



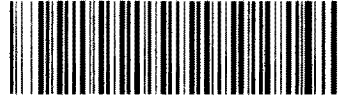
LARRY WALKER
Auditor/Controller – Recorder

R Regular Mail

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Redlands
35 Cajon Street
Redlands, California 92373
Attention: City Clerk

Doc#: **2009 – 0464951**



Titles: 1 Pages: 8

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

FEES NOT REQUIRED
PER GOVERNMENT CODE
SECTION 6103

This document is exempt from the payment of a recording fee
pursuant to Government Code Section 27383

HOUSING INCENTIVE AND/OR CONCESSION AGREEMENT

This Housing Incentive and/or Concession Agreement (“Agreement”) is entered into as of this 4th day of August, 2009, by and between the City of Redlands, a California municipal corporation (“City”), and the Housing Authority of the County of San Bernardino, a California nonprofit public benefit corporation (“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 a two hundred twenty eight (228) dwelling unit housing project (the “Project”) located on approximately 19.23 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 one hundred eighty-nine of the dwelling 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: General Plan Amendment No. 123, Specific Plan No. 61, Street Vacation Nos. 149, 150, 151 and 152, Conditional Use Permit No. 955 and Tentative Tract Map No.18762, 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 the 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, a two hundred twenty-eight (228) unit housing project on the Property in accordance with the Entitlements and the restrictions and conditions of this Agreement. Developer shall designate and rent one hundred eighty-nine (189) of the units (the "Affordable 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 words and phrases shall have the definitions 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" mean 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 Affordable Units within 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 City's exterior noise development standard, as part of City's approval of the Entitlements for the Project.

6. No Further Incentives or Concessions. Developer acknowledges and agrees that the incentive and/or concession 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 City relating 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 documents 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 City is implementing the goals, objectives and policies of 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 the Affordable Units as Affordable Housing. If Developer does not rent the Affordable 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 any of the Affordable Units are 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 Affordable Units that are not rented as Affordable Housing, or not rented 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: Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, California 92408
Attention: Sue Benner, Director

City: City of Redlands
35 Cajon Street
Redlands, California 92373
Attention: City Manager

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

14. 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 person(s) or entity(ies) shall have any right of action hereunder.

15. 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.

16. 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.

17. 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.

18. 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:

HOUSING AUTHORITY OF SAN BERNARDINO
COUNTY, a California nonprofit public benefit
corporation

By: Susan Berman

Its: Executive Director

CITY:

THE CITY OF REDLANDS, a California municipal
corporation

By: Pat Gilbreath
Pat Gilbreath, Mayor Pro Tem

ATTEST:

Lorrie Poyzer
Lorrie Poyzer, City Clerk

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on October 20, 2009, before me, Lisa Caldera, Administrative Assistant, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared Pat Gilbreath, Mayor Pro Tem and Lorrie Poyzer, City Clerk 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.

LORRIE POYZER, CITY CLERK

By: *Lisa Caldera*
Lisa Caldera, Administrative Assistant
(909)798-7531

~~~~~  
**CAPACITY CLAIMED BY SIGNER(S)**

- ☐ **Individual(s) signing for oneself/themselves**  
☐ **Corporate Officer(s)**  
    Title(s) \_\_\_\_\_  
    Company \_\_\_\_\_  
☐ **Partner(s)**  
    Partnership \_\_\_\_\_  
☐ **Attorney-In-Fact**  
    Principal(s) \_\_\_\_\_  
☐ **Trustee(s)**  
    Trust \_\_\_\_\_  
☒ **Other**  
    Title(s):   Mayor Pro Tem and City Clerk  
    Entity Represented:   City of Redlands, a municipal corporation
- ~~~~~

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:**

Title or Type of Document: Housing Incentive and/or Concession Agreement

Date of Document: August 4, 2009

Signer(s) Other Than Named Above: Housing Authority of San Bernardino County

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

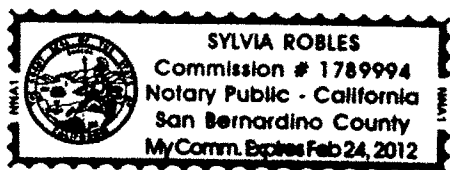
On 10/8/2009 before me, Sylvia Robles Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Susan Benner

Name(s) of Signer(s)



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 Sylvia Robles

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Housing Incentive and/or Concession Agreement

Document Date: 8/4/2009 Number of Pages: 5

Signer(s) Other Than Named Above: Pat Gilbreath

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## 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:

### Legal Description

The land referred to herein is situated in the County of San Bernardino, State of California, and is described as follows:

Lots 1, 2 and 3, Tract 6414, as per plat recorded in Book 80 of Maps, pages 32 and 33, records of said County; and

That portion of the Northeast quarter of Section 22, Township 1 South, Range 3 West, San Bernardino Base and Meridian, in the City of Redlands, County of San Bernardino, State of California, described as follows:

Beginning at a point on the South line of the Northeast Quarter of said Section, which is the centerline of Lugonia Avenue, 329.53 feet east from the southwest corner of said Northeast Quarter; thence east along the south line 329.53 feet; thence North 396.55 feet; thence West 329.53 feet; thence South 396.55 feet to the point of beginning; and

The South Half of the West Half of the Southwest Quarter of the Northeast Quarter of Section 22, Township 1 South, Range 3 West, San Bernardino Base and Meridian, in the City of Redlands, County of San Bernardino, State of California.

Except the west 22 feet conveyed to the City of Redlands for street purposes; and

The East Half of the West Half of the Southwest Quarter of the northeast Quarter of Section 22, Township 1 South, Range 3 West, San Bernardino Base and Meridian, in the City of Redlands, County of San Bernardino, State of California.

Except that portion conveyed to George Schutt by deed recorded in Book 697 of Deeds, Page 204, Records of said County, described as follows:

Beginning on the South line of the Northeast Quarter of said Section, which is also the center line of Lugonia Avenue, said point being 329.53 feet from the Southwest corner of the Northeast Quarter of said Section; thence East 329.53 feet; thence North 396.55 feet; thence west 329.53 feet; thence South 396.55 feet to the point of beginning.

Also except that portion in said Parcel lying North of the center line of Delaware Street, as located through said property, on June 28, 1942.

Assessor's Parcel Number: 0167-221-13 and 14  
0167-371-01  
0167-372-01  
0167-373-01