

RECORDING REQUESTED BY:
Humboldt County Community
Development Services - Planning Division

EXEMPT PURSUANT TO GOVERNMENT
CODE SECTION 27383

WHEN RECORDED MAIL TO:
Humboldt County Community
Development Services
3105 H Street
Eureka, CA 95501

DENSITY BONUS HOUSING AGREEMENT
[DEVELOPMENT NAME]

THIS AGREEMENT is made and entered into this _____ day of _____, 200__, by and between the County of Humboldt (hereinafter referred to as "County") and [DEVELOPER NAME AND LEGAL DESCRIPTION] (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of that X.XX acres of real property commonly known as [PROPERTY NAME AND/OR ADDRESS], in the unincorporated area of Humboldt County, and as Humboldt County Assessor's Parcel Number XXX-XXX-XXX-000 (hereinafter referred to as "the property") and is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, the General Plan and Zoning Ordinance of the County of Humboldt permit no more than XX housing units on the Property;

WHEREAS, Developer proposes to develop a total of XX housing units on the Property, consisting generally of XX studio apartments, XX one bedroom units, XX two bedroom units, XX three bedroom units, and XX four bedroom units. The residential units will be grouped in XX buildings [in a development that will occupy the Property which will be divided into XX contiguous parcels] as more particularly described in Humboldt County Planning Division Case No(s). [CASE NUMBER(S)], (hereinafter referred to as "the Development"); and

WHEREAS, the Developer estimates the total development cost of the Development to be approximately \$XX,XXX,XXX; and

WHEREAS, pursuant to Government Code section 65915, Section 314-112.1 of the Humboldt County Zoning Ordinance, and the Humboldt County Housing Element, the Developer has proposed to construct and rent the XX affordable rental housing units in the Development at rents affordable to very-low and lower income households in exchange for a Density Bonus of XX units and other incentives.

WHEREAS, on [DATE OF APPROVAL], the Humboldt County Planning Commission [or Board of Supervisors] approved the Development with a Density Bonus of XX units (“Density Bonus”) and the following additional incentives (Other Incentives”):
[LIST ADDITIONAL INCENTIVES]; and

WHEREAS, on [DATE OF APPROVAL], County approved, as an incentive to the Development, Community Development Block Grant (CDBG) loan assistance in the total amount of \$XXX,XXX for [USE OF FUNDS].

WHEREAS, on [DATE OF APPROVAL], County also approved, as an incentive to the Development, HOME Investment Partnership Program (HOME) loan assistance in the total amount of \$XXX,XXX for [USE OF FUNDS]; and

WHEREAS, on [DATE OF APPROVAL], County approved, as an incentive to the Development, a loan of County redevelopment funds in the amount of \$XXX,XXX for [USE OF FUNDS]; and

WHEREAS, condition XX of the Humboldt County Planning Commission [or Board of Supervisors] approval of the density bonus for the Development requires XX percent (XX%) of the total number of rental units to be set aside for rent to very-low and lower income households, pursuant to Government Code section 65915 and Section 314-112.1.4.2 of the Humboldt County Zoning Ordinance, for a minimum period of thirty (30) years.

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and covenants hereinafter set forth, the parties hereto agree as follows:

1. Satisfaction of Planning Commission [or Board of Supervisors] Conditions and Acknowledgement of Incentives. County hereby agrees that execution, recordation, performance of and compliance with this Agreement shall constitute performance of condition number XX of File Number XXX-XXX-XXX of the Humboldt County Planning Commission’s [or Board of Supervisors’] approval of the Development, dated [DATE OF APPROVAL], and shall be sufficient in that respect to permit the issuance of building permits for the Development subject to the satisfaction of all other applicable conditions and compliance with all provisions of law. Developer acknowledges and agrees that, in addition to the Density Bonus, Developer has received sufficient incentives pursuant to Government Code section 65915, including Other Incentives [and the loans of Community Development Block Grant, HOME funds, and County redevelopment funds].

2. Rental of Housing Units. Pursuant to and in consideration of the density bonus approved by the County and the additional incentives set forth in this Agreement, Developer hereby agrees that it shall rent not less than XX rental housing units to very-low and lower income households, as defined in Section 314-112.1.2 of the Humboldt County Zoning Ordinance, or as those terms may hereafter be amended (“Affordable Housing Units”). The Affordable Housing Units shall consist of the following housing units subject to this Paragraph:

Unit Size*	Affordable to Very Low Income Households	Affordable to Lower Income Households
Studio	X	X
One Bedroom	X	X
Two Bedroom	X	X
Three Bedroom	X	X
Four Bedroom	X	X
Totals:	X	X

*Note: Developer may substitute unit sizes for the Affordable Housing Unit(s) as described hereinabove provided the total number of units remains the same. Any such substitution shall require the parties to execute an amendment to this Agreement reflecting the change. Separate approval by the Planning Commission of the unit substitution amendment shall not be required. All other provisions of the Agreement shall remain in full force and effect.

Developer shall not market any Affordable Housing Units in the Development until the Director of Community Development Services – Planning Division (“Director”), acting on behalf of the County, has approved the marketing plan for the marketing of the Affordable Housing Units.

3. Rent Amounts. On or about March 1 of each year, when the U.S. Department of Housing and Urban Development issues annual updates of the income limits for Humboldt County, adjusted by household size, the County shall issue to Developer new gross rent limits for the Affordable Housing Units designated in Paragraph 2 for the following calendar year. Department shall calculate gross rents in compliance with Sections 314-112.1.2.2 and 314-136 of the Humboldt County Zoning Ordinance, Affordable Rent. The gross rents shall be subject to deduction of a utility allowance, approved and issued by the Humboldt Del-Norte Housing Authority (“Authority”), and shall be consistent with the definitions of rent referenced in this paragraph 3. The utility allowance schedule includes monthly figures for utility expenses that the tenant is required to pay in addition to rent, and may include the costs associated with cooking, space heating, water heating, lights, other electrical, water, sewer, garbage, and renting a stove and refrigerator. Developer shall not charge its tenants more than the net rent resulting from the calculation described in this paragraph and as permitted by the Department.

The imputed household size for a unit shall be equal to the number of bedrooms in the unit plus one. For example, County shall calculate gross rent for a two-bedroom unit using the appropriate income limit for a three-person household.

4. Term. This Agreement shall be effective on the date of its recordation and shall remain in force for a period of not less than thirty (30) years from the date that the County issues the Certificate(s) of Occupancy for the Affordable Housing Units in the Development. [In the event the Developer requests an extension of the term for repayment of any of the financing that County has or will extend to Developer for the Development, the term of this Agreement shall be extended to coincide with the extended term of that financing.]

5. Assurance of Continued Affordability. The incentives made to Developer by County and recited in this Agreement constitute a “subsidy” for affordable housing. In order for County to meet the requirement of Government Code Section 65917 that it ensure the continued affordability of housing units priced for affordability for very-low and lower income households

by this Agreement, Developer agrees that it will not rent any of the Affordable Housing Units identified by this Agreement at rents exceeding those established pursuant to this Agreement.

Developer agrees to submit to County, on a schedule that the County selects, but not more than quarterly, on forms that the County provides or approves, a compliance report reporting the name, household size, income and rent of each tenant occupying an Affordable Housing Unit. Upon request of County, Developer further agrees to certify annually the income of each tenant occupying an Affordable Housing Unit and to submit to the County the certifications on forms that the County provides or approves and copies of leases in effect for each tenant residing in an Affordable Housing Unit.

At County's request, Developer shall permit the County to inspect the Property and make available for the County's review and inspection the tenant records that Developer shall maintain for each tenant residing in a unit subject to this Agreement.

6. Maintenance Standards. During the term of this Agreement, Developer shall maintain the unit(s) subject to this Agreement and the Property in a condition that satisfies the more stringent of: (a) the requirements of the applicable local building codes; or (b) the United State Department of Housing and Urban Development's Housing Quality Standards (HQS). The County shall have the right to inspect the unit(s) subject to this Agreement and the Property prior to initial occupancy and periodically during the term of this Agreement, upon three (3) business days' notice to Developer. The County shall have the right to disclose the results of those inspections to the appropriate enforcement authority. Failure to maintain the unit(s) and the Property in compliance with this section shall constitute a breach of this Agreement and subject Developer to damages as set forth in Section 17 of this Agreement.

7. Reconciliation of Program Requirements. Developer has received and will receive financial assistance from several of the County's programs. In the event of differences between and among the requirements of these programs and the requirements of the Density Bonus Program, the most restrictive requirement shall prevail.

8. Interpretation and Construction. To the extent that this Agreement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the public policy goals of Government Code Section 65915, the Housing Element of Humboldt County, and the Humboldt County Zoning Ordinance, [and the requirements of the CDBG and HOME Programs, the County's redevelopment program, and other County programs that may assist the Development]. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby. Nothing contained herein shall be deemed compliance with or waiver of any provision of the law or conditions of approval except as expressly stated herein.

9. Opinion of Counsel. Concurrent with the execution hereof, Developer shall provide to County a letter opinion from its legal counsel stating that in the opinion of counsel this Agreement constitutes a valid and binding contract upon Developer and its successors in interest with respect to the property.

10. Agreement Binding on Successors. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto and any successors or assignees. Developer's obligations under this Agreement are to be considered as covenants and/or equitable

servitudes, as those terms are used in Revenue and Taxation Code section 3712(d), running with and appurtenant to the Property and for the benefit of the County. Any sale or conveyance of the Property shall be made subject to this Agreement.

11. Waiver. The waiver by any party of any breach or violation of any term, covenant or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law.

12. Costs and Attorney's Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and witness, expert and attorney's fees expended in connection with such an action from the other party.

13. Recordation. Developer shall execute this Agreement, cause the same to be acknowledged and deliver said executed and acknowledged document to County in such form as to permit its recordation in the Office of the County Recorder of the County of Humboldt. County shall not be obligated to issue permits prior to such delivery and recordation of this Agreement.

14. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856.

15. Ownership of the Property. Developer represents and warrants that it is the owner of the Property and has full authority to execute this Agreement.

16. Monitoring Expenses. In order to allow the County to recover their administrative expense associated with this Agreement, Developer shall pay to County a Ministerial/Agency Review Fee (currently \$55.00) for each of the XX Affordable Housing Units, or such other fee as may be established by the County from time to time. The fee shall be paid in advance by Developer to County on or before June 1st of each year of the thirty (30) year term described in paragraph 4 of this Agreement.

17. Additional Damages. In addition to any other remedy available to County by law, in the event that the Developer charges rent in excess of that allowed by this Agreement, it shall be liable to County for damages in the amount of the rent charged or collected, whichever is greater, in excess of the maximums allowed herein and interest compounded at the maximum rate allowable for judgments.

For any other breach of this Agreement, County may, in addition to any other remedy authorized by law, elect that Developer, or any of its successor's in interest, shall be liable to County in the amount of \$100.00 per day until the breach is cured.

18. Risk of Market Conditions. Developer shall bear sole responsibility for developing, constructing and marketing the units covered by this Agreement, pursuant to the approvals of the County has issued for the Development and the requirements contained in this Agreement, and the Developer shall reimburse the County for all administrative costs associated with any modification of this Agreement that shall require the approval of the Planning Commission [or Board of Supervisors] of Humboldt County.

19. Administration by County. The Director of Community Development Services for the County of Humboldt shall be responsible for administration of the County's duties and responsibilities under the terms of this Agreement.

COUNTY OF HUMBOLDT

Dated: _____

By: _____
Kirk A. Girard, Director
Humboldt County Community
Development Services

DEVELOPER:
[DEVELOPER NAME AND LEGAL
DESCRIPTION]

Dated: _____

BY: _____
DIRECTOR NAME
DIRECTOR TITLE

Approved as to form by
County Counsel:

By: _____
Carolyn Ruth
Deputy County Counsel

EXHIBIT "A"
Property Legal Description

That real property situated in the County of Humboldt, State of California described as follows: