

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

Project: Dexter Village Apartments

(Space Above For Recorder's Use)

This Density Bonus Housing Agreement is recorded at the request and for the benefit of the City of Lake Elsinore and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

DENSITY BONUS HOUSING AGREEMENT

DEXTER VILLAGE

By and Between

**CITY OF LAKE ELSINORE,
a California municipal corporation**

and

**3RD & DEXTER, LLC,
a Delaware limited liability company**

[THIS AGREEMENT CONTAINS SUBORDINATION REQUIREMENTS
TO PRESERVE PRIORITY OF LAND USE AND REGULATORY COVENANTS]

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**DENSITY BONUS HOUSING AGREEMENT
DEXTER VILLAGE**

This DENSITY BONUS HOUSING AGREEMENT (Dexter Village) (“**Agreement**”) is entered into as of the _____ day of _____, 2025 by and between the CITY OF LAKE ELSINORE, a California municipal corporation (“**City**”), and 3RD & DEXTER, LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Owner is the owner in fee of that certain real property located on Dexter Avenue between 2nd Street and 3rd Street, consisting of approximately 23.44 acres of land, and more particularly described in the legal description attached hereto as Exhibit “A” and more particularly depicted in Exhibit “B,” both of which are incorporated herein by this reference (the “**Property**”).

B. Owner has submitted plans to develop on the Property a four hundred fifty-one (451) unit residential development, consisting of two hundred thirty (230) rental apartment units, eighty-four (84) condominium units, and one hundred thirty-seven (137) single family units (collectively, the “**Project**”). Owner intends to build the Project in two or more phases.

C. Pursuant to California Government Code Sections 65915-65918 and the implementing ordinance in Chapter 17.58 of the City of Lake Elsinore Municipal Code, owners of projects that include specified levels of affordable housing are entitled to apply for and receive certain density bonuses and additional incentives in order to facilitate the economic feasibility of those projects.

D. The General Plan designation for the Property is Commercial Mixed-Use GP. The project’s “master case number” is PA 2024-15, and other Project entitlements include CUP 2024-08 for the townhome/condominium units included, RDR 2024-07 for design review of the residential building, and TTM 2024-05 for the proposed subdivision of the Property (collectively, the “**Entitlements**”).

E. Based on the zoning for the Property, the number of base units permitted is four hundred twenty-two (422) residential units. Owner has proposed constructing twenty-two (22) affordable units in the Project (i.e., 5% of the Base Units), which would entitle Owner to exercise a twenty percent (20%) density bonus option for the Project, resulting in up to eighty-five (85) density bonus units. Notwithstanding the foregoing, Owner has proposed constructing four hundred twenty-two (422) base residential units and up to twenty-nine (29) density bonus residential units, for a total of four hundred fifty-one (451) residential units.

F. In order to take advantage of the increase in allowable density, Owner must ensure, pursuant to the terms of this Agreement, that no less than twenty-two (22) residential units (i.e., 5% of the Base Units) will be used and occupied or available for use and occupancy by Very-Low Income Households (as defined below).

G. City has agreed to grant an incentive, as required by Government Code Sections 65915- 65918, by allowing the Project to be exempt from the requirements of subsection C of Lake

Elsinore Municipal Code Section 17.134.080. Additionally, City has agreed to certain waivers requested by Owner, as required by applicable law.

H. Attached hereto as Exhibit “F” is a regulatory agreement for the provision of affordable housing at the Project (“**Regulatory Agreement**”).

I. The Regulatory Agreement and this Agreement constitute the affordable housing plan with respect to the Affordable Units (as defined below) being provided for the Project and satisfy the affordable housing plan requirements of Chapter 17.58 of the City of Lake Elsinore Zoning Ordinance.

J. City has prepared and Initial Study/Mitigated Negative Declaration for the Project, and complied with the procedures set forth in the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines by the environmental review of the Project [(_____Final Environmental Impact Report and Addendum (State Clearinghouse No. _____)].

K. This Agreement (which includes by this incorporation by reference the attached Exhibits) is intended to set forth the terms and conditions for the implementation of the Project’s requirement to provide affordable housing units in exchange for receiving the density bonus units and incentive set forth herein.

L. It is a condition to the approval of the Entitlements that Owner enter into and duly record this Agreement and the Regulatory Agreement in the Official Records of the Riverside County Recorder's Office ("Official Records") with respect to and containing affordable housing agreements, covenants, conditions, and restrictions intended to be binding on Owner and the Property and Project.

M. The development of the Project on the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

COVENANTS

NOW, THEREFORE, in consideration of the Entitlements and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND EXHIBITS

1.1 Definitions. In addition to the terms that may be defined elsewhere in this Agreement, the following terms when used in this Agreement shall be defined as follows:

1.1.1 “**Adjusted for household size appropriate to the unit**” means a household of one person in the case of a studio unit, a household of two persons in the case of a one-bedroom unit, a household of three persons in the case of a two- bedroom unit, and a household of four persons in the case of a three-bedroom unit.

1.1.2 “**Affordable Housing Plan**” means, collectively, this Agreement and the Regulatory Agreement attached hereto as Exhibit “F”.

1.1.3 “**Affordable Rent**” means for a Very-Low Income Household the maximum Monthly Rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Very-Low Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the Effective Date, a copy of which is attached hereto and incorporated herein as Exhibit “C”, which statute as of the Effective Date states that the maximum Monthly Rent is equal to the product of thirty percent (30%) times fifty percent (50%) of Median Income, adjusted for household size appropriate to the unit. An example of the calculation of Affordable Rent is attached hereto and incorporated herein as Exhibit “D”.

1.1.4 “**Affordable Units**” means the twenty-two (22) Rental Units within the Project to be rented by Owner to a Very-Low Income Household at Affordable Rent in accordance with this Agreement. In accordance with the requirements of the Regulatory Agreement, the Affordable Units are anticipated to be comprised of the following:

Unit Type	Very-Low Income Units
1 Bedroom	14
2 Bedroom	6
3 Bedroom	2
Total	22

From time to time, Owner may modify the actual bedroom mix of Affordable Units without amending this Agreement so long as Owner complies with the bedroom mix requirements more fully set forth in the Regulatory Agreement.

1.1.5 “**Agreement**” means this Density Bonus Housing Agreement and all of the exhibits attached hereto.

1.1.6 “**Base Units**” means the four hundred twenty-two (422) Units (subject to adjustment pursuant to Section 2.3 below) that Owner would be authorized to develop on the Property pursuant to the Project zoning without application of the State Density Bonus Law (as defined below).

1.1.7 “**City**” means the City of Lake Elsinore, California, and the City’s successors and assigns.

1.1.8 “**City Council**” means the City Council of the City of Lake Elsinore.

1.1.9 “**City Attorney**” means the City Attorney for the City of Lake Elsinore.

1.1.10 “**City Manager**” means the City Manager for the City of Lake Elsinore or designee.

1.1.11 “**City’s Planning Commission**” means the Planning Commission for the City of Lake Elsinore.

1.1.12 “**Density Bonus Units**” means the twenty-nine (29) Units, in addition to the Base Units, that Owner may develop pursuant to the density allowance in the State Density Bonus Law and the terms and conditions of this Agreement, which Owner would not be entitled to develop without providing that twenty-two (22) of the Base Units (i.e., 5% of the Base Units) will be Affordable Units designated for occupancy by Very-Low Income Households.

1.1.13 “**Effective Date**” means the date this Agreement is signed by the City Manager, which date shall be inserted in the preamble to this Agreement.

1.1.14 “**Eligible Tenant**” means a Household who complies with the income verification requirements of the Regulatory Agreement and qualifies as a Very- Low Income Household as defined therein.

1.1.15 “**Household**” means all persons residing in a Unit.

1.1.16 “**Housing Regulations**” means the regulations published from time to time by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, as they exist as of the Effective Date, a copy of which is attached hereto and incorporated herein as Exhibit “C”.

1.1.17 “**Median Income**” means the Riverside County area median income as published periodically by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation based on the median housing income as annually established by the United States Department of Housing and Urban Development. The Median Income figures for 2025, as of the Effective Date, are set forth in Exhibit “E”, which is attached hereto and incorporated herein by this reference. Upon request by Owner, City shall provide to Owner the amount of the Median Income.

1.1.18 “**Monthly Rent**” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants (including mandatory renters insurance, if applicable), other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas, air conditioning and other heating, cooking and refrigeration fuels, if such utilities are paid for separately by the tenant and which allowance shall be based on the schedules determined by the Housing Authority of the County of Riverside; but not including telephone, internet or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

1.1.19 “**Owner**” means 3rd & Dexter, LLC, a Delaware limited liability company, and its permitted successors and assigns to all or any part of the Property.

1.1.20 “**Owner Affiliate**” shall mean any person or entity controlling, controlled by, or under common control with either such entity.

1.1.21 “**Project**” shall have the meaning ascribed in Recital B of this Agreement. In the event of any inconsistency between the description of the Project in this Agreement and the entitlements and permits for the Project, the approved entitlements and permits shall govern. In no event shall any development be permitted that is not permitted under the entitlements and permits in effect at the time of development.

1.1.22 “**Property**” shall have the meaning ascribed in Recital A of this Agreement.

1.1.23 “**Rental Unit**” means a residential dwelling unit within the Project to be rented by Owner pursuant to this Agreement, including, without limitation, the Affordable Units.

1.1.24 “**Regulatory Agreement**” means that certain Regulatory Agreement and Declaration of Covenants and Restrictions attached to this Agreement as Exhibit “F”. In the event of any inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, the terms of the Regulatory Agreement shall govern.

1.1.25 “**State Density Bonus Law**” means Government Code Sections 65915-65918 as they exist on the Effective Date.

1.1.26 “**Substitute Affordable Unit**” means an equivalent Unit in terms of level of affordability restriction (Very-Low Income Household) and number of bedrooms for a previously designated Affordable Unit, substituted during the Total Density Bonus Agreement Term and further explained in the Regulatory Agreement.

1.1.27 “**Total Affordability Term**” means the fifty-five (55) year period for which Affordable Units shall be restricted for use and occupancy by a Very-Low Income Household. The Total Affordability Term shall commence on the date on which the last of the Affordable Units receives a certificate of occupancy issued by the City.

1.1.28 “**Total Density Bonus Agreement Term**” means the total period during which this Agreement shall be in full force and effect, as provided for in Section 5 below.

1.1.29 “**Unit**” means a residential dwelling unit within the Project.

1.1.30 “**Very-Low Income Household**” means a Household whose income does not exceed the qualifying limits for very-low income households pursuant to Health and Safety Code Section 50105 as it exists on the Effective Date, a copy of which is attached hereto and incorporated herein as Exhibit “C”, which statute as of the Effective Date states that the qualifying limits (as adjusted for household size) shall be published by the Department of Housing and Community Development in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

- Exhibit “A” Legal Description of the Property Exhibit
- Exhibit “B” Map showing Property and its Location
- Exhibit “C” Health and Safety Code Sections 50052.5, 50053, 50105, and 50093
- Exhibit “D” Example of Affordable Rent Calculation
- Exhibit “E” Median Income for 2023
- Exhibit “F” Regulatory Agreement (and Attachments)
- Exhibit “G” Termination and Release

1.3 Recitals. The Recitals set forth above are true and correct and incorporated herein by this reference.

2. DEVELOPMENT OF THE PROPERTY

2.1 Project. The Property may be developed as a four hundred fifty-one (451) unit residential community in accordance with and subject to all applicable entitlements and permits. Nothing herein shall be construed to require Owner to proceed with the construction or other implementation of the Project.

2.2 Total Number of Units. The Project may have up to four hundred fifty-one (451) Units, to be developed and maintained pursuant to the terms and conditions of this Agreement. The Project’s Units consist of up to four hundred twenty-two (422) Base Units and up to twenty-nine (29) Density Bonus Units, for a total of up to four hundred fifty-one (451) Units. The Parties expressly understand and agree that the State Density Bonus Law as of the Effective Date allows up to a twenty percent (20%) increase in the number of the Base Units because Owner shall restrict five percent (5%) of the Base Units for occupancy by Very-Low Income Households.

2.3 Affordable Units. The Affordable units shall be provided within the development of the Rental Units, and shall be dispersed throughout that phase. Based on the number of Units allowed on the Property pursuant to Section 2.2 above, the Project shall have twenty-two (22) Affordable Units (i.e., 5% of the Base Units) designated for Very-Low Income Households pursuant to the terms and conditions of this Agreement, which shall be included in the two hundred thirty (230) Rental Units. The twenty-two (22) Affordable Units shall consist of fourteen (14) one-bedroom Rental Units, six (6) two-bedroom Rental Units, and two (2) three-bedroom Rental Units. The average square footage of the Affordable Units shall be approximately the same (i.e., less than 7% deviation) as the average square footage of the other Rental Units of the same number of bedrooms. Nothing herein shall preclude Owner from increasing the number of Affordable Units, and Owner may include a larger proportion of Affordable Units with a higher bedroom count as compared to the other Rental Units.

2.4 Authorized Incentives and Concessions. In accordance with the State Density Bonus Law and pursuant to the entitlements for the Project approved by City, City authorized the incentives and concessions set forth in Recital G above.

3. AFFORDABILITY

3.1 Terms. Each Affordable Unit designated for Very-Low Income Households shall be restricted for use and occupancy by a Very-Low Income Household for a total period of no less than the Total Affordability Term. Owner may elect to substitute a Substitute Affordable Unit for an Affordable Unit during the Total Affordability Term. In that event, the remaining portion of the Total Affordability Term for the Affordable Unit shall be transferred to the Substitute Affordable Unit.

4. OWNERSHIP AND OPERATION OF THE PROJECT BY OWNER

4.1 Recording of Documents. No later than ten (10) days after approval of the Entitlements, Owner shall record or cause to be recorded in the Official Records for Riverside County, California, an executed original of this Agreement and the Regulatory Agreement. Owner shall provide City with conformed recorded copies of this Agreement and the Regulatory Agreement not later than fifteen (15) days after approval of the Entitlements. City shall cooperate with Owner in promptly executing in recordable form this Agreement and the Regulatory Agreement. It is the express intent and agreement between the Parties that during the Total Affordability Term, this Agreement and the Regulatory Agreement shall remain binding and enforceable against the portion of the Property upon which the rental units are to be constructed, the Project, and the Affordable Units to ensure compliance with the State Density Bonus Law and Chapter 17.58 of the Lake Elsinore Municipal Code, and to ensure the continued supply of Affordable Units in the Project.

4.2 Rental of Units. During the Total Affordability Term, Owner shall rent or cause to be rented the Affordable Units in accordance with the terms and conditions set forth in the Regulatory Agreement.

5. TERM OF THIS AGREEMENT

5.1 Term. The Total Density Bonus Agreement Term shall commence on the Effective Date and unless terminated earlier, shall continue until the expiration of the Total Affordability Term with respect to each Affordable Unit. Upon satisfaction of the foregoing, the City shall, at the request of Owner, record a termination of the Regulatory Agreement and this Agreement, in the form attached hereto as Exhibit "G". The recording of such a termination document shall remove the Regulatory Agreement and this Agreement as an encumbrance upon title to the entire Property. Notwithstanding any other provision herein to the contrary, Owner's indemnity obligations under Section 6.3 hereof shall survive the termination of this Agreement for a period of five (5) years from the date thereof with respect to any events that occurred prior to the expiration of the Total Affordability Term.

5.2 Release of For-Sale Property from Regulatory Agreement and Density Bonus Agreement. Following recordation of the Final Tract Map, City shall terminate and reconvey this Agreement and the Regulatory Agreement as to the portion of the Property upon which the for-sale units are to be constructed.

6. DEFAULT; INDEMNIFICATION

6.1 Default. Failure or delay by any Party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other Party specifying the default (or such other period specifically provided herein) constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting Party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure has expired. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

6.2 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

6.3 Indemnification. Owner shall defend (with counsel acceptable to the City, which acceptance shall not be unreasonably withheld), indemnify and hold harmless City and its officers, officials, agents, employees and representatives (collectively, “**Indemnitees**”) from and against any loss, liability, claim, or judgment (collectively, “**claims**”) arising from any act or omission of Owner in connection with this Agreement, including, without limitation, liability for damage to any third party or claims for personal injury and property damage to any third party, which may arise out of or in connection with the direct or indirect activities of the Owner with respect to the Project, except to the extent arising from the gross negligence or willful misconduct of one or more Indemnitee. Owner agrees to and will defend the Indemnitees from any third-party claim, action, or proceeding to attack, set aside, void, or annul an approval by Indemnitees concerning this Agreement or the development of the Project or to determine the reasonableness, legality or validity of any condition attached thereto. The Owner’s indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against Indemnitees and costs of suit, claim or litigation, including without limitation reasonable attorneys’ fees, penalties and other costs, liabilities and expenses incurred by Indemnitees in connection with such proceeding. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. Owner’s obligation to indemnify City hereunder shall survive any termination of this Agreement.

7. ASSIGNMENT

7.1 Assignment By Owner.

7.1.1 Assignment to Affiliate. Owner shall have the right to assign its rights and obligations under this Agreement to an Owner Affiliate in connection with a transfer of all or any portion of Owner’s interest in the Property to such Owner Affiliate. In the event of any such assignment, (i) assignee shall be liable for performance of the obligations of Owner after the date of assignment with respect to the portion of the Property so transferred and (ii) following written notice to City and delivery of an Assignment and Assumption Agreement with respect to

the rights and obligations set forth herein, Owner shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement applicable solely to the portion of the Property so transferred.

7.1.2 Assignment to Third Party. Subject to the terms of this Section 7.1.2, Owner shall have the right to sell or transfer the Property or any portion thereof, and assign its interests in this Agreement, to a non-affiliate third party (any of the foregoing, a “**Transfer**”). Not less than sixty (60) days prior to any Transfer, Owner shall notify City, in writing, of the proposed Transfer, and shall provide to City an assignment and assumption agreement pursuant to which the transferee will agree to assume all of the obligations of Owner hereunder for review and approval by City, such approval not to be unreasonably withheld, conditioned or delayed. Upon notice from the City (which notice must be provided within ten (10) days following Owner’s notification of City concerning the proposed transfer), the transferee may be required to meet with City’s Director of Community Development regarding the implementation of the affordable housing obligations hereunder prior to the City countersigning or otherwise approving any such assignment and assumption agreement. The City hereby agrees that it shall be unreasonable for the City to withhold consent to any proposed transferee with assets of at least \$100,000,000.00 (as the same may be reasonably adjusted from time-to-time for inflation relying on a base year of 2025) and experience operating residential housing projects.

Notwithstanding the foregoing, Owner shall not be required to obtain City’s prior written approval for each individual lease entered into between Owner and a tenant of a Unit during the Total Density Bonus Agreement Term (so long as Owner complies with the terms and conditions of this Agreement and the form of the lease for Affordable Units complies with the Regulatory Agreement).

7.1.3 Release of Assigning Owner. Upon any sale, transfer or assignment that complies with the provisions of Section 7.1.1 or 7.1.2 above, City shall deliver to Owner upon request a release in writing by City, which release shall be provided by City upon the full satisfaction by Owner of the following conditions:

- (a) Owner no longer has a legal or equitable interest in all or any part of the portion of the Property or Project assigned.
- (b) Owner is not then in default under this Agreement.
- (c) Owner has provided City written evidence of the assignment and assumption of the rights, duties and obligations arising under or from this Agreement.

7.1.4 Subsequent Assignment. As used in this Agreement, the term “**Owner**” shall be deemed to include any such transferee or assignee after the date such transfer or assignment occurs in compliance with this Agreement.

7.1.5 Unpermitted Assignments Void. Any sale, transfer, or assignment made in violation of this Agreement by either Party shall be null and void, and the Parties shall have the right to pursue any right or remedy at law or in equity to enforce the assignment provisions in this Section 7.

7.2 Assignment by City. City shall have the right to assign in its sole and absolute discretion all or any part of its interests in this Agreement without Owner's approval to any legal entity controlled by City. City shall provide notice to Owner of any such assignment.

7.3 Covenants Run with the Land. The Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Owner and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns; shall inure to the benefit of City and its successors and assigns; and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by City, which real property shall be deemed the benefited property of such covenants, and this Agreement shall create equitable servitudes and covenants appurtenant to all real property owned by City and running with the Property in accordance with the provisions of Civil Code Section 1468. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of City. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Owner's interest in the Property is rendered less valuable thereby. Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the residents of City and by furthering the health, safety, and welfare of the residents of City. Owner hereby further declares its understanding that the covenants set forth in this Agreement are required by the State Density Bonus Law and Chapter 17.58 of the Lake Elsinore Municipal Code to run with the land and the Property for the duration of the Total Density Bonus Agreement Term.

8. MISCELLANEOUS

8.1 Notices.

8.1.1 Delivery. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as FedEx), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider. All notices shall be addressed as follows:

If to City: City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Manager

With a copy to: Barbara Leibold
City Attorney
Leibold McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618

If to OWNER: 3rd & Dexter, LLC
30767 Gateway Place
Unit 144
Rancho Mission Viejo, CA 92694
Attn: James Walters

8.1.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a Party or an officer or representative of a Party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

8.2 Entire Agreement. This Agreement and all of its exhibits and attachments hereto and agreements referenced herein set forth and contain the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

8.3 Amendments. The terms of this Agreement may only be modified or amended by an instrument in writing executed by each of the Parties hereto; provided, however, the City hereby authorizes the City Manager or his/her designee to make necessary corrective amendments or modifications to this Agreement on behalf of the City.

8.4 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

8.5 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against

the drafting party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

8.6 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.7 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

8.8 Joint and Several Obligations. Except as otherwise set forth in Section 8.9 below, if at any time during the term of this Agreement the same portion of the Property and/or Project is owned by more than one Owner, all obligations of such Owner under this Agreement shall be joint and several with respect to the portion of the Property and Project that are collectively owned, and the default of any such Owner shall be the default of all such Owners.

8.9 Obligations upon Transfer. If at any time during the term of this Agreement, ownership in portions of the Property are separated, each Owner of any portion of the Property shall be solely and only liable for performance of such Owner's obligations applicable to the portion of the Property under this Agreement as specified in the applicable assignment agreement.

8.10 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

8.11 Computation of Days. Unless otherwise specified in this Agreement, use of the term "days" shall mean calendar days. For purposes of this Agreement, "business days" shall mean every day of the week that City Hall of the City is open for business to the general public.

8.12 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

8.13 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, casualties, wars, riots or similar hostilities, strikes walk-outs and other labor difficulties beyond the Party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), government regulations, restrictions or mandates, or other causes beyond the Party's control. If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance.

8.14 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

8.15 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to

this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

8.16 Jurisdiction and Venue. Any legal actions arising under this Agreement or brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement must be instituted in the Superior Court of the County of Riverside, State of California, or in any other court in that county, and the Parties waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.17 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the Owner of such property.

8.18 Further Actions and Instruments; Administration of Agreement. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the uses or development permitted on the Property. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

8.19 Estoppel Certificate. Within thirty (30) business days following a written request by any of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to this Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured defaults in the performance of the requesting Party except as may be represented by the requesting Party. The preparation and issuance of estoppel certificates under this Section 8.17 shall be at no expense to City.

8.20 Subordination. City's approval of the necessary land use entitlements that authorize Owner to develop, operate, and maintain the Project was based, in part, upon Owner's obligation to provide no less than the number of Affordable Units required pursuant to the State Density Bonus Law and the terms and conditions of this Agreement. For the Total Density Bonus Agreement Term, this Agreement and the Regulatory Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing (each a "**Deed of Trust**") recorded against the portion of the Property upon which the Rental Units are to be constructed. Notwithstanding the preceding sentence, a Deed of Trust obtained by Owner from a reputable lender (collectively, "**Lenders**") that is regularly engaged in the business of making or owning loans of similar types to the financing provided to Owner for the Property (hereinafter, the "**Priority Obligations**"), shall, upon request of Owner or the beneficiary of a Deed of Trust securing any Priority Obligation (hereinafter, the "**Holder**"), have priority over this Agreement if (i) Holder obtains City's approval, which shall not be unreasonably withheld or delayed, prior to executing the Deed of Trust securing a Priority Obligation, and (ii) Holder and City execute in recordable form a subordination agreement in such form (or other necessary document) as may be reasonably approved by the City Attorney and Holder, confirming subordination of this Agreement to the lien of the Deed of Trust securing the Priority Obligation. The City Manager shall have the authority on behalf of City to provide the approval required under clause (i) above and to execute a subordination agreement in such form as reasonably approved by the City Attorney. Any subordination agreement must preserve the affordability requirements herein in the event of a default on the Deed of Trust securing a Priority Obligation, it being expressly understood and agreed by Owner that state law requires preservation of affordability covenants in connection with the approval of this density bonus project.

8.21 Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to receive, in addition to the relief granted, actual and reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the attorneys of the prevailing Party in the conduct of the litigation. The court may set such fees in the same action or in a separate action brought for that purpose.

8.22 Authority to Execute. The person or persons executing this Agreement on behalf of either Party warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their agency, corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

8.23 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth in the preamble above.

“CITY”

CITY OF LAKE ELSINORE, a California municipal corporation

By: _____
Name: Jason Simpson
Its: City Manager

ATTEST:

Candice Alvarez, MMC , City Clerk

APPROVED AS TO FORM

David H. Mann, Acting City Attorney

“DEVELOPER”

3RD & DEXTER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

TO DENSITY BONUS HOUSING AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

[to come]

DRAFT

EXHIBIT “B”

**TO DENSITY BONUS HOUSING AGREEMENT
MAP SHOWING PROPERTY AND ITS LOCATION**

[Attached]

EXHIBIT “C”

TO DENSITY BONUS HOUSING AGREEMENT

Health and Safety Code Sections 50052.5, 50053, 50105, and 50093

[Attached]

DRAFT

CALIFORNIA HEALTH AND SAFETY CODE SECTIONS:

50052.5

(a) For any owner-occupied housing that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, “affordable housing cost” with respect to lower income households may not exceed 25 percent of gross income.

(b) For any owner-occupied housing that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, “affordable housing cost” may not exceed the following:

(1) For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for household size appropriate for the unit.

(2) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for household size appropriate for the unit.

(3) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for household size, the product of 30 percent times 70 percent of the area median income adjusted for household size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for household size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.

(4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for household size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for household size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

(c) The department shall, by regulation, adopt criteria defining, and providing for determination of, gross income, adjustments for household size appropriate to the unit, and housing cost for purposes of determining affordable housing cost under this section. These regulations may provide alternative criteria, where necessary to be consistent with pertinent federal statutes and regulations governing federally assisted housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing development.

(d) With respect to moderate- and lower income households who are tenants of rental housing developments and members or shareholders of cooperative housing developments, or limited equity cooperatives “affordable housing cost” has the same meaning as affordable rent, as defined in Section 50053.

(e) Regulations of the department shall also include a method for determining the maximum construction cost, mortgage loan, or sales price that will make housing available to an income group at affordable housing cost.

(f) For purposes of this section, “area median income” shall mean area median income as published by the department pursuant to Section 50093.

(g) For purposes of this section, “moderate income household” shall have the same meaning as “persons and families of moderate income” as defined in Section 50093.

(h) For purposes of this section, and provided there are no pertinent federal statutes applicable to a project or program, “adjusted for household size appropriate to the unit” shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four- bedroom unit.

50053

(a) For any rental housing development that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, “affordable rent” with respect to lower income households shall not exceed the percentage of the gross income of the occupant person or household established by regulation of the department that shall not be less than 15 percent of gross income nor exceed 25 percent of gross income.

(b) For any rental housing development that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, “affordable rent,” including a reasonable utility allowance, shall not exceed:

(1) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for household size appropriate for the unit.

(2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for household size appropriate for the unit.

(3) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for household size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for household size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(4) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for household size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for household size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(c) The department’s regulation shall permit alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to regulations adopted under subdivision (f) of Section 50462. The department shall, by regulation, adopt criteria defining and providing for determination of gross income, adjustments for household size appropriate to the unit, and rent for purposes of this section. These regulations may provide alternative criteria, where necessary, to be consistent with pertinent federal statutes and regulations governing federally assisted rental and cooperative housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing developments. For purposes of this section, “area median income,” “adjustments for household size appropriate to the unit,” and “moderate- income household” shall have the same meaning as provided in Section 50052.5.

50105

(a) “Very low income households” means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for very low income households for all geographic areas of the state at 50 percent of area median income, adjusted for household size and revised annually.

(b) “Very low income households” includes extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, “area median income” means the median household income of a geographic area of the state.

50093

“Persons and families of low or moderate income” means persons and families whose income does not exceed 120 percent of area median income, adjusted for household size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business, Consumer Services and Housing, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

“Persons and families of low or moderate income” includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) “Persons and families of low income” or “persons of low income” means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) “Persons and families of moderate income” or “middle-income families” means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) “Persons and families of median income” means persons and families whose income does not exceed the area median income, as adjusted by the department for household size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, “area median income” means the median household income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for household size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5, 50105, and 50106 to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate household size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

EXHIBIT “D”

TO DENSITY BONUS HOUSING AGREEMENT

EXAMPLE OF AFFORDABLE RENT CALCULATION

[Attached]

DRAFT

Example of Affordable Rent Calculation

RENTAL CALCULATION EXAMPLE

For purposes of determining Affordable Rent, Owner shall use an average of estimated housing costs for the next twelve months, which shall include all of the following:

- Use and occupancy of a housing unit and land and facilities associated therewith.
- Any separately charged fees or service charges assessed by the lessor which are required of all tenants (including mandatory renters insurance, if applicable), other than security deposits.
- A reasonable allowance for utilities not included in the above costs, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities do not include telephone and cable service. Such an allowance shall take into consideration the cost of an adequate level of service.
- If applicable, possessory interest taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.

In explanation of the foregoing, Table 1 shows the maximum monthly gross rental housing payment pursuant to Health and Safety Code Section 50053(b)(2) and (b)(4) for Very Low Income households. The gross monthly cost for Very Low Income is the product of 30 percent times 50 percent of the Riverside County Area Median Income adjusted for household size appropriate to the unit, (as shown in Table 1).¹

**Table 1
2025 Very-Low Income Rental
Gross Monthly Housing Payment**

[2025 RENT LEVELS TO BE ADDED PRIOR TO EXECUTION]

Renting a studio unit, payment may not exceed	\$ _____
Renting a 1 bedroom unit, payment may not exceed	\$ _____
Renting a 2 bedroom unit, payment may not exceed	\$ _____
Renting a 3 bedroom unit, payment may not exceed	\$ _____

Should utilities or other costs listed above be paid separately by the tenant, Owner shall deduct from the above maximum monthly payment to arrive at the net rental payment for the unit. Utility cost schedules may be confirmed by the City of Lake Elsinore, which currently utilizes the most recent Utility Allowance Schedule issued by the Housing Authority of the County of Riverside.

The above examples are provided to illustrate how rental housing costs are calculated. Nothing in this Exhibit shall supersede the provisions of this Agreement or the Regulatory Agreement and the provisions of those agreements shall control and be binding on all parties.

¹ “Adjusted for household size appropriate to the unit” shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, and three persons in the case of a two-bedroom unit.

EXHIBIT “E”

TO DENSITY BONUS HOUSING AGREEMENT

Median Income

[Attached]

DRAFT

2025 Income Guidelines

Qualifying Income Levels*

Note: Per State law, only median income adjusted for household size appropriate to the unit may be used for pricing. These incomes are shown in bold.

Income caps for specific categories are provided only for purposes of qualifying household not to determine price/rent.

*Numbers from HCD Memorandum dated April 23, 2025.

DRAFT

EXHIBIT “F”

TO DENSITY BONUS HOUSING AGREEMENT

Regulatory Agreement and Declaration of Covenants and Restrictions

[Attached]

DRAFT

EXHIBIT “G”

TO DENSITY BONUS HOUSING AGREEMENT

Termination and Release

[Attached]

DRAFT

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

(SPACE ABOVE THIS LINE FOR
RECORDER'S USE)

This Termination and Release is recorded at the request and for the benefit of the City of Lake Elsinore and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

TERMINATION AND RELEASE

This TERMINATION AND RELEASE (the “**Termination and Release**”) is being entered into by and between the CITY OF LAKE ELSINORE, a California municipal corporation (the “**City**”), and FAIRBOOK COMMUNITIES LLC, a Nevada limited liability company (the “**Owner**”). City and Owner are hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Owner is the owner in fee of that certain real property located at [INSERT], consisting of approximately _____ net acres of land, and more particularly described in the legal description attached hereto as Attachment 1 and incorporated herein by this reference (the “**Property**”).

B. On or about _____, Owner and City entered into that certain Density Bonus Housing Agreement (the “**Density Bonus Agreement**”) relating to the Property. The Density Bonus Agreement is a public record and is available for inspection and copying in the office of the City Clerk of City located at 130 S. Main Street, Lake Elsinore, California 92530. Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Density Bonus Agreement.

C. The Owner has developed o a four hundred fifty-one (451) unit residential rental community. Pursuant to a City condition of approval for the Project and the Density Bonus Agreement, twenty-two (22) of said units (herein, the “**Affordable Units**”) are required to be rented at Affordable Rent to Very-Low Income Households.

D. Pursuant to the Density Bonus Agreement, Owner was required to execute and record that certain Regulatory Agreement and Declaration of Covenants and Restrictions (the “**Regulatory Agreement**”), recorded on _____, 20 , as Instrument No. _____ of the Official Records for Riverside County, California. The Regulatory Agreement was recorded against the Property to memorialize the terms and conditions of the rental restrictions on the Affordable Units within the Project and to memorialize

and impose the restrictive covenants, including the affordability covenants that no less than twenty-two (22) Units were to be rented at Affordable Rent to Very-Low Income Households during the Total Affordability Term as set forth in the Density Bonus Agreement.

E. Pursuant to the Density Bonus Agreement and Regulatory Agreement, upon the expiration of the Total Affordability Term with respect to each Affordable Unit, Owner and City are required to execute and record or cause to be executed and recorded for the benefit of the Property this Termination and Release, whereupon the Property and Project would be released from the terms and conditions of the Regulatory Agreement and Density Bonus Agreement, and Owner would be released from all obligations thereunder except as to the Survival Obligations as defined below.

COVENANTS

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, Owner and City agree as follows:

1. From and after the date that this Termination and Release is recorded, neither the Property nor the Project shall be bound or burdened by any of the provisions set forth or referred to in the Regulatory Agreement or Density Bonus Agreement; provided, however, Owner shall continue to be bound by the obligations in the Density Bonus Agreement and Regulatory Agreement referenced in Section 6 of the Density Bonus Agreement as surviving the termination (“**Survival Obligations**”).

2. City shall cooperate in executing any further or additional documents, in recordable form as necessary, as may be reasonably requested by any existing or prospective owner or holder of a mortgage or deed of trust of, in, or to any of the Property and/or Project to confirm said Termination and Release. The form of any such additional documents shall be prepared by such existing or prospective owner or holder at no cost to City, and shall be in a form approved by the City Attorney.

3. City does hereby certify that Owner is released from any further obligations set forth in the Density Bonus Agreement or the Regulatory Agreement except for the Survival Obligations.

4. This Termination and Release shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction or operation of work on the Property, or any part thereof.

[Signatures on next page]

IN WITNESS WHEREOF, City has executed this Termination and Release as of this _____ day of _____, _____.

“CITY”

CITY OF LAKE ELSINORE,
a California municipal corporation

By: _____
_____, City Manager

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

On behalf of Fairbrook Communities LLC, a Nevada_limited liability company, [OR SUCCESSOR OR ASSIGNEE] I hereby consent to the recordation of this Termination and Release for the benefit of the Property described herein.

Dated: _____

“OWNER”

[INSERT],
a_____limited liability company [OR
SUCCESSOR OR ASSIGNEE]

By: _____
Its: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**ATTACHMENT "1" TO TERMINATION AND
RELEASE OF LEGAL DESCRIPTION OF PROPERTY**

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California,
described as follows:

[INSERT]

DRAFT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

Project: Dexter Village Apartments

(Space Above For Recorder's Use)

This Regulatory Agreement and Declaration of Covenants and Restrictions is recorded at the request and for the benefit of the City of Lake Elsinore and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

(Dexter Village)

This REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS (Dexter Village) ("Agreement") is entered into as of this _____ day of _____, 2025, by and between the CITY OF LAKE ELSINORE, a California municipal corporation (the "City"), and 3RD & DEXTER, LLC, a Delaware limited liability company ("Owner"). City and Owner are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party".

R E C I T A L S

A. The City is a municipal corporation organized and existing pursuant to the laws of the State of California.

B. Owner and/or Owner's members are owners and operators of multifamily rental and homeownership projects in California.

C. On or about _____, 202__, Owner submitted a complete or deemed complete housing project in accordance with the City's applicable municipal codes, regulations, and policies, which may generally be described as follows: a four hundred fifty-one (451) unit residential development, consisting of two hundred thirty (230) rental apartment units, eighty-four (84) condominium units, and one hundred thirty-seven (137) single family units (collectively, the "Project").

D. The Project is located on Dexter Avenue between 2nd Street and 3rd Street in the City of Lake Elsinore, County of Riverside, State of California, as more particularly described in

the legal description attached hereto as Attachment 1 and more particularly depicted in Attachment 2, both of which exhibits are incorporated herein by this reference (the “Property”).

E. Pursuant to California law (Government Code Sections 65915-65918) (the “State Density Bonus Law”) and implementing ordinance in Chapter 17.58 of the City’s Municipal Code (the “City Density Bonus Ordinance”), applicants of residential projects that include specified levels of affordable housing are entitled to apply for and receive certain density bonuses and additional incentives that contribute significantly to the economic feasibility of lower income housing.

F. The Project complies with the affordable housing requirements set forth in the State Density Bonus Law as may be implemented through the City Density Bonus Ordinance. For purposes of this Agreement, the Project is a “housing development” as defined in the State Density Bonus Law.

G. On or about the date hereof, the City and Owner entered into that certain Density Bonus Housing Agreement (Dexter Village), which will be recorded concurrently herewith in the Official Records of Riverside County, California (“Density Bonus Agreement”). Among other terms and conditions, the Density Bonus Agreement memorializes the density bonus, incentives, and other provisions under the State Density Bonus Law applicable to the Project.

H. This Agreement (which includes by this incorporation by reference the Attachments and Exhibits) is required to be entered into under the Density Bonus Agreement and to be binding upon the Owner to implement, among the other terms and conditions set forth herein, the affordability requirements for the Project in exchange for receiving the density bonus, incentives, and other provisions applicable to the Project, as required by the State Density Bonus Law and as may be implemented through the City’s Density Bonus Ordinance.

I. It is the intent of the City and Owner that Owner’s interests in the Property shall be subject to this Agreement and that the terms hereof shall be binding on the Owner and its successors in interest in the Property approved pursuant to the Density Bonus Agreement, for so long as this Agreement shall remain in effect pursuant to the Density Bonus Agreement.

J. The development of the Project on the Property pursuant to this Agreement and Density Bonus Agreement, and the fulfillment generally of this Agreement and Density Bonus Agreement, are in the vital and best interests of the City, and the welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Definitions and Attachments.

1.1 Definitions. In addition to the terms that may be defined elsewhere in this Agreement, the following terms when used in this Agreement shall be defined as follows:

1.1.1 “*Adjusted for family size appropriate to the unit*” shall have the meaning set forth in Health and Safety Code section 50052.5, and established and published from time to time for *state* income limits by HCD in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

1.1.2 “*Affordable Rent*” means the maximum Monthly Rent that may be charged to and paid by an Eligible Affordable Household for the Affordable Units, as determined annually, as calculated pursuant to Health and Safety Code Section 50053, and established and published from time to time for state income limits by HCD in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

1.1.3 “*Affordable Unit*” means individually and “*Affordable Units*” means, collectively, twenty-two (22) Rental Units, which shall be comprised of fourteen (14) 1-bedroom Units available for Very Low Income Households; six (6) 2-bedroom Units available for Very Low Income Households, and two (2) 3-bedroom Units available for Very Low Income Households.

1.1.4 “*Agreement*” and “*Regulatory Agreement*” means this Agreement and all attachments hereto.

1.1.5 “*Base Units*” means the four hundred twenty-two (422) residential Units that would have been authorized on the Property without application of the State Density Bonus Law.

1.1.6 “*City*” means the City of Lake Elsinore, California, and the City’s successors and assigns.

1.1.7 “*City Council*” means the City Council of the City.

1.1.8 “*City Attorney*” means the City Attorney for the City.

1.1.9 “*City Manager*” means the City Manager, or authorized designee acting on behalf of the City Manager to administer this Agreement, for the City.

1.1.10 “*City Monitoring Fee*” means an annual monitoring fee payment to the City in the amount of \$74 per Affordable Unit, as adjusted by the lesser of 3.5% or the percentage annual increase in the United States City Average All Items for All Urban Consumers (CPI-U, 1982-84=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor; if the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical reasonably selected by City shall be used for making such computations) per annum commencing in the year the Affordable Unit receives a certificate of occupancy, to be paid annually by Owner to defray the costs incurred by City for monitoring

compliance with the affordability covenants set forth in this Agreement and the Density Bonus Agreement, as the same may be adjusted by the City Manager from time to time.

1.1.11 “*Density Bonus Agreement*” means the agreement referenced in Recital G.

1.1.12 “*Density Bonus Agreement Term*” means the period during which the Density Bonus Agreement shall be in full force and effect, as provided for in Section 5.1 of the Density Bonus Agreement.

1.1.13 “*Density Bonus Units*” means the twenty-nine (29) Units in addition to the Base Units that Developer shall develop pursuant to the density allowance in the State Density Bonus Law and the terms and conditions of the Density Bonus Agreement, of which Developer would not be entitled to develop without providing the Affordable Units.

1.1.14 “*Effective Date*” has the same meaning as in the Density Bonus Agreement.

1.1.15 “*Eligible Affordable Household*” means a Household that Owner has determined constitutes a Very Low Income Household.

1.1.16 “*Gross Mismanagement*” has the meaning set forth in Section 8.

1.1.17 “*HCD*” means the California Department of Housing and Community Development, or successor state agency responsible for the oversight and administration of State Density Bonus Law as that law relates to statewide programs for low and moderate income households.

1.1.18 “*Home Office*” means a separate area or room in an Affordable Unit used for business purposes and claimed as a business expense pursuant to federal and state income tax laws. Any room used for business purposes shall not reduce the number of bedrooms that are required to be within an Affordable Unit pursuant to this Agreement and the Density Bonus Agreement.

1.1.19 “*Household*” means all persons residing in a Unit.

1.1.20 “*Income Computation and Certification Form*” means the form attached to this Agreement as Attachment 3 used to determine and certify whether a potential renter is an Eligible Affordable Household.

1.1.21 “*Median Income*” means the Riverside County, California area median income, adjusted for family size appropriate to the unit, established and published from time to time, pursuant to Section 8 of the United States Housing Act of 1937, by HCD in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

1.1.22 “*Monthly Rent*” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants,

other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the Affordable Unit and/or land and facilities associated therewith by a public or private entity other than Owner. In the event that all utility charges are paid by the Owner rather than the tenant, no utility allowance shall be added to the rent for purposes of calculating Monthly Rent. “Monthly Rent” shall include any other monthly (or monthly pro-rated) costs, fees, or payments that HCD requires pursuant to duly adopted California Code of Regulations to be included as part of “affordable rent” for the use and occupancy of an Affordable Unit.

1.1.23 “**Project**” means that certain residential development more particularly described in Recital C.

1.1.24 “**Property**” means that certain real property more particularly described in the legal description in Attachment 1 and improvements thereon, and depicted in Attachment 2.

1.1.25 “**Rental Unit**” means a residential dwelling unit within the Project (including Unrestricted Units and Affordable Units) to be rented by Owner pursuant to this Agreement and the Density Bonus Agreement.

1.1.26 “**Residential Unit**” means a residential dwelling unit within the Project (including Unrestricted Units and Affordable Units) to be sold or rented by Owner pursuant to this Agreement and the Density Bonus Agreement.

1.1.27 “**State Density Bonus Law**” means Government Code Sections 65915-65918 as they exist on the Effective Date.

1.1.28 “**Substitute Affordable Units**” means an equivalent Unit in terms of number of bedrooms for an Affordable Unit.

1.1.29 “**Total Affordability Term**” has the meaning set forth in Section 3.1.

1.1.30 “**Unit**” means a “Residential Unit.”

1.1.31 “**Unrestricted Units**” means the Residential Units within the Project to be sold or rented by Owner to a Household without restriction.

1.1.32 “**Very Low Income Household**” means a Household whose income does not exceed the qualifying limit for “very low income families” pursuant to Health and Safety Code Section 50105, in which such income does not exceed the state income limit for such household as established and published from time to time by HCD in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

1.2 Attachments. The following documents are attached to, and by this reference made a part of, this Agreement:

- Attachment 1 – Legal Description of Property
- Attachment 2 – Map showing Property and Location of Affordable Units
- Attachment 3 – Income Computation and Certification Form

2. Development of the Project; Affordable Units. Owner shall complete the construction and development of the Project on the Property subject to the entitlements for the Project and the terms and conditions set forth in the Density Bonus Agreement. The Affordable Units shall be dispersed throughout the Rental Units as designated on Attachment 2.

3. Affordability.

3.1 Total Affordability Term for Affordable Units. Each Affordable Unit shall be restricted to use and occupancy by an Eligible Affordable Household for a total period of no less than fifty-five (55) years (the “Total Affordability Term”). The Total Affordability Term for an Affordable Unit shall commence on the date that the Affordable Unit receives all required occupancy permits from the City. By way of explanation of the foregoing two sentences, it is possible that the 55-year affordable period for one Affordable Unit will neither commence on the same date nor terminate on the same date as another Affordable Unit. If the Affordable Units do not concurrently receive on the same day all required occupancy permits from the City, this Agreement shall remain binding and in full force and effect from the date it is required to be recorded pursuant to the Density Bonus Agreement until the date that is fifty-five (55) years after the last Affordable Unit received all required occupancy permits. If the Affordable Units concurrently receive on the same day all required occupancy permits from the City, this Agreement shall remain binding and in full force and effect from the date it is required to be recorded pursuant to the Density Bonus Agreement until the date that is fifty-five (55) years after the Affordable Units received all required occupancy permits.

3.2 City Monitoring Fee. For purposes of defraying the monitoring activities required to ensure compliance with the State Density Bonus Law and affordability covenants set forth in this Agreement, Owner shall pay to City the City Monitoring Fee no later than December 31 of each year. City may deliver to Owner an invoice for the City Monitoring Fee, but in no event shall Owner be relieved of the payment obligation for any City Monitoring Fee even if no invoice is provided. City shall ensure that the funds received from the City Monitoring Fee shall be used to monitor compliance with the State Density Bonus Law and the affordability covenants set forth in this Agreement.

4. Use; Affordability Covenants. For the entire duration this Agreement is recorded and of full force and effect, Owner shall own, operate, and maintain the Project by renting the Affordable Units in accordance with the covenants and conditions of this Section 4.

4.1 General. Owner shall devote the Property for use as a residential community with associated amenities. The Affordable Units shall be rented to and occupied or held available for occupancy only by Eligible Affordable Households at Affordable Rent. The Affordable Units shall be consistent with the requirements and conditions set forth in all City entitlements and approvals for the Project, and the Affordable Units shall be located as identified in Attachment 2 as part of the Project. Subject to City’s written approval, which shall not be unreasonably withheld, Developer may: (a) increase the number of Affordable Units or alter the

unit distribution as provided in this Agreement, provided that the Project has the minimum number of Affordable Units and the minimum distribution thereof as specified in the Density Bonus Agreement; and (b) elect to substitute a Substitute Affordable Unit for an Affordable Unit during the Density Bonus Agreement Term, in which event the affordability requirements hereunder with respect to the Affordable Unit shall be transferred to the Substitute Affordable Unit. The Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities, and shall use the same type and quality of materials, as provided for the unrestricted Rental Units in the Project. Owner shall not permit any of the Units (including the Affordable Units) to be utilized on a transient basis, or as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, trailer court or park, or non-residential uses (other than to maintain a Home Office).

4.2 Occupancy by Eligible Affordable Households. The lease for each Affordable Unit shall provide that it is to be used as the principal residence of that Affordable Unit's Eligible Affordable Household and for no other purpose. The lease for an Affordable Unit may allow an Eligible Affordable Household to have a Home Office so long as the Affordable Unit is the Eligible Affordable Household's principal residence. The lease shall further provide that an Eligible Affordable Household shall not lease or sublease its Affordable Unit or its right of occupancy.

4.3 Occupancy Limits. The number of persons permitted to occupy each Affordable Unit shall not exceed the maximum occupancy permitted pursuant to the requirements of the United States Department of Housing and Urban Development, which as of the date of this Agreement is two persons per bedroom, plus one person (e.g., for a two bedroom unit the maximum number of persons residing in the unit can be five persons). The lease for each Affordable Unit shall include a provision limiting the number of persons permitted to occupy each Affordable Unit in accordance with the preceding sentence and Owner shall enforce such occupancy restrictions.

4.4 Determination of Eligible Affordable Household Status. Immediately prior to any occupancy of an Affordable Unit, Owner shall obtain an Income Computation and Certification Form from each applicant for an Affordable Unit dated the date of initial occupancy of the Affordable Unit by such applicant. In addition, Owner shall provide such further information as may be reasonably required by City for purposes of verifying a tenant's status as an Eligible Affordable Household. Owner shall verify that the income provided by an applicant is accurate by obtaining the following as a part of the verification process for all proposed tenants eighteen (18) years of age or older: (a) the Social Security Number (if available) of the proposed tenant(s); (b) copies of the federal and state income tax returns if filed by the proposed tenant(s) for the prior calendar year; (c) copies (if available) of the two most current wage earning statements of the proposed tenant(s); (d) a certification as to the income and family size of the applicant Household; and (e) any other information that City may reasonably require to verify the income of the proposed tenant(s). Owner shall maintain in its records each Income Computation and Certification Form obtained pursuant to this Section and Section 4.5 for a minimum period of five (5) years.

4.5 Recertification. Within sixty (60) days prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Affordable Household, and on each

anniversary date thereafter, or if preferred by Owner and approved in writing by City, within sixty (60) days prior to January 1 of each year, Owner shall recertify the income of such Eligible Affordable Household by obtaining a completed Income Computation and Certification Form based upon the current income of each occupant of the Affordable Unit. In the event that recertification demonstrates that a Household's income exceeds the maximum income permitted for Eligible Affordable Household status, Owner shall perform either of the following: (i) To the extent permitted by applicable law, the occupants' lease shall not be renewed and said occupants shall be required to vacate the unit within one hundred eighty (180) days after the recertification; or (ii) the next available Unrestricted Unit in the Project shall be leased as an Affordable Unit at Affordable Rent to an Eligible Affordable Household so that the Project will be in compliance with the covenants and conditions of this Agreement, and the previous Affordable Unit shall be redesignated as an Unrestricted Unit and the occupants thereof may be charged the amount of rent for an Unrestricted Unit.

4.6 Leasing Affordable Units. The Affordable Units shall be available for rental on a continuous basis and Owner shall not give preference to any particular class or group in renting Affordable Units, except to the extent that the Affordable Units are required to be rented to Eligible Affordable Households. Owner shall maintain a list of persons who have applied for an Affordable Unit and, should multiple tenants be equally eligible (as to income, credit history, and other nondiscriminatory criteria) and qualified to rent an Affordable Unit, Owner shall rent available Affordable Units to Eligible Affordable Households on a first qualified (with reasonable efforts made to qualify applicants in the order that the applications are received), first offered basis, or pursuant to a lottery system. Owner shall use commercially reasonable efforts to lease Affordable Units that become available as quickly as possible. Owner shall market the Affordable Units to the residents of the City on a nonexclusive basis and to the extent permitted by applicable fair housing laws and regulations.

4.7 Rental Agreement. The form of the lease agreement that will be entered into between Owner and Eligible Affordable Households shall be reasonably approved by City prior to the rental or leasing of any of the Affordable Units. Once approved, no material changes shall be made to the form of the lease agreement relating to the total rent to be paid by an Eligible Affordable Household, the qualification of an Eligible Affordable Household, or usage of the Affordable Unit, without City's prior written approval, which shall not be unreasonably withheld as long as the proposed changes are consistent with implementing the terms and conditions of the Density Bonus Agreement. The lease agreement shall obligate the Eligible Affordable Households to comply with the provisions set forth in this Agreement, and an Eligible Affordable Household who violates such requirements shall be in default under the rental agreement. Each lease agreement with an Eligible Affordable Household shall include a provision to the effect that the Owner has relied on the information provided by the Eligible Affordable Household on the Income Computation and Certification Form and all other supporting information supplied by the Eligible Affordable Household in determining qualification for occupancy of the applicable Affordable Unit, and that any material misstatement in such certification (whether or not intentional) shall be cause for immediate termination of such lease agreement. In addition, each lease agreement shall contain a provision that failure to cooperate with the annual recertification process may disqualify the Eligible Affordable Household as such and will be cause for immediate termination of such lease agreement. Any termination shall be subject to fair housing laws and other laws designed to protect the rights of tenants, of which Owner shall be obligated to follow and comply.

5. Termination and Release from Regulatory Agreement. The covenants set forth in this Agreement shall remain binding and in effect for the portion of the Property upon which the Rental Units are to be constructed from the date of its recording until the date the executed Termination and Release of Regulatory Agreement is recorded in the Official Records for Riverside County, California. The Termination and Release of Regulatory Agreement shall be executed and recorded pursuant to the terms and conditions set forth in Section 5 of the Density Bonus Agreement. Following recordation of the Final Tract Map, City shall terminate and reconvey this Agreement as to the portion of the Property upon which the for-sale units are to be constructed pursuant to Section 5.2 of the Density Bonus Agreement.

6. No Discrimination. Owner shall not discriminate on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, or rental, or in the use, occupancy, or enjoyment of the Property, nor shall Owner itself, or any person claiming under or through it, establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

7. Maintenance of Property. For the Density Bonus Agreement Term, Owner shall maintain or cause to be maintained the Property and all improvements on the Property in a good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction. City places prime importance on quality maintenance to ensure that residential developments which include affordable units within the City are not allowed to deteriorate due to substandard maintenance. In addition, Owner shall keep the Property free from all graffiti and any accumulation of debris or waste material. Owner shall make all repairs and replacements reasonably necessary to keep the improvements in first class condition and repair, reasonable wear and tear excepted, and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials. In the event that Owner breaches any of the covenants contained in this Section 7, and such default continues for a period of ten (10) days after written notice from a City or such longer period of time as is reasonably necessary to correct the condition (with respect to landscaping, graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from City or such longer period of time as is reasonably necessary to correct the condition (with respect to building improvements), then City in addition to whatever other remedy it may have at law or in equity shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a five percent (5%) administrative charge, which amount shall be promptly paid by Owner to City upon demand.

8. Management. For the Density Bonus Agreement Term, Owner shall manage or cause to be managed the Project in accordance with this Agreement and Density Bonus Agreement.

In the event of “Gross Mismanagement” (as that term is defined below), City shall have the authority to require that such Gross Mismanagement cease immediately and that management of the Property comply with this Agreement and the Density Bonus Agreement. City shall provide written notice to Owner of the event(s) of Gross Mismanagement occurring and Owner shall have thirty (30) days after receipt of such notice (or such shorter period as specified in this Agreement, or longer period as is reasonably necessary to correct the condition) to cure, correct, or remedy the event(s) of Gross Mismanagement identified in City’s notice and to notify City of the cure, correction, or remedy. For purposes of this Agreement the term “Gross Mismanagement” shall mean management of the Project in a manner which violates the terms of this Agreement and/or the Density Bonus Agreement and shall include, but is not limited to, the following:

- i. Knowingly allowing an Affordable Unit to be occupied by a person or Household that does not qualify as an Eligible Affordable Household;
- ii. Knowingly requiring a tenant of an Affordable Unit to pay more than Affordable Rent;
- iii. Allowing the prescribed occupancy levels to be exceeded without taking immediate action to stop such overcrowding; or
- iv. Failure to maintain the Property in the manner prescribed in Section 7.

9. Records. Owner shall maintain complete and accurate records pertaining to the Affordable Units for a period of no less than five (5) years (unless a longer period of time is expressly set forth herein), and shall permit any duly authorized representative of City to inspect the books and records of Owner pertaining to the Affordable Units within two (2) business days of a request to do so.

10. Right to Inspect. City shall have the right to inspect the Property and the Affordable Units for purposes of assuring compliance with this Agreement during normal business hours on not less than seventy-two (72) hours written notice.

11. Indemnification. In addition to any other indemnity provided in this Agreement or the Density Bonus Agreement, Owner shall defend (with counsel of City’s choosing), indemnify and hold harmless City and its officers, officials, members, agents, employees, representatives, and volunteers (collectively, “Indemnitees”) from and against any loss, damage, costs, expenses, liability, claim, or judgment (collectively, “claims”) relating to or in connection with the operation of the Project and Residential Units, or Owner’s performance under this Agreement, except to the extent such claims are caused by the gross negligence or willful misconduct of one or more Indemnitees. Owner’s indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against Indemnitees and costs of suit, claim or litigation, including without limitation reasonable attorneys’ fees, penalties and other costs, liabilities and expenses incurred by Indemnitees in connection with such proceeding. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. Owner’s obligation to indemnify City hereunder shall survive any termination of this Agreement.

12. Insurance. Upon completion of construction of the Project and in no event later than the date upon which the first Residential Unit has received all required occupancy permits from the City and for the duration of this Agreement, Owner shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to City, of insurance policies meeting the minimum requirements set forth in this Section 12.

12.1 Types of Insurance Policies. The insurance policies to be maintained by Owner upon the date specified above and for the duration of the term of this Agreement are as follows:

- i. Commercial General Liability insurance with respect to the Property and the operations of or on behalf of Owner, in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence combined single limit (which may be achieved with the use of umbrella/excess liability policies) including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as City may reasonably require from time to time; provided, that the percentage increase in coverage shall not be required to exceed the percentage increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, Riverside-San Bernardino-Ontario Average, All Items (1984 = 100) (the "Index"), from and after the date of this Agreement, or, if said Index is discontinued, such official index as may then be in existence and which is most nearly equivalent to said Index (the "CPI Adjustment"). Unless otherwise approved in advance by the City, the insurance to be provided by Owner may provide for a deductible or self-insured retention of not more than Fifty Thousand Dollars (\$50,000.00), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. City and its officers, officials, members, employees, volunteers, agents, and representatives shall be named as additional insureds under such policy or policies.
- ii. With respect to the improvements and any fixtures and furnishings to be owned or leased by Owner on the Property, all risk property insurance against fire, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Riverside County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. City shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

12.2 Policy Requirements. A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to City on or prior to the date specified in Section 12 above, and thereafter, upon renewals, not less than ten (10) days following the expiration of coverage. City may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder. In addition to the requirements set forth in Section 12.1, each insurance policy required to be carried by Owner pursuant to this Agreement:

- i. shall be primary insurance and not contributory with any other insurance which City or its officers, officials, members, employees, volunteers, agents, or representatives may have;
- ii. shall contain no special limitations on the scope of protection afforