

89-049717

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF REDLANDS
30 CAJON STREET
REDLANDS, CA 92373

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OFFICIAL RECORDS

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SAN BERNARDINO
CO. CALIF.

DEVELOPMENT INCENTIVE AGREEMENT
AND COVENANT

This Agreement is entered into this 4th day of January, 1989, by and between REDLANDS SENIOR HOUSING, INC., a California nonprofit corporation (hereinafter referred to as "Developer"), and the CITY OF REDLANDS, a municipal corporation (hereinafter referred to as "City").

RECITALS

1. Developer is the owner of all that certain real property located in the City of Redlands, County of San Bernardino, described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"). The Property consists of approximately 2.72 acres of land located on the west side of Redlands Boulevard, 339 feet south of Fern Avenue, in the R-2 Zone.
2. Developer has applied for a Conditional Use Permit ("Conditional Use Permit No. 467") for a 75-unit senior housing development (hereinafter referred to as the

"Project"), to be constructed on the Property. Developer has requested a development incentive to allow for the elimination of required carports and the provision of 38 parking spaces in lieu of the 113 spaces required by City codes.

3. This Agreement shall be mutually binding, is made in good faith, and reflects the Planning Commission's and City Council's intent to provide quality, affordable housing for the people of the City.

DEFINITIONS

4. The term "Low-Income," as used herein, refers to "very low income households" and "lower income households," as defined in Sections 50105 and 50079.5 of the California Health and Safety Code, as amended.

5. The term "Elderly Tenants," as used herein, refers to a family in which the head of the household is 60 years of age or older, a single person who is 60 years of age or older, or an elderly or handicapped household as defined in Section 19903 of the California Health and Safety Code, as amended.

TERMS

6. The term of this Agreement shall be for forty (40) years, beginning on the date of issuance of the Certificate of Occupancy for the apartment building to be constructed on the Property, as described in Conditional Use Permit No. 467.

7. Pursuant to the requirements of California Government Code Sections 65915-65918, the City agrees to grant the following incentives to the Developer in order to provide affordable housing to Low-Income Elderly Tenants within the Project: (1) Developer may provide a minimum of 38 parking spaces instead of the 113 spaces required by City codes; and (2) Developer is not required to cover any of these spaces.

8. In consideration of said incentives and in consideration of the granting by the City of Conditional Use Permit No. 467 to permit construction of the Project on the Property, Developer covenants and agrees to provide, construct and make available for rent for the term of this Agreement all of the units constructed within the Project exclusively to Low-Income Elderly Tenants, as set forth herein, excepting those units which are occupied by necessary management and maintenance personnel. Notwithstanding the foregoing, the Developer shall be deemed in compliance with this paragraph during the period the units are rented

in accordance with the requirements of the housing assistance payments contract in effect between the Developer and the Department of Housing and Urban Development ("HUD") and further, during the period the regulatory agreement is in effect between the developer and HUD, occupancy of the project shall be limited to elderly and handicapped persons and families as defined in Section 202 of the Housing Act of 1959 and applicable HUD regulations.

9. Developer agrees that each unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking, and sanitation, which may include efficiency units.

10. Developer agrees that none of the dwelling units in the Project shall at any time be utilized on a transient basis; that none of the dwelling units shall ever be leased or rented for a period of less than thirty (30) days; and that neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, roominghouse, hospital, sanitarium, rest home or trailer park or court.

11. Developer hereby promises and covenants that it has no present plan or intent, nor does there presently exist any contractual arrangement, formal or informal, to convert the Project to any use other than residential rental property for Low-Income Elderly Tenants as provided herein.

12. Developer agrees that if, at any time during the forty (40) years following issuance of a Certificate of Occupancy for the Project, Developer is unable to rent or lease the units to Low-Income Elderly Tenants, Developer shall hold available and vacant the unrented units and offer the unrented units so held for occupancy by such Tenants.

13. Developer agrees to obtain and maintain on file from each Tenant residing in the Project a copy of such Tenant's federal income tax return for the taxable year immediately preceding such Tenant's initial occupancy and annually thereafter; or, in the event that a Tenant certifies that he or she did not file or did not retain a copy of such tax return, to obtain and maintain on file alternate independent evidence of such Tenant's income for such years, such as wage statements or employer records.

14. Developer agrees to maintain at all times complete and accurate records required hereunder which pertain to the incomes of Tenants who occupy or apply to occupy units in the Project and the rentals of units in the Project, and to permit any duly authorized representative of the City to inspect the books and records of Developer pertaining to the incomes of Tenants residing in the Project upon five (5) business days' prior written notice. Developer agrees to maintain such information on file covering the immediately preceding three (3) years.

15. Developer agrees to prepare and submit to the City on May 1 of each year, commencing on the first May 1 following occupancy of fifty percent (50%) of the units within the Project, a certificate executed by Developer stating whether any default under this Agreement has occurred and stating the number of units:

- (a) Occupied by Low-Income Elderly Tenants;
- (b) Held vacant and available for occupancy by Low-Income Elderly Tenants, including rental rates; and
- (c) Occupied by households other than Low-Income Elderly Tenants and a description of the circumstances relating to such occupancy.

16. Developer shall notify the City within thirty (30) days after the announcement of any increase in the rents to be charged for any of the residential units comprising the Project.

17. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of said parties' successors and assigns. Developer will not sell or otherwise transfer ownership of the Project during the term of this Agreement without first notifying the City in writing of the name and address of the proposed successor in interest. Unless the proposed successor has agreed in writing to all terms contained in this Agreement, Developer shall be found in violation of the Agreement on the date of transfer of ownership.

18. If any action at law or in equity, including any action for declaratory or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

19. Developer hereby subjects the Project (including the Property upon which the Project has been constructed) to the covenants, reservations and restrictions set forth in this Agreement. The City and Developer 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 Developer's successors in title to the Project; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire without the necessity of any further documentation. 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.

The City and Developer hereby declare their understanding and intent that the burden of the covenants set

forth herein touch and concern the land in that Developer's legal interest in the Project is rendered less valuable thereby. The City and Developer hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by providing for the enjoyment and use of the Project by Low-Income Elderly Tenants, the intended beneficiaries of such covenants, reservations and restrictions.

20. Developer shall indemnify, defend and hold harmless the City, its officers, agents and employees from any and all claims, losses or legal actions arising from any and all of the actions of Developer, its employees, agents or sub-contractors pursuant to this Agreement.

21. In the event that occupancy of the Property is no longer limited to Low-Income Elderly Tenants as above defined, then the number of parking spaces required shall conform to the code requirements then in effect rather than the 38 parking spaces permitted by Conditional Use Permit No. 467. No new Certificate of Occupancy shall be issued until the new use requirements have been met or the total number of dwelling units in the Project has been reduced to a number commensurate with the number of parking spaces existing on the the Property and required by the City regulations then in effect. In the event additional parking spaces are required by the foregoing provisions, the Developer and the City shall consider the feasibility of a parking structure on the site.

22. Notwithstanding anything in this Agreement to the contrary, in the event that any provision of this Agreement contradicts, modifies or in any way changes the terms of that certain Regulatory Agreement entered into or to be entered into between the Secretary of the Department of Housing and Urban Development (the "Secretary") and Developer which encumbers or will encumber the Property and all improvements to be constructed thereon, then the terms of the Regulatory Agreement shall prevail and govern; or if any provision of this Agreement limits the Secretary in his administration of the National Housing Act of 1959, as amended, or the United States Housing Act of 1937, as amended, or the regulations promulgated pursuant thereto, this Agreement shall be deemed amended so as to comply with the foregoing Acts.

23. Notwithstanding anything in this Agreement to the contrary, in the event the Secretary of Housing and Urban Development acquires the Property by foreclosure, by deed in lieu of foreclosure, or otherwise, this Agreement shall terminate and be of no further force and effect.

24. No amendment of this Agreement shall become effective without the consent of HUD during the period that the Regulatory Agreement is in effect as referred to in paragraph 23 hereof.

25. A notarized signed copy of this Agreement shall be recorded with the County Recorder prior to issuance of a building permit for the Project.

REDLANDS SENIOR HOUSING, INC.

CITY OF REDLANDS

By: *Richard E. Ice*
PRESIDENT

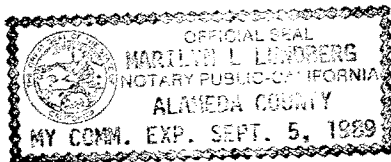
By: *Barbara Womser*
Mayor

Address: AMERICAN BAPTIST HOMES
400 ROLAND WAY
P. O. BOX 6669
OAKLAND, CA. 94621

ATTEST:

Donna Poyzer
City Clerk
30 Cajon Street,
P.O. Box 280, 3005,
Redlands, CA 92373

State of California }
County of Alameda } SS.



On this the 4th day of January 1989, before me,

Marilyn L. Lundberg,
the undersigned Notary Public, personally appeared

Richard E. Ice,

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
President for on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

Marilyn L. Lundberg
Notary's Signature

EXHIBIT "A"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CITY OF REDLANDS AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 7, BLOCK "F", SECOND PRELIMINARY MAP OF REDLANDS, AS PER PLAT RECORDED IN BOOK 5 OF MAPS, PAGE 2, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY LINE OF FERN AVENUE, AT THE INTERSECTION OF SAID SOUTHERLY LINE WITH THE WESTERLY LINE OF SAID LOT 7;

THENCE ALONG SAID SOUTHERLY LINE OF FERN AVENUE NORTH $56^{\circ} 20'$ EAST 364.50 FEET TO THE POINT OF BEGINNING;

THENCE FROM SAID POINT OF BEGINNING SOUTH $33^{\circ} 40'$ EAST 290 FEET;

THENCE SOUTH $56^{\circ} 20'$ WEST 141.5 FEET TO THE NORTHEASTERLY LINE OF THAT PARCEL OF LAND CONVEYED TO J. L. IRVIN AND WIFE, BY DEED DATED MAY 3, 1928 AND RECORDED ON JUNE 1, 1928 IN BOOK 372, PAGE 276 OF THE OFFICIAL RECORDS;

THENCE SOUTH $33^{\circ} 40'$ EAST 320 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 7;

THENCE NORTH $56^{\circ} 20'$ EAST ALONG THE SOUTHERLY LINE OF SAID LOT 7 TO THE MOST SOUTHERLY CORNER OF THAT PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA, BY DEED DATED MAY 20, 1942 AND RECORDED JULY 13, 1942 IN BOOK 1543, PAGE 224 OF OFFICIAL RECORDS;

THENCE FROM A TANGENT BEARING NORTH $36^{\circ} 52' 1''$ WEST ALONG A CURVE TO THE LEFT WITH A RADIUS OF 2927 FEET THROUGH AN ANGLE OF $3^{\circ} 11' 29''$, A DISTANCE OF 163.03 FEET;

THENCE NORTH $40^{\circ} 3' 30''$ WEST 251.83 FEET;

THENCE NORTH $33^{\circ} 29' 30''$ WEST 197.43 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID LOT 7 BEING THE MOST WESTERLY CORNER OF SAID PARCEL DEEDED TO THE STATE OF CALIFORNIA;

THENCE SOUTH $56^{\circ} 20'$ WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 7, FOR 100.96 FEET TO THE POINT OF BEGINNING.