

110
RECORDING REQUESTED BY:

THE CITY OF SAN DIEGO

AND WHEN RECORDED MAIL TO:

City of San Diego
Real Estate Assets Dept
1200 Third Ave, Suite 1700, MS-
51A
San Diego, CA 92101

DOC# 2021-0872016



Dec 29, 2021 02:30 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$44.00 (SB2 Atkins: \$0.00)

PCOR: N/A

PAGES: 11

APN 644-072-01

The undersigned grantor hereby declares the documentary transfer tax is:
\$0 and is computed on the full value of the interest or property conveyed.

ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT FOR CITY-OWNED EASEMENT

In accordance with the provisions of Section 129.0715 of the San Diego Municipal Code, this Encroachment Maintenance and Removal Agreement for City-Owned Easement ("Encroachment Agreement") is made as of November 4, 2021 ("Effective Date") by and between the City of San Diego, a municipal corporation ("City"), and AG ESSENTIAL HOUSING CA 2, L.P., a Delaware limited partnership ("Property Owner").

RECITALS

- A. In 2013, City sold 13.753 acres of land improved with water main pipelines to HomeFed Village 8, LLC, a Delaware limited liability company ("HomeFed") and reserved a water easement within the entirety of said property ("2013 Easement"), more particularly described on the grant deed recorded in the Office of the San Diego County Recorder as Document No. 2013-0516511, in the City of Chula Vista, County of San Diego, State of California ("2013 Grant Deed"). Property Owner acquired from HomeFed a portion of such property, as described on Exhibit A, attached hereto ("Property"). A portion of the 2013 Easement is located within the Property, as depicted on Sheets 19 and 20 of Map 16428, filed in the Office of the San Diego County Recorder as Document No. 2020-7000372 ("City's Easement").
- B. The 2013 Grant Deed stated that if the 2013 Easement was ever vacated, the value of the 2013 Easement shall be the greater of \$279,000 and the fair market value of the 2013 Easement at the time the 2013 Easement is vacated.
- C. HomeFed is relocating the City's existing water transmission pipeline, known as the Otay 2nd Pipeline, a portion of which is currently located within the 2013 Easement, in accordance with the March 25, 2015 Participation Agreement for the Design and Construction of the Otay 2nd Pipeline Relocation and Related Facilities ("Participation Agreement") by and among the City, Baldwin & Sons, LLC, a California limited liability company, Otay Land Company, LLC, a Delaware limited liability company, and SSBT LCRE V, LLC, a Delaware limited liability company, and has submitted a request to City's Development Services Department to vacate portions of the 2013 Easement ("Easement Vacation"). The parties anticipate that the Easement Vacation may take several months to process, even after the first phase of the pipeline has been

relocated and the existing pipeline has been abandoned.

- D. The Easement Vacation will require approval by the City's City Council ("City Council"), which may or may not be granted in City Council's sole and absolute discretion, subject to the terms and conditions of the Participation Agreement.
- E. Property Owner has requested City's permission to make certain encroachments into City's Easement prior to City Council's consideration of the Easement Vacation.

AGREEMENT

In consideration of the grant of permission by the City of San Diego to Property Owner to encroach into the City's Easement by installing and maintaining private improvements, to wit: grading, storm drain improvements, sewer improvements, irrigation and landscaping and freestanding walls and fences ("Encroachments") over, under, and across the City's Easement for the use and benefit of the Property Owner, Property Owner covenants and agrees with the City of San Diego as follows:

1. This Encroachment Agreement shall run with the land and be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents, and assigns of City and Property Owner.
2. Pursuant to a separate Encroachment Maintenance and Removal Agreement for City-Owned Easement between HomeFed and City ("HomeFed Agreement"), HomeFed agreed to deposit funds into an escrow account ("Escrow Account") with Chicago Title Company to be credited toward payment to City for the value of the 2013 Easement proposed to be vacated.
3. HomeFed shall pay all fees associated with this Encroachment Agreement, including recording, escrow, and title fees.
4. If the 2013 Easement is vacated, pursuant to the HomeFed Agreement, HomeFed shall authorize the release of the funds being held in the Escrow Account to the City, and pay to City any remaining amount due for the value of the 2013 Easement to be vacated, pursuant to the 2013 Grant Deed.
5. This Encroachment Agreement shall terminate upon such date that the Easement Vacation is recorded with the San Diego County Recorder's Office.
6. The Encroachments shall be installed and maintained in a safe condition at the sole cost, risk and responsibility of the Property Owner and the successors in interest.
7. If the performance of an act required by this Encroachment Agreement is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. The party claiming a delay shall notify the other party in writing within **thirty** (30) days after the beginning of any claimed delay.
8. With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the Encroachments, the Property Owner agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.
 - 8.1 Also covered by this Section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City,

