

EXHIBIT D

ORDINANCE NO. _____
AN UNCODIFIED ORDINANCE OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
ADOPTING THE CLEARWATER AT NORTH TUSTIN
DEVELOPMENT AGREEMENT

Date, 2018

WHEREAS, Government Code Section 65864 et seq. authorizes the County to enter into binding development agreements to achieve certain public purposes; and

WHEREAS, pursuant to the state authorization cited above, the County has established procedures and requirements for the processing of proposed development agreements; and

WHEREAS, pursuant to California Government Code Section 65000 *et seq.*, the County of Orange has adopted a General Plan that meets all of the requirements of State law; and

WHEREAS, pursuant to Government Code Section 65300 et seq., the County has adopted a General Plan which provides for residential, commercial, industrial and public facilities to meet the future needs of the County population as projected in adopted population and growth forecasts; and

WHEREAS, the Roman Catholic Bishop of Orange (“Owner”) and Clearwater Living (“Operator”) submitted Planning Application 170040 (“PA170040”), requesting the following actions: 1) approval and adoption of an ordinance, attached hereto as Exhibit B, and incorporated herein, by the Orange County Board of Supervisors, which would amend the North Tustin Specific Plan (“NTSP”) to add the RCF “Residential Care Facility” Overlay District and to apply the RCF Overlay District to a vacant 6.6-acre site located at 11901 Newport Avenue (APN 395-033-01); 2) approval of a Use Permit to allow a 100-unit senior care facility on the same property; 3) approval of a Development Agreement related to the senior living facility, as required by the new RCF regulations; 4) approval of a Site Development Permit to allow project grading in excess of 5,000 cubic yards on the project site; and 5) adoption of The Clearwater at North Tustin Environmental Impact Report (“EIR”) Addendum to Final EIR No. 607, collectively the Amended Project (“Amended Project”); and

WHEREAS, the County recognizes the need for and benefit of Senior Living Facilities to serve growing segment of the County’s population; and

WHEREAS, the County also recognizes that Senior Living Facilities must be well planned and have design and operational characteristics that are compatible with the neighboring and surrounding uses; and

WHEREAS, the County of Orange has adopted a specific plan, the North Tustin Specific Plan, for the area within which the Amended Project is situated. The property is zoned 100-RSF (Residential Single Family with a minimum 100-foot building site width) under the North Tustin Specific Plan.

WHEREAS, the North Tustin Specific Plan was prepared and adopted to implement policies of the Orange County General Plan and other applicable planning documents, with specific emphasis on development of land use and traffic circulation recommendations for the North Tustin area, and among its goals, to promote future development which will be compatible with the character of the existing surrounding community, to seek a balance of housing opportunities through encouraging a variety of types and densities of housing, to provide a local and regional park system designed to meet the recreation needs of Community Service Area 5 residents including the North Tustin Specific Plan area, and to provide an optimum variety of recreation facilities to meet the specific needs of the North Tustin residents.

WHEREAS, the County has adopted a North Tustin Specific Plan Amendment that permits the adoption of a Residential Care Facility overlay zone designation on residentially zoned properties that meet specified area and site width requirements; and,

WHEREAS, after the adoption of the Residential Care Facility overlay zone designation on a qualified property, a Senior Living Facility, as defined in Orange County Codified Ordinances section 7-9-40), may be approved on such property with the approval of a Use Permit and a Development Agreement; and,

WHEREAS, the utilization of the Use Permit process will ensure that proposed Senior Living Facilities will be appropriately designed for the specific site and will have appropriate operational characteristics to ensure compatibility with its environs; and,

WHEREAS, the utilization of the Development Agreement process will ensure that when approved proposed Senior Living Facilities will have the opportunity to also provide greater public benefits for the entire community in which it is located in the furtherance of General Plan and community goals and objectives; and,

WHEREAS, among other things, the purpose of this Development Agreement is to provide the necessary assurances and predictability to the development of the Clearwater at North Tustin Residential Care Facility while also providing significant public benefit in addition to those exactions which could be obtained through the existing entitlement process, including but not limited to the expedited design and construction of a public passive park in an area that is currently deficient in park facilities; and,

WHEREAS, the Owner proposes to enter into a development agreement with the County in conjunction with the development of the Clearwater at North Tustin Residential Care Facility, which would require it to contribute a public benefit to provide either funding for or to provide design and construction services for the accelerated completion of a desired passive park in the North Tustin community; and,

WHEREAS, in consideration of this public benefit, the County would agree that the applicant's rights to proceed with the project under rules and regulations existing at the time of entry into the development agreement vest for a period of ten years with provisions to extend that time period by mutual consent; and,

WHEREAS, the Planning Commission conducted a duly noticed public hearing on July 11, 2018 to consider the proposed Development Agreement and has recommended adoption of the agreement to this Board pursuant to procedures established with respect to development agreements; and

WHEREAS, this Board conducted a duly noticed public hearing to consider the proposed Development Agreement: and

WHEREAS, the proposed Development Agreement will not subject the County to any additional liability for monetary damages as a result of any assurance or right contained therein or for any other reason; and

WHEREAS, this Board shares the concerns of all citizens of Orange County that efforts to provide adequate and appropriate housing for the growing senior-aged sector of our population are necessary and appropriate; and,

WHEREAS, this Board further shares the desires of all citizens of Orange County that efforts to increase and expedite the provision of recreational facilities are a public benefit; and,

WHEREAS, the proposed Development Agreement represents an innovative example of coordination between the public and private sectors and a creative approach to implementation of responsible planning;

The Board of Supervisors of the County of Orange, California, ordains as follows:

Section 1. The Board finds, with respect to the Development Agreement that:

(a) The Development Agreement is consistent with the Orange County General Plan policies and objectives and is consistent with the North Tustin Specific Plan, as amended, and other applicable zoning regulations.

(b) The intensity, building height and uses set forth in the Development Agreement are permitted by or are consistent with the North Tustin Specific Plan as amended, and other applicable zoning regulations;

(c) The Development Agreement is consistent with State authorizations contained in Government Code Section 65864 et seq. and established County procedures and regulations.

(d) Final EIR No. 607 previously certified by the Board of Supervisors on March 15, 2011, reflects the independent judgment of the County of Orange.

(1) Find that the circumstances of the project are substantially the same and Final EIR No. 607 and the Clearwater at North Tustin EIR Addendum adequately address the effects of the proposed Project. No substantial changes have been made in the Project, no substantial changes have occurred in the circumstances under which the Project is being undertaken, and no new information of substantial importance to the Project which was not known or could not have been

known when Final EIR No. 607 was certified has become known; therefore, no further environmental review is required.

Section 2. The Board hereby approves the Development Agreement, attached hereto as Exhibit A, and authorizes and directs the Director, Orange County Public Works to execute the Development Agreement in the name of the County of Orange.

Section 3. This Ordinance shall take effect and be in full force thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after the passage thereof shall be published once in an adjudicated newspaper in the County of Orange.