

**Attachment D**

**Density Bonus and Incentive/Concession Agreement**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City Clerk  
City of Redlands  
P. O. Box 3005  
Redlands, CA 92373

## **HOUSING INCENTIVE AND/OR CONCESSION AGREEMENT**

This Housing Incentive and/or Concession Agreement (“Agreement”) is entered into as of this 21<sup>st</sup> day of February, 2017, by and between the City of Redlands, a California municipal corporation (“City”), and the Redlands Supportive Housing, L.P., a California limited partnership (“Developer”). City and Developer are each sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

### RECITALS

A. Developer proposes to construct an eighty (80) dwelling unit housing project ( the “Project”) located on approximately 4.7 acres of real property in the City of Redlands, California, on property which is more particularly described in the legal description attached hereto as Exhibit “A” and incorporated herein by this reference (“Property”).

B. Developer represents that all of the dwelling units (collectively, the “Affordable Units”) comprising the Project shall be made available to the public as “Affordable Housing,” as that term is defined herein, for a minimum time period of fifty-five (55) years.

C. City has approved and granted to Developer certain entitlements for the Project, including: Zone Change No. 448 and Conditional Use Permit No. 1045, including the conditions of approval related thereto (collectively, the “Entitlements”). The Entitlements are hereby incorporated fully into this Agreement as if set forth at length herein.

D. Provided that Developer complies with all of the requirements of California Government Code section 65915 et seq., Developer is eligible to obtain certain incentives and/or concessions, including the waiver or reduction of City development standards, from City.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

### AGREEMENT

1. Recitals. The foregoing recitals are true and correct, and are incorporated herein as a substantive part of this Agreement.

2. Minimum Affordability Requirements. Developer shall develop, or cause to be

developed, an 80 unit housing project on the Property in accordance with the Entitlements and the restrictions and conditions of this Agreement. Developer shall designate and rent all of the units at the Project as Affordable Housing, including not less than ten percent (10%) of such units (the “Low Income Units”) for rental to Low Income Persons.

3. Definitions. The following terms when used in this Agreement shall have the meanings ascribed to them:

A. “Affordable Housing” means apartments rented to persons at an Affordable Rent.

B. “Affordable Rent” has the same meaning as set forth in California Health and Safety Code section 50053.

C. “Density Bonus Law” means California Government Code section 65915 et seq.

D. “Low Income Persons” means persons earning no more than the income set forth by the Department of Housing and Community Development pursuant to California Health and Safety Code section 50053.

4. Affordability Restrictions. Developer covenants and agrees it shall rent all of the units comprising the Project as Affordable Housing. The rental restrictions and conditions described in this Agreement shall run with the land and shall be binding on all successor owners of the Property. City is given the express authority by Developer to enforce the restrictions and conditions described in this Agreement.

5. Development Incentive and/or Concessions. Pursuant to the Density Bonus Law, Developer has requested, and was granted as an incentive and/or concession, City’s waiver of Developer’s compliance with the minimum dimensions of private open space and the separation requirements between buildings and carports, as part City’s approval of the Entitlements for the Project.

6. No Further Incentives or Concessions. Developer acknowledges and agrees that the incentive and/or concessions set forth in Section 5, above, fully satisfies any duty City may have under the Redlands Municipal Code, the Density Bonus Law, or any other law or regulation applicable to the Project, to provide any development incentive or concession to Developer, including the waiver or reduction of any building, zoning, or other requirement. By this Agreement, Developer releases any and all claims Developer may have against the City related to or arising from, in any way, City’s obligation to waive requirements of or provide development incentives or concessions pursuant to any state, federal, or local law, rule, or regulation applicable to the Project.

7. Term. (the “Term”) of this Agreement shall be fifty-five (55) years commencing upon the date of the City’s issuance of the first certificate of occupancy for an Affordable Unit for the Project.

8. Agreement to be Recorded; Priority. This Agreement shall be recorded, prior to the issuance of building permits for the Project, in the Official Records of San Bernardino County, California as senior, non-subordinate covenants and as an encumbrance running with the land for the full Term of this Agreement. In no event shall this Agreement be made junior or subordinate to any deed of trust or other document providing financing for the construction or operation of the Project or any other lien or encumbrance whatsoever for the entire fifty-five (55) year Term of this Agreement.

9. Liquidated Damages. Developer acknowledges that the City is implementing the goals objectives and policies of the City's General Plan Housing Element, and that City has granted an incentive and/or concession to Developer in recognition of Developer's designation of all Project units as Affordable Housing. If Developer does not rent the units as Affordable Housing in accordance with the provisions of this Agreement, Developer shall be in default of this Agreement and City will suffer damages. However, it is extremely difficult and impractical to ascertain the extent of the damages to City; therefore, in addition to any other legal or equitable remedies City may have, Developer and City agree that if the Project is not rented as Affordable Housing in accordance with the provisions of this Agreement, as liquidated damages, City shall be entitled to recover from Developer the amount of any rents received by Developer from any units not rented as Affordable Housing or as the required Low Income Units.

10. Defaults and Remedies. City shall have the right to specifically enforce each and every covenant, condition, restriction, and provision in this Agreement and Developer hereby agrees and acknowledges that money damages are an inadequate remedy for any default under this Agreement.

11. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

12. Time. Time is of the essence in this Agreement.

13. Notices. Any approval, disapproval, demand, document or other notice ("Notice") which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below, or at any other address as that Party may later designate by Notice:

Owner: Redlands Supportive Housing, L.P.  
3701 Wilshire Blvd, Suite 700  
Los Angeles, CA 90010

City: City of Redlands

35 Cajon Street  
Redlands, CA 92373  
Attention: City Clerk

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

17. Third Party Beneficiaries. The Parties acknowledge and agree there are no third party beneficiaries of this Agreement. Agency shall have full right and ability to enforce each and every covenant and restriction in this Agreement. No other persons or entities shall have any right of action hereunder.

18. Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and City and the permitted successors and assigns of Developer and City. Whenever the terms "Developer" or "City" are used in this Agreement, such terms shall include any other successors and assigns as herein provided.

19. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

20. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

21. Amendment. This Agreement may not be changed orally, but only by an agreement in writing signed by Developer and City.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first set forth above.

DEVELOPER:

REDLANDS SUPPORTIVE HOUSING,  
L.P., a California Limited Partnership

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

Its: \_\_\_\_\_

THE CITY OF REDLANDS, a California  
municipal corporation

By:

\_\_\_\_\_  
Paul W. Foster, Mayor

ATTEST:

\_\_\_\_\_  
Jeanne Donaldson, City Clerk

## **EXHIBIT A**

### **DESCRIPTION OF SUBJECT PROPERTY**

That real property located in the State of California, County of San Bernardino, City of Redlands, and described as follows:

**APN: 0169-021-19**

SMITH TRACT N 1/2 LOT 2 EX W 198 FT THEREOF AND N 1/2 LOT 1 EX S 185 FT  
E 250 FT THEREOF AND EX W 120 FT E 233 FT N 164 FT MEAS FROM  
INTERSECTION CEN LI W LUGONIA AVE AND TEXAS ST