

**PLEASE COMPLETE THIS INFORMATION**

**RECORDING REQUESTED BY:**  
CITY CLERKS OFFICE  
CITY OF HESPERIA  
15776 MAIN STREET, #10  
HESPERIA CA 92345

**AND WHEN RECORDED MAIL TO:**

CITY CLERKS OFFICE  
CITY OF HESPERIA  
15776 MAIN STREET, #10  
HESPERIA CA 92345

Recorded in Official Records, County of  
San Bernardino, Errol J. Mackzum, Recorder

No Fee

**Doc No. 19980450749**  
**2:23pm 10/22/98**

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**SPACE ABOVE FOR RECORDER'S USE ONLY**

DENSITY BONUS AND INCENTIVE AGREEMENTS

Title of Document

**THIS AREA FOR  
RECORDER'S  
USE ONLY**

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)**

Recording Requested By  
and When Recorded Mail To:

City of Hesperia  
15776 Main Street  
Hesperia, California 92345

Attention: City Clerk

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Exempt from Recording Fees Per Gov't Code §6103

APN No.: 0407-221-01

DENSITY BONUS AND INCENTIVE AGREEMENT  
AND COVENANT RESTRICTING USE

THIS DENSITY BONUS AND INCENTIVE AGREEMENT AND  
COVENANT RESTRICTING USE (this "Covenant") entered into as of October 5,  
1998, 1998, by and among OPPORTUNITY BUILDERS, A NOT-FOR-PROFIT  
DEVELOPMENT CORPORATION, a California nonprofit corporation ("Developer"), THREE  
PALMS APARTMENTS, LP, a California limited partnership ("Owner"), and the CITY OF  
HESPERIA, a municipal corporation ("City"), is made with reference to the following:

Recitals

A. Owner is the owner in fee of that certain real property (the "Site") described in Exhibit A attached hereto and incorporated herein by reference, which is located within the City, south of Cajon Street between 7th and 8th Avenues.

B. Developer has submitted Site Plan Review Application #SPR-98-010 and Density Bonus Agreement Application # DA-98-001 (together, the "Application") for approval of, and intends to construct, a rental residential development (the "Project") on the Site containing 112 rental units (the "Units") and at least one but no more than two manager's units (the "Manager's Units"). The Units will be 1- and 2-bedroom units, each of which will be restricted to occupancy by Qualified Households. "Qualified Household" means is a household that is a Low-Income Household (as that term is defined in the City of Hesperia Municipal Code ("Municipal Code") § 16.20.195) at the time the household begins its tenancy at the Project, and that consist entirely of Senior Citizens, as hereinafter defined.

C. Under existing zoning, the maximum allowable number of residential units at the Site is 64 units.

D. City desires to, and, under the Municipal Code §§ 16.20.190, *et seq.*, (the "City's Density Bonus Program") and California Government Code § 65915 is required to, grant Owner a density bonus of at least 25% (or 16 units) and one additional incentive in consideration for their commitment to restrict occupancy as herein described.

E. As an inducement to the City to approve the Application, Owner and Developer have agreed to enter into this Agreement and hereby consent to be regulated and restricted by the City as provided herein.

NOW, THEREFORE, Owner, Developer and City mutually agree as follows:

1. Term. The term (the "Term") of this Agreement shall commence on the date of its execution by all parties and shall continue in full force and effect until the date that is the 30th anniversary of the date on which the final certificate of occupancy for the Project is received from City.

2. Covenants. Owner and Developer hereby covenant by and for themselves, and for their representatives, successors and assigns and every successor in interest to the Site or any part thereof, to comply with the covenants, reservations and restrictions set forth in this Agreement. Owner further covenants that during the period set forth in Paragraph 1 hereof, Owner shall devote the Site for use only in conformance with this Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site, 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.

a. Owner and Developer agree that the Project shall be constructed substantially in accordance with the plans, drawings, and specifications approved by the City.

b. Owner shall ensure that 100% of the Units be restricted to occupancy by Qualified Households (as those terms are defined in Recital B, above) at rent levels ("Qualified Rent Levels") that do not exceed the limits set forth in Municipal Code § 16.20.255. The Manager's Units may be occupied by maintenance or management personnel employed by the property management company.

c. Owner shall obtain and maintain or cause to be obtained and maintained on file reasonable verification in written form as to the income and age of each tenant of each Unit ("Tenant"). Owner shall prepare and submit to the City annually a Certification of Continuing Program Compliance, in substantially the form attached hereto as Exhibit B and incorporated herein by this reference, executed by Owner.

3. City's Covenants.

a. Density Bonus and Equivalent. Pursuant to Municipal Code § 16.20.205(C), City hereby agrees to grant Owner and Developer a combination of a density bonus and a financial incentive that together are equivalent to a total density bonus of 100%, as follows:

(1) City grants Owner a density bonus of 48 bonus units above the presently allowable number of units, resulting in a density bonus of 75%.

(2) City grants Owner a financial incentive equivalent to the remaining 25% density bonus (16 units) in the form of a conditional deferral of applicable development impact fees in the amount of \$16,428.48 (the "Financial Incentive"), which equals 16 units multiplied by the per unit cost of the land (\$125,000 divided by 112 units). The Financial Incentive is conditioned upon Owner's continued compliance, for the duration of the Term, with its obligation to ensure that 100% of the Units are occupied by Qualified Households at Qualified Rent Levels, and shall be repaid by Owner to the City immediately, upon demand, if Owner fails to so comply.

(3) Owner agrees that Owner is not entitled to any further density bonus or the financial equivalent thereof beyond those set forth in this subparagraph 3(a).

b. Additional Incentives. Pursuant to Municipal Code § 16.20.230 and Government Code § 65915, City agrees to grant Owner the following additional incentives to encourage the supply of affordable housing by helping to reduce construction costs:

(1) City agrees that, notwithstanding the definition of "Senior Citizen" set forth in Municipal Code § 16.20.195, "Senior Citizen" for the purposes of this Agreement only shall be any person 55 years of age or older.

(2) City agrees to reduce building setback requirement along all street frontages to 15 feet, and next to the proposed bus turnout on 7th Avenue to 5 feet.

(3) City agrees to allow one additional monument sign that otherwise complies with City's sign regulations on Cajon Street in addition to the two monument signs by the entrances to the Project on 7th and 8th Avenues.

4. Accounting to City.

a. The books and accounts of the Project shall be kept in conformity with generally accepted accounting practices.

b. Owner shall maintain a complete and accurate rent roll listing all Units, the names of all Tenants, the dates of their tenancies and the amounts of rents charged and collected.

c. The City, its agents and employees, shall have the right, after reasonable notice, to review and inspect, at reasonable times during business hours, the books, records and accounts of the Owner and Developer specifically regarding the Site, from and after the date of the recordation of this Agreement and until the expiration of this Agreement.

5. Inspections. Subject to the rights of the Tenants, the City shall have the right to perform an annual on-site inspection of the Units, common areas and grounds.

6. Default.

a. Failure or delay by the Owner or Developer to perform any term or provision or comply with any covenant of this Agreement constitutes a default under this Agreement, except that Owner shall not be in default of its obligation to ensure that the Units are occupied by Qualified Households if the Owner shows that it reasonably relied on a Tenant's representations regarding age or income level. Should Owner or Developer default and fail to cure such default to the City's satisfaction within thirty (30) days after the date City delivers written notice of the default to Owner or Developer, then the City may, at its option, take one or any combination of the following actions:

(1) demand that Owner and/or Owner's successors in interest as owner of the Site, immediately pay to City the Financial Incentive;

(2) demand Owner to cause the Site to be brought into compliance with the maximum allowable density restrictions, and all other parking, setback, and signage requirements, that would apply to the Site absent this Agreement, unless Owner proposes and obtains City Council approval for alternative measures that, in the City Council's sole discretion, otherwise achieve the objectives of Government Code Section 65915, the City's Density Bonus Program, and this Agreement;

(3) declare the Site and/or the Project a public nuisance under Chapter 8.24 of the Municipal Code and take all actions authorized therein with respect to the public nuisance and the abatement thereof, including, but not limited to, summary abatement and recordation of a nuisance abatement lien to collect abatement and related administrative costs; and/or

(4) bring actions at law or in equity in a court of competent jurisdiction to enforce the provisions of this Agreement and record a lis pendens against the Site providing notice of same.

The remedies of the City herein are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of all remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

b. Notwithstanding subparagraph (a) above, violations of the Building Code shall be handled by appropriate building officials resolved under the same terms as available to any other development.

7. Lien. Owner's obligations to pay any amounts to the City in accordance with Section 6 shall constitute a lien encumbering the Site, and City shall have the right to foreclose such lien if any sums owed hereunder are not paid when due to the City. Such lien shall be foreclosed in the manner provided in California Civil Code Section 2924c, et seq., or any successor statute providing for the foreclosure of trust deeds and mortgages by means of a power of sale.

8. Successors Bound. This Agreement and the covenants reservations, restrictions and agreements contained herein shall be a burden upon the Site and shall bind Owner, Developer, and their successors, assigns, transferees and every successor in interest to the Site. Neither Owner nor Developer may assign any of the benefits of this Agreement, or delegate any of their obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City Council.

9. Benefit of Covenants, Reservations and Restrictions. City, Owner, and Developer hereby declare their understanding and intent that the covenants, reservations and restrictions set forth herein directly benefit the land by enhancing and increasing the enjoyment of use of the Site by certain low income residents of the City of Hesperia, and benefit City as owner of the public rights of way in the adjoining public streets. City and its successors and assigns, are deemed the beneficiary of the covenants, reservations and restrictions contained herein, without regard to technical classification and designation. The covenants, reservations and restrictions shall benefit and run with the land in favor of the City, its successors and assigns, and shall be enforceable by same without regard to whether same has been, remains, or is an owner of any land or interest therein.

10. Notice. Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto as follows:

If to City: City of Hesperia  
15776 Main Street  
Hesperia, California 92345  
Tel: (760) 947-1030  
Fax: (760) 947-2881

Attention: City Manager

If to Developer: Opportunity Builders  
845 W. Market Street, Suite P  
Salinas, California 93901  
Tel: (831) 758-8455  
Fax: (831) 758-8100

Attention: Eric D. Kjeldgaard

If to Owner: Three Palms Apartments, LP  
845 W. Market Street, Suite P  
Salinas, California 93901  
Tel: (831) 758-8455  
Fax: (831) 758-8100

Attention: Eric D. Kjeldgaard

11. Modifications.

This Agreement may be amended or modified only by a written instrument signed by all parties hereto. City agrees that the City's Planning Director, with the concurrence of the City Attorney, shall have the authority to execute any such instrument on behalf of the City, without formal action by the City Council, but only if such instrument does not materially alter this Agreement nor increase the quantity or value of the density bonus or incentives hereby granted to Developer and Owner.

12. Recording and Filing.

This Agreement shall be acknowledged by each of the parties and recorded by City in the Official Records of the County of San Bernardino. This Agreement shall be indexed in the grantor index in the name of the Owner and in the grantee index in the name of City.

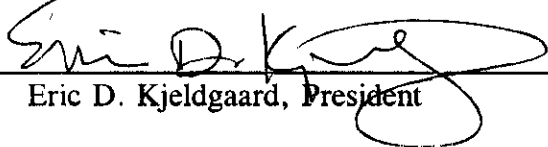
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

"Owner":

THREE PALMS APARTMENTS, LP, a California limited partnership

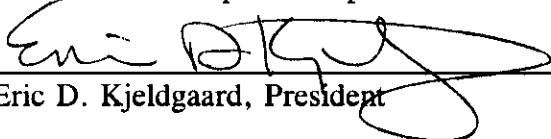
By: OPPORTUNITY BUILDERS, A NOT-FOR-PROFIT  
DEVELOPMENT CORPORATION, a California nonprofit  
corporation

Its: General Partner

By:   
Eric D. Kjeldgaard, President

"Developer":

OPPORTUNITY BUILDERS, A NOT-FOR-PROFIT DEVELOPMENT  
CORPORATION, a California nonprofit corporation


By:   
Eric D. Kjeldgaard, President

"City":

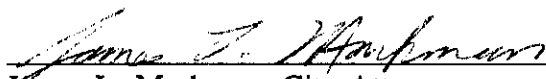
CITY OF HESPERIA, a municipal corporation

By:   
Steve West, City Manager

ATTEST:

  
Marsha Whalen, City Clerk

Approved as to Form:

  
James L. Markman, City Attorney

*[Signatures must be acknowledged.]*



## EXHIBIT A

### LEGAL DESCRIPTION OF SITE

BLOCK 243, MAP OF HESPERIA, IN THE COUNTY OF SAN BERNARDINO,  
STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS,  
PAGES 43 AND 44, IN THE OFFICE OF THE COUNTY RECORDER OF SAID  
COUNTY.

EXHIBIT B

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

The undersigned, \_\_\_\_\_, being duly authorized to execute this certificate on behalf of THREE PALMS APARTMENTS, LP, a California limited partnership ("Owner"), hereby represents and warrants that:

1. He/she has read and is thoroughly familiar with the provisions of the Density Bonus and Incentive Agreement and Covenant Restricting Use (the "Agreement") by and among OPPORTUNITY BUILDERS, A NOT-FOR-PROFIT DEVELOPMENT CORPORATION, a California nonprofit corporation, the CITY OF HESPERIA, a municipal corporation, and Owner, dated \_\_\_\_\_, 1998, of which a form of this Certification is an attachment.

2. As of the date of this Certification, the Units are all occupied by Qualified Households as that term is defined in the Agreement.

3. As of the date of this Certification, the Units are all rented at no more than Qualified Rent Levels as described in the Agreement.

"Owner"

THREE PALMS APARTMENTS, LP, a  
California limited partnership

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

\_\_\_\_\_  
[Typed/printed name]

\_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

State of California

County of

Monterey

On October 7, 19 98, before me, Joan E. Santoro, a  
Notary Public, personally appeared

Eric D. Rydgaard

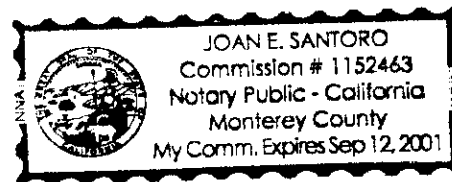
\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Joan E. Santoro

(seal)



State of California

County of

Monterey

On October 7, 19 98, before me, Joan E. Santoro, a  
Notary Public, personally appeared

Eric D. Rydgaard

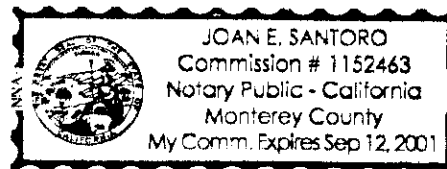
\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Joan E. Santoro

(seal)



State of California

County of San Bernardino

On October 12, 1998, before me, Marsha Whalen, a  
Notary Public, personally appeared Steve West

\_\_\_\_\_, personally known to me (or 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.

WITNESS my hand and official seal.

Signature

Marsha Whalen



(seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, a  
Notary Public, personally appeared \_\_\_\_\_

\_\_\_\_\_, personally known to me (or 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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(seal)



# City of Hesperia

15776 Main Street • Hesperia, California 92345 • (760) 947-1000 • TDD (760) 947-1119  
Fax (760) 949-7013 or (760) 947-1304

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within instrument to the City of Hesperia, County of San Bernardino, State of California, a municipal corporation, is hereby accepted by the undersigned officer or agent on behalf of the City Council pursuant to authority conferred by Resolution No. 90-213 of the City Council adopted August 2, 1990, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: October 12, 1998

By: Roxanne L. Anderson  
City Clerk, City of Hesperia  
(Deputy)



### MISSION STATEMENT

*Hesperia is dedicated to enhancing our safe, friendly community, while blending a rural lifestyle with progress and responsible growth.*