

## ATTACHMENT 1

RECORDING REQUESTED BY:

CITY OF HESPERIA

WHEN RECORDED, RETURN  
TO:

CITY OF HESPERIA  
9700 SEVENTH AVE.  
HESPERIA, CA 92345  
ATTENTION: CITY CLERK

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(Space above this line for Recorder's use only)

APN: 0405-072-72, No fee for recording per Gov. Code§ 27383

This Landscaping Maintenance and License Agreement ("**Agreement**") is made and entered into by and between the CITY OF HESPERIA ("**City**"), a California municipal corporation, and Hesperia Apartments, LLC, a California limited liability company ("**Licensee**") as of this 20<sup>th</sup> day of August, 2019. The City and Licensee shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

### **RECITALS**

**WHEREAS**, Licensee is the owner of one (1) legal parcel of real property located in the City of Hesperia, California, which is currently being developed by Licensee as a 160-unit apartment complex (the "**Project**"), with said parcel more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference (the "**Property**");

**WHEREAS**, located upon the southern portion of the Property and adjacent to Live Oak Street exists a public right of way within which contains a linear strip of raw land where Licensee intends to install and maintain landscaping improvements (the "**Improvements**"), with the approximate location of said Improvements being depicted on Exhibit 'B' hereto and incorporated herein by this reference (the "**Landscape Area**");

**WHEREAS**, as a Condition of Approval for the Project identified as "Light and Landscape District Annexation" (the "**COA**"), Licensee is required to annex the Landscape Area into the lighting and landscape district administered by the Hesperia Recreation and Parks District (the "**Parks District**") to fund the installation and maintenance of the Improvements in the Landscape Area;

**WHEREAS**, the Parties have agreed that in full satisfaction of the COA, in lieu of annexing the Landscape Area into the Parks District, and to avoid any controversy over which

Party retains responsibility for the Landscape Area, Licensee has agreed to accept full responsibility for the installation and the ongoing maintenance of the Landscape Area and the costs associated therewith in accordance with the requirements of the City's Landscape Regulations, as defined in Section 1 below, during the term of this Agreement; and

**WHEREAS**, by this Agreement, City desires to provide a license to Licensee to enter onto the Landscape Area to carry out and maintain on an ongoing basis the Improvements and to specify the essential terms of the license.

**NOW THEREFORE**, in consideration of the promises and agreements hereinafter made and exchanged, City and Licensee covenant and agree as follows:

### **TERMS**

1. **GRANT OF LICENSE.** Subject to the terms of this Agreement, City hereby grants to Licensee, its employees, contractors, representatives, and/or its agents a revocable license ("***License***") to enter the Landscape Area to conduct the Improvements, which include the installation and maintenance of certain irrigation features and planting, which Improvements have been approved by the City and are deemed by the City to be in accordance with the City's landscape regulations, currently contained in Article XII of Title 16 of the Hesperia Municipal Code ("***Landscape Regulations***") The purpose of this right to enter, install, and maintain the Improvements shall be limited to activities related to said Improvements and the City-approved landscaping. By entering into this Agreement, Licensee shall be deemed to have a City-issued landscaping permit and an approved landscape design and irrigation design plan under the Landscape Regulations with respect to the Improvements. Licensee shall, at Licensee's cost, maintain the Landscape Area using its landscaping crew for the Project, which may, but need not, include a licensed landscape contractor.

2. **TERM.** The term of the License (the "***Term***") granted herein shall be perpetual, provided that City may terminate the License and this Agreement upon thirty (30) days written notice to Licensee.

3. **TERMINATION.** In the event of any such termination, in addition to the remedies provided for Licensee's default in Section 14 below, City may, at its option, either:

(a) disconnect existing water and electrical supply sources to the Landscape Area from the Property (leaving the water and electrical systems serving the Property fully functional and in compliance with law), and construct and reconnect City water and electrical supply sources to the Landscape Area, or

(b) continue to use water and electricity from the Property for the Landscape Area.

5. **DESCRIPTION OF LANDSCAPE AREA.** The Improvements installed within the Landscape Area shall be located as approved by the City on date of this Agreement, and any changes the location of the Improvements within the Landscape Area shall be provided to the City for the City to confirm that the changes do not interfere with any other City facilities located within

the Landscape Area or adjacent right of way. Licensee shall repair, maintain, and/or replace the Improvements within the Landscape Area at Licensee's sole cost during the term of this Agreement, except in the case of damage caused to the Improvements or Landscape Area by the City.

6. **MAINTENANCE RESPONSIBILITIES.** Licensee shall maintain the Landscape Area in accordance with the standards set forth in the Landscape Regulations ("*Maintenance Responsibilities*"), except to the extent said standards are modified by the terms of this Agreement.

7. **CITY RIGHT TO INSPECT.** City shall have the right to inspect the Landscape Area at any time to ensure that Licensee is performing its obligations hereunder. City shall provide 24-hour advance notice to Licensee of any such inspection so that Licensee may arrange to have its representative present during the noticed inspection.

8. **DAMAGE TO LANDSCAPE AREA.** In the event any damage is caused to the Landscape Area or Improvements by Licensee or its agents as a result of Licensee's maintenance activities related to the same, Licensee agrees to repair the same at its sole cost and expense. Except as otherwise provided for in this License, in the event any damage is caused to any part of the Landscape Area or Improvements as a result of the maintenance and/or repair work performed by the City or its contractors, agents or employees within the Landscape Area or adjacent right of way, City shall promptly repair the same at the City's sole cost and expense. In the event both Licensee and City are required to repair damage to the Landscape Area or Improvements the Parties shall cooperate with each other so as to minimize the costs incurred by each of them.

9. **MECHANICS' LIENS.** Licensee agrees not to suffer any mechanics' lien(s) to be filed against the Landscape Area by reason of any work, labor, services or material performed at or furnished within the Landscape Area, by or through Licensee. Licensee shall, at its sole cost and expense, cause any mechanics' lien(s) which may be filed against the Landscape Area to be released, bonded, or affirmatively insured within sixty (60) days after the date of filing of such mechanics' lien(s). Nothing in this Agreement shall be construed as consent on the part of City to subject the Landscape Area to any mechanics' lien(s) or liability under the mechanics' lien laws of the State of California.

10. **ASSIGNMENT.** The License herein granted is personal to Licensee. Notwithstanding the foregoing, assignment of the License to a Licensee affiliated entity shall not require prior approval of City. Other than the License granted hereunder, Licensee hereby expressly waives any claim to or interest or estate of any kind or extent whatsoever in the Landscape Area arising out of the License or out of Licensee's use or maintenance of the Landscape Area, whether now existing or arising at any future time. This License is appurtenant to the Property and may not be separately assigned apart from the Property or the interests therein. Licensee shall give notice in writing to City of any such assignment and delegation, such notice shall include the mailing address of the delegee, and will become the delegee's address for service of notices. Licensee hereby covenants for itself and its successors and assigns, that conveyance of any interest in the Property shall constitute an assumption by any successors, assigns or transferees of Licensee, of the obligations to maintain that portion of the Landscape Area pursuant to this Agreement along that portion of the Property conveyed under this License, and upon such

conveyance, the predecessor in interest of such assuming party shall be deemed relieved from any further obligations or responsibilities under this License.

## **11. INSURANCE AND INDEMNIFICATION:**

**11.1 Insurance.** Licensee shall cause its current comprehensive general liability and worker's compensation insurance coverage for the Property to include the Landscape Area, shall maintain the insurance, and shall provide to the City Certificates of Insurance or appropriate insurance binders evidencing the insurance coverage throughout the term of this Agreement.

The insurance policies shall name the City, its officers, employees and agents ("*City Parties*") as additional insureds with respect to the Landscape Area and shall waive all rights of subrogation and contribution against the City, City Parties and their respective insurers with respect to the Landscape Area.

The Licensee agrees that the provisions of this Section 11 shall not be construed as limiting in any way the extent to which the Licensee may be held responsible for the payment of damages to any persons or property resulting from the Licensee's activities under this Agreement.

**11.2 Indemnification.** Licensee agrees to indemnify the City and City Parties against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys' fees, or paying any judgment that may be asserted or claimed by any person, firm or entity arising out of or in connection with the Licensee's use of the Landscape Area.

**11.3 Assumption of All Risks and Liabilities.** Licensee assumes all risks and liabilities arising out of any and all use of the Landscape Area during the term of this Agreement, except with respect to City gross negligence, willful misconduct, or City intentional tortious actions, including City creation or allowance of a dangerous condition within the Landscape area or along the adjacent right of way.

**12. INDEPENDENT CONTRACTOR.** Licensee agrees that all work done or undertaken by Licensee related to the Improvements within, and maintenance of, the Landscape Area shall be for its sole account and not as an agent, servant or contractor for City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Licensee's agents, volunteers or employees perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Licensee's employees, servants, representatives, volunteers or agents, or in fixing their number, compensation, or hours of service. Licensee shall perform all services required herein as an independent contractor with only such obligations as are consistent with that role. Licensee shall not at any time or in any manner represent that it or any of its agents, volunteers, or employee are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Licensee in its business or otherwise, a joint venturer, or a member of any joint enterprise with Licensee.

**13. RULES AND REGULATIONS.** Licensee agrees to obey and observe (and cause its officers, employees, contractors, invitees and all others doing business with Licensee to obey and observe) all rules and regulations of general applicability regarding the Landscape Area as may be reasonably established by City not already addressed in this Agreement at any time and from time to time during the Term of this Agreement.

**14. DEFAULT.** In the event Licensee does not perform, or cause to be performed, any of the Maintenance Responsibilities as set forth in Section 6 of this Agreement, City shall first provide written notice to Licensee in the manner and at the address for notices provided in Section 16 below, with said notice describing in detail the alleged default by Licensee. If Licensee fails to cure said default within thirty (30) calendar days following the date of delivery of such notice of default, City may at its discretion cause such maintenance to be performed, and all actual costs incurred by City in performing the maintenance shall be assessed to and billed directly to the Licensee or Licensee's successors or assigns. City shall provide Licensee with copies of invoices evidencing the costs incurred. Payment from Licensee, or Licensee's successors or assigns, shall be due within thirty (30) calendar days following the date of receipt of invoice. In addition, one and a half (1-1/2%) interest per month shall be added for each month payment hereunder is due but unpaid. Any unpaid costs shall be secured by a lien on the Property.

In the event City assumes maintenance of the Landscape Area pursuant to this Section 14 following a default of Licensee, City shall install, replace and repair said Improvements within the Landscape Area to the same standards as currently in place at the time of this Agreement. Licensee shall have the right to re-assume maintenance of the Landscape Area at any time thereafter.

15. **APPLICABLE LAW.** Except as already addressed or otherwise set forth herein with respect to the Landscape Regulations, Licensee shall, at its sole cost and expense, faithfully observe in the use and occupation of the Landscape Area all municipal ordinances, and all state and federal statutes now in force and which may hereafter be in force, and shall fully comply, at its sole expense, with all regulations, orders, and other requirements issued or made pursuant to any such ordinances and statutes. All applicable permits and licenses not already addressed herein shall be secured and paid for by Licensee.

**16. NOTICES.** Unless expressly otherwise provided elsewhere in this Agreement, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or the fourth (4th) day after mailing (by certified mail return receipt requested) with proper postage prepaid, by facsimile transmission with evidence confirming transmission, or when delivered by a national commercial courier service (such as Federal Express) for expedited delivery, to be confirmed in writing by such courier.

To CITY: City of Hesperia  
9700 Seventh Ave.  
Hesperia, CA 92345  
Attn: \_\_\_\_\_  
Fax: (760) 947-2881

To LICENSEE: Hesperia Apartments, LLC  
2151 E. Convention Center Way, Suite 222  
Ontario, CA 91764  
Attn: Andrew Wennerstrom  
Phone: (909) 354-8010  
E-Mail: [awennerstrom@frontier-enterprises.com](mailto:awennerstrom@frontier-enterprises.com)

**17. CAPTIONS AND TERMS.** The captions and section numbers appearing in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit, amplify, define, construe or describe the scope of intent of the terms and provisions of this Agreement, or in any way affect this Agreement.

**18. RECORDATION.** Licensee shall record this Agreement in the Official Records of the County of San Bernardino, State of California.

**19. NON-EXCLUSIVITY.** This License is non-exclusive, and the Landscape Area shall at all times be open to use by the general public.

**20. COVENANT AGAINST DISCRIMINATION.** Licensee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement and Licensee shall take affirmative action to insure that applicants are employed and that employees and volunteers are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

**21. COOPERATION.** The Parties shall in good faith cooperate in connection with its respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

**22. ATTORNEY'S FEES.** In any action between the parties hereto seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to reasonable attorney's fees.

**23. ENTIRE AGREEMENT.** This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties hereto relating to the rights herein granted and the obligations herein assumed, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties hereto with respect to the rights and obligations contained herein. Any oral representations or modifications concerning this instrument shall be of no force or effect except a subsequent modification in writing, approved by the City and signed by the parties to be charged.

**24. COVENANTS.** Each of the covenants set forth in this Agreement (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of, any person or entity having or acquiring any interest in any portion of any property benefited or burdened thereby, during the

period of such person's or entity's ownership, and all of their respective successive owners and assigns; and (iii) shall be binding upon, and shall inure to the benefit of, the property benefited or burdened thereby and every portion thereof and interest therein. The License granted by this Agreement is subject to all matters of record as of the effective date of this Agreement.

25. **GOVERNING LAW.** This Agreement shall be governed, construed, interpreted, and enforced under and in accordance with and governed by the laws of the State of California.

26. **AMENDMENTS.** This Agreement may be amended, modified, and/or supplemented only by the written agreement of the Parties, or the successors and assigns of each.

27. **DELEGATION OF AUTHORITY.** City hereby delegates to its City Manager or his or her designee the authority to implement all provisions of this Agreement.

28. **EXCLUSIVE BENEFIT OF PARTIES.** The provisions of this Agreement are for the exclusive benefit of the Parties and their successors and assigns, subject to the provisions hereof, and neither for the benefit of nor give rise to any claim or cause of action by any other person.

29. **AUTHORITY TO SIGN.** Licensee hereby represents that the individual executing this Agreement on behalf of Licensee has full authority to do so and to bind Licensee to perform pursuant to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Dated: \_ \_ \_ \_ \_

City: CITY OF HESPERIA, a municipal  
corporation

By: . Larry Bird, Mayor

ATTEST:

By: \_\_\_\_\_  
Melinda Sayre, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Eric L. Dunn, City Attorney

LICENSEE: Hesperia Apartments, LLC, a  
California limited liability  
company

By: \_\_\_\_\_  
Richard Munkvold, Chief Financial Officer

[End of Signatures]



STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_ personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument  
and acknowledged to me that she executed the same in her authorized capacity, and that by her  
signature on the instrument the person or the entity upon behalf of which the person acted, executed  
the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_ personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument  
and acknowledged to me that she executed the same in her authorized capacity, and that by her  
signature on the instrument the person or the entity upon behalf of which the person acted, executed  
the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

**EXHIBIT "A"**

**Legal Description**

**LEGAL DESCRIPTION OF PROPERTY**

APN 0405-072-72

Parcel 2 of Parcel Map No. 19719, in the City of Hesperia, County of San Bernardino, State of California, as per plat recorded in Book 248 of Parcel Maps, Page(s) 16 and 17, in the office of the County Recorder of said county.

# EXHIBIT 'B'

## LANDSCAPE AREA

