction of said units. The affordable housing requirement under this Paragraph may also be transferred to another village, subject to City approval.

Upon issuance of temporary certificates of occupancy for 100% of the Village 3 Units have been issued in writing by the City, all of the Project shall be released of the burden of this Agreement as specified in Section 9 below. However, the aforementioned release shall not affect the obligations of the Village 8 Owner to satisfy the Transferred Affordable

Housing Obligation, as they are subject to the requirements of the Village 8 Affordable Housing Agreement.

**b. Progress report.** Developer shall provide the City 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. No further reports shall be required upon satisfaction of this obligation.

**c. Completion of construction.** For purposes of paragraph 2(a) of this Agreement, construction shall be considered completed when a temporary certificate of occupancy for the Low or Moderate-Income Housing have been issued in writing 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. Surplus Affordable Housing Units.** If the Project includes more Low Income Housing Units than five percent (5%) of the total number of units constructed within the Project ("**Surplus Units**"), Developer may, with the City's approval, be entitled to obtain credit for any of the Surplus Units, known as "**Affordable Housing Credits**". The City's approval of such Credits shall be determined by the City at such time the City and Developer execute a Regulatory Agreement for that project satisfying any or all of Developer's Low Income Housing obligation (to be known as the "**Project Level Agreement**") and shall be governed by the criteria described below. The extent to which Developer or other party is entitled to credit by the City for the Surplus Units shall be governed by the City's consideration of the criteria described below and any other such criteria that may be agreed to by the parties pursuant to the applicable Project Level Agreement. The following criteria shall be considered by the City:

- a.** The Developer's contribution, if any, to the Surplus Units;
- b.** The City's contribution, if any, to the Surplus Units for which the City may require reimbursement or require use of the credits by the other owners;
- c.** Other public sector contribution, if any, to the Surplus Units;
- d.** The level of affordability achieved by the affordable housing project;
- e.** The concentration of affordable housing units within the neighborhood that the Surplus Units are planned.

A contribution may include, but is not limited to, direct financial assistance, conveyance of land, standards modifications or any other financial, land use, or regulatory concession which would result in identifiable cost reductions enabling the provision of affordable housing.

If Developer is provided Affordable Housing Credits by the City, Developer may either: 1) apply such credits against Developer's obligation to provide Low Income Housing units in developments outside of the Project and located within the City of Chula Vista, 2) apply such credits against Developer's obligations within Village 3, or 3) convey the credits to another person or entity in full or partial satisfaction of their obligation to provide Low and/or Moderate-Income Housing within the City of Chula Vista.

**4. 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 may reduce the Affordable Housing Obligation, particularly for Moderate Income Housing when the Developer opts to provide for very low or low income households. The Affordable Housing Obligation set forth in Section 2 of this Agreement may be reduced as set forth in the City's Guidelines to the Balanced Communities Policy, 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.

**5. 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 Agreement 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 and based upon those considerations described above.

**a. In Lieu Housing Fee.** Prior to the issuance of the residential building permit (excluding models) representing 35 percent of the total units to be constructed by the Developer, Developer shall execute an agreement with the City acknowledging and agreeing to the satisfaction of the affordable housing obligation associated with their residential development through payment to the City of an in lieu housing fee. Developer may make payment of a fee in



lieu of all or some of the Low and/or Moderate-Income Housing units. The in-lieu fee shall be paid prior to issuance of the building permits for their residential development. Developer may, at its discretion and as specified in the agreement, defer payment of the in lieu housing fee until such time, but no later than, building permits have been issued for the residential unit representing 50 percent of the total units to be constructed by that Developer. Should the City establish an updated in lieu fee, Developer shall make payment to the City in accordance with the current fee in effect at that time. Partial Affordable Housing Obligations shall be assessed on a pro-rata basis.

**b. Off-Site.** Developer may construct, convert existing non-restricted, acquire and rehabilitate, or acquire the use of Affordable Housing Credits towards its Affordable Housing Obligation at a property outside of Village 3 or at a Residential Development within Village 3 but not within the Developer's ownership interest, also known as an Off-Site Alternative. Developer's Affordable Housing Obligation as set forth in this Agreement shall be satisfied with respect to the Project 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 operated in compliance with that Regulatory Agreement. Allowing 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 3 should advance the City's housing goals and the relative advantages of the alternative methods of compliance should substantially outweigh the disadvantages. 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 in the areas within Otay Ranch.

**6. Duty to Identify.** This Agreement identifies potential sites for the construction of both the Low and Moderate-Income Housing within Village 3. 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 5. 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.

**7. Duty to Implement Affordable Housing Program.** Developer shall cause the Low and Moderate-Income Housing to be developed, marketed, rented (when not precluded by state law)/sold 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 (collectively the "Affordable Housing Policies"), this Agreement shall control.

**8. 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 and Developer with the written demand to construct the units within 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 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.

**9. 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 any residential development within the Project that has not been released in accordance with paragraph 11 herein if 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 798 prior to commencement of construction on the Village 3 Units (subject to adjustment of such building permit thresholds pursuant to paragraph 8).

**10. 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 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 Affordable Housing Obligation. Any unreasonable delay caused by City in this regard that is not caused by the fault of Developer shall not be cause for City declaring Developer in 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 have used, and continue to use, their best efforts to cause the Affordable Housing Obligation completion in a timely manner.

**11. Release.**

**a.** This Agreement shall run with the Project and bind any future owner to the Affordable Housing Obligation for the Village 3 Units described herein. 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 assigned 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 3 will accommodate Developer's duty to build the Village 3 Units.

**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 duty to build.

**c.** City further agrees to timely consider any request for release by Developer pursuant to (a) above. When such release is granted, Developer and City agree to identify those other sites to accommodate the affordable housing units in place of those 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 Owner, Developer or its assignee; City shall have no responsibility of such costs.

**e.** Upon the recordation of a City-approved Regulatory Agreement imposing affordable housing covenants, this Affordable Housing 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 Affordable Housing 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 the Affordable Housing Agreement shall in no way alter the obligations of Developer under the Affordable Housing 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.

## **12. Subordination and Notice.**

**a. Subordination.** 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 3 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.

### **13. 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. 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.

**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 3, 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 Housing Authority and/or City of Chula Vista unless a claim has first been presented in writing and filed with the City of Chula Vista and Housing Authority for the City of Chula Vista and acted upon by the City and/or Housing Authority 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 Housing Authority and/or City of Chula Vista in the implementation of same. Upon request by Housing Authority and/or City of Chula Vista, Developer shall meet and confer in good faith with Housing Authority and/or City of Chula Vista for the purpose of resolving any dispute over the terms of this Agreement.

SIGNATURE PAGE TO AFFORDABLE  
HOUSING AGREEMENT OTAY RANCH  
VILLAGE THREE

IN WITNESS WHEREOF, City and Developer have executed this Agreement this \_\_\_\_\_  
day of \_\_\_\_\_, 2016.

CITY OF CHULA VISTA

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

By: \_\_\_\_\_  
Mary Casillas Salas,  
Mayor

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

\_\_\_\_\_  
Glen Googins, City Attorney

Approved as to form by

\_\_\_\_\_  
Attorney for Developer

# EXHIBIT "A"

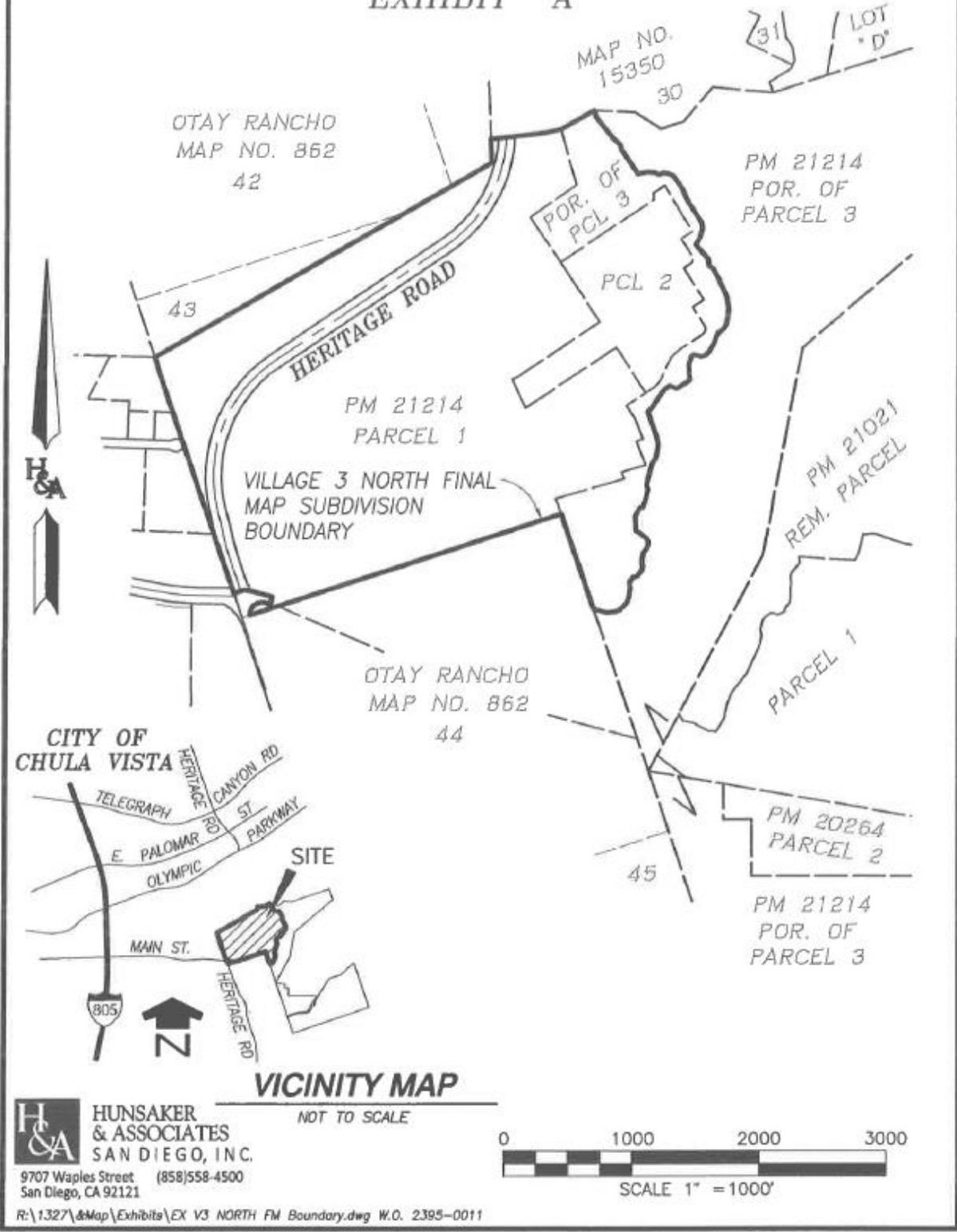


EXHIBIT "B"  
LEGAL DESCRIPTION

PARCELS 1, 2 AND 3 OF PARCEL MAP NO. 21214, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JANUARY 29, 2015 AS INSTRUMENT NO. 2015-7000022 OF OFFICIAL RECORDS. TOGETHER WITH HERITAGE ROAD AS SHOWN ON SAID PARCEL MAP.

EXCEPTING ALL THAT PORTION OF PARCEL 3 LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 1; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 3 NORTH 60°06'49" EAST, 301.89 FEET (RECORD N60°06'49"E, 301.89' PER SAID PARCEL MAP) TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHERLY BOUNDARY SOUTH 12°54'00" EAST, 54.20 FEET; THENCE SOUTH 38°07'00" EAST, 202.50 FEET; THENCE SOUTH 50°34'00" EAST, 30.10 FEET; THENCE SOUTH 44°28'00" EAST, 58.20 FEET; THENCE SOUTH 11°24'00" EAST, 37.30 FEET; THENCE SOUTH 34°00'00" EAST, 229.80 FEET; THENCE NORTH 70°32'00" EAST, 20.00 FEET; THENCE NORTH 81°47'00" EAST, 57.00 FEET; THENCE SOUTH 86°45'00" EAST, 58.00 FEET; THENCE SOUTH 65°23'00" EAST, 35.60 FEET; THENCE NORTH 75°10'00" EAST, 40.90 FEET; THENCE SOUTH 85°33'00" EAST, 36.40 FEET; THENCE SOUTH 60°54'00" EAST, 44.30 FEET; THENCE SOUTH 36°37'00" EAST, 118.50 FEET; THENCE SOUTH 24°11'00" EAST, 111.00 FEET; THENCE SOUTH 32°36'00" EAST, 205.30 FEET; THENCE SOUTH 09°23'00" EAST, 43.80 FEET; THENCE SOUTH 16°46'00" WEST, 84.70 FEET; THENCE SOUTH 33°39'00" WEST, 55.70 FEET; THENCE SOUTH 41°03'00" EAST, 150.40 FEET; THENCE SOUTH 08°35'00" EAST, 55.50 FEET; THENCE SOUTH 54°40'00" EAST, 39.70 FEET; THENCE SOUTH 29°46'00" EAST, 48.80 FEET; THENCE SOUTH 26°54'00" EAST, 60.50 FEET; THENCE SOUTH 16°35'00" EAST, 17.90 FEET; THENCE SOUTH 28°40'00" EAST, 58.50 FEET; THENCE SOUTH 21°21'00" EAST, 68.80 FEET; THENCE SOUTH 07°30'00" EAST, 84.80 FEET; THENCE SOUTH 04°43'00" WEST, 59.50 FEET; THENCE SOUTH 09°42'00" WEST, 67.20 FEET; THENCE SOUTH 30°02'00" WEST, 42.50 FEET; THENCE SOUTH 54°52'00" WEST, 59.50 FEET; THENCE SOUTH 21°02'00" WEST, 92.00 FEET; THENCE SOUTH 30°12'00" WEST,



72.30 FEET; THENCE SOUTH 48°57'00" WEST, 40.70 FEET; THENCE SOUTH 78°11'00" WEST, 27.50 FEET; THENCE NORTH 78°27'00" WEST, 65.40 FEET; THENCE SOUTH 53°16'00" WEST, 21.20 FEET; THENCE SOUTH 16°48'00" WEST, 61.80 FEET; THENCE SOUTH 02°11'00" EAST, 74.30 FEET; THENCE SOUTH 06°57'00" EAST, 53.90 FEET; THENCE SOUTH 56°58'00" WEST, 122.40 FEET; THENCE NORTH 71°40'00" WEST, 63.60 FEET; THENCE SOUTH 57°14'00" WEST, 34.00 FEET; THENCE SOUTH 43°21'00" WEST, 47.00 FEET; THENCE SOUTH 33°29'00" WEST, 149.20 FEET; THENCE SOUTH 48°08'00" WEST, 38.70 FEET; THENCE SOUTH 19°37'00" EAST, 200.54 FEET; THENCE SOUTH 12°24'14" EAST, 63.30 FEET; THENCE SOUTH 00°19'55" EAST, 25.46 FEET; THENCE SOUTH 16°35'48" WEST, 29.03 FEET; THENCE SOUTH 11°24'10" WEST, 69.14 FEET; THENCE SOUTH 39°15'00" WEST, 34.50 FEET; THENCE SOUTH 17°04'00" WEST, 131.20 FEET; THENCE SOUTH 09°15'00" WEST, 52.80 FEET; THENCE SOUTH 13°15'00" EAST, 39.30 FEET; THENCE SOUTH 11°35'00" WEST, 67.30 FEET; THENCE SOUTH 20°39'00" WEST, 82.00 FEET; THENCE SOUTH 88°39'00" WEST, 22.10 FEET; THENCE SOUTH 31°09'00" WEST, 70.00 FEET; THENCE SOUTH 03°08'00" EAST, 119.90 FEET; THENCE SOUTH 60°13'00" EAST, 28.60 FEET; THENCE SOUTH 51°09'00" EAST, 71.60 FEET; THENCE SOUTH 31°37'00" EAST, 25.40 FEET; THENCE SOUTH 0°54'00" EAST, 29.10 FEET; THENCE SOUTH 18°37'00" WEST, 27.80 FEET; THENCE SOUTH 36°23'00" WEST, 42.20 FEET; THENCE SOUTH 14°40'00" WEST, 63.80 FEET; THENCE SOUTH 04°38'00" EAST, 61.80 FEET; THENCE SOUTH 19°32'00" WEST, 22.40 FEET; THENCE SOUTH 38°48'00" WEST, 56.10 FEET; THENCE SOUTH 70°35'00" WEST, 31.30 FEET; THENCE SOUTH 41°07'00" WEST, 45.20 FEET; THENCE SOUTH 06°41'00" EAST, 50.70 FEET; THENCE SOUTH 07°05'00" WEST, 65.50 FEET; THENCE SOUTH 21°11'00" WEST, 45.60 FEET; THENCE SOUTH 36°42'00" WEST, 52.10 FEET; THENCE SOUTH 51°38'00" WEST, 36.80 FEET; THENCE SOUTH 67°50'00" WEST, 35.30 FEET; THENCE SOUTH 85°19'00" WEST, 59.30 FEET; THENCE NORTH 76°32'00" WEST, 110.62 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 3, SAID POINT LYING 791.78 FEET SOUTHERLY ALONG SAID WESTERLY BOUNDARY FROM THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AND DESCRIBED ON SAID PARCEL MAP AS "N18 ° 37'59"W, 2139.53", ALSO BEING THE POINT OF TERMINUS.

  
DOUGLAS B. STROUP  
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

*11/15/2016*  
P.L.S. 8553