its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of the Property Owner, its employees, agents or officers, or any third party. The Property Owner's duty to defend, indemnify, protect and hold harmless shall not include any established liability arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

8.2 Property Owner further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

9. The Property Owner shall remove, relocate or restore the Encroachments as directed by the City Engineer within **thirty** (30) calendar days of written notice from the City, or in the case of an emergency, as determined by the City, the City may request that the work be done immediately or within less than **thirty** (30) calendar days. If the Property Owner fails to remove, relocate or restore or otherwise comply with the direction of the City Engineer regarding the Encroachments, the City may cause the work to be done, and the costs thereof shall be a lien against the Property. The City's request to remove, relocate, or restore the Encroachments shall not be arbitrary or without reason.

10. Whatever rights and obligations were acquired by the City with respect to the City's Easement shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the Encroachments.

11. **Insurance.** The Property Owner shall procure and maintain (or cause to be procured and maintained) for the duration of this Encroachment Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Property Owner, its agents, representatives, employees or subcontractors.

11.1 Coverage shall be at least as broad as:

11.1.1 Commercial General Liability (CGL): Commercial general liability insurance [Insurance Services Office (ISO) Form CG 0001 or equivalent covering CGL] on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG2503 or CG2504) or the general aggregate limit shall be twice the required occurrence limit.

11.1.2 Automobile Liability: covering Code 8 (Non-Owned) and Code 9(Hired Autos) with limits no less than \$1,000,000 per accident for Bodily injury and property damage

11.1.3 Workers Compensation insurance as required by the State of California, with Statutory Limits, and Employers Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease for employees who enter the encroachment area.

11.1.4 The foregoing liability limits shall in no way limit the liability of the Property Owner to the City under this Encroachment Agreement.

11.2 Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

11.2.1 The City, its officers, officials, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Property Owner including materials, parts or equipment furnished in connection with such work operations and automobiles hired or borrowed by or on behalf of the Property Owner.

11.2.2 For any claims related to this project, the Property Owner's insurance

coverage shall be primary insurance coverage at least as broad as ISO CG 2001 04 13 as respects the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Property Owner's insurance and shall not contribute with it.

11.3 Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

11.4 Waiver of Subrogation. Property Owner hereby agrees to waive rights of subrogation which any insurer of Property Owner may acquire from Property Owner by virtue of the payment of any loss. Property Owner agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Property Owner, its employees, agents and subcontractors.

11.6 Verification of Coverage. Contractor shall furnish the Entity with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) to the City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies, including endorsements, to the extent required in connection with litigation relating to claims.

11.7 Subcontractors. Unless covered by the policies maintained by Property Owner, Property Owner shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein except that the CGL policy limits shall be \$1,000,000 per occurrence and \$2,000,000 general aggregate, and Property Owner shall ensure that the City is an additional insured on the insurance required from subcontractors.

11.8 Special Risk or Circumstances. The City reserves the right to modify these requirements based on changes in the use of the encroachment area, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

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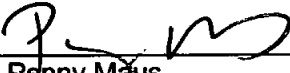
12. Counterparts. This Encroachment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Agreement, to be effective as of the Effective Date.

CITY:

Date: 12-1-21

City of San Diego,
a California municipal corporation

By: 
Penny Maus
Director, Real Estate Assets Department

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

By: _____
Julie Gough Inman
Deputy City Attorney

Property Owner:

AG ESSENTIAL HOUSING CA 2, L.P.,
a Delaware limited partnership

By: AGWIP Asset Management, LLC,
an Arizona limited liability company,
its Authorized Agent

Date: 11/14/2021

By: 
Steven S. Benson, its Manager

~~**HomeFed:**~~

~~HomeFed Village 8, LLC, a Delaware limited
liability company~~

Date: _____

~~By: _____
Name: _____
Title: _____~~

See next page

Attachments:
Exhibit A: City's Easement

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CITY:

Date: _____
City of San Diego,
a California municipal corporation

By: _____
Penny Maus
Director, Real Estate Assets Department

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

By: _____
Julie Gough Inman
Deputy City Attorney

Property Owner:

AG ESSENTIAL HOUSING CA 2, L.P.,
a Delaware limited partnership

By: AGWIP Asset Management, LLC,
an Arizona limited liability company,
its Authorized Agent

Date: _____

By: _____
Steven S. Benson, its Manager

HomeFed:

HomeFed Village 8, LLC, a Delaware limited
liability company

Date: 11/18/2021

By: [Signature]
Name: Erin N. Ruhl
Title: Vice President

Attachments:
Exhibit A: City's Easement

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CIVIL CODE §1189

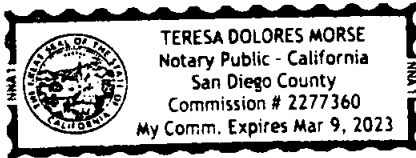
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
)
) §
COUNTY OF San Diego)

On December 1, 2021 before me, Teresa Dolores Morse, Notary Public,
Date Insert Name and Title of Officer Here

personally appeared Penny Maus
Name of Signer

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under the PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature Lisa Dolores Morse

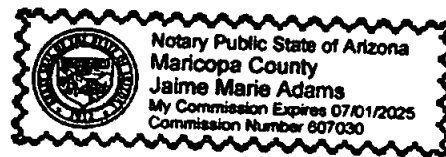
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ ^{Arizona})
County of ~~San Diego~~ ^{Maricopa})

On November 4, 2021, before me, Jaime Marie Adams, a Notary Public, personally appeared Steven S. Benson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ ^{Arizona} that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

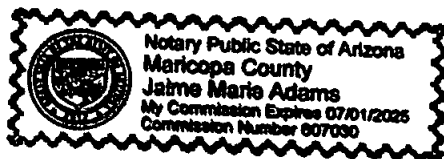
Jaime Marie Adams

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 11/4, 2021, by Steven S. Benson, the manager of AGWIP Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG ESSENTIAL HOUSING CA 2, L.P., a Delaware limited partnership.

Notary Public
(SEAL)

Jaime Marie Adams



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.

State of California)
County of San Diego)

On 11-18-2021, before me, Tristan Manoff, a Notary Public, personally appeared Enn N- Duke, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Tristan Manoff



STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2021, by Steven S. Benson, the manager of AGWIP Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG ESSENTIAL HOUSING CA 2, L.P., a Delaware limited partnership.

Notary Public
(SEAL)

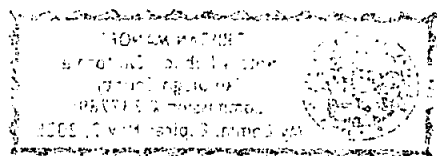


EXHIBIT A: Property

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

LOT 17 OF CITY OF CHULA VISTA TRACT NO. 19-03 OTAY RANCH VILLAGE 8 WEST 'A' MAP, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16428, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON NOVEMBER 3, 2020, AS DOCUMENT NO. 2020-7000372, OF OFFICIAL RECORDS.

12. **Counterparts.** This Encroachment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Agreement, to be effective as of the Effective Date.

CITY:

Date: 12-1-21

City of San Diego,
a California municipal corporation

By: [Signature]
Penny Maus
Director, Real Estate Assets Department

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

By: Julie Gough Inman Dec 3, 2021
Julie Gough Inman (Dec 3, 2021 12:28 PST)
Julie Gough Inman
Deputy City Attorney

Property Owner:

AG ESSENTIAL HOUSING CA 2, L.P.,
a Delaware limited partnership

By: AGWIP Asset Management, LLC,
an Arizona limited liability company,
its Authorized Agent

Date: 11/14/2021

By: [Signature]
Steven S. Benson, its Manager

HomeFed:

HomeFed Village 8, LLC, a Delaware limited
liability company

Date: _____

By: _____
Name: _____
Title: _____

See next page

Attachments:
Exhibit A: City's Easement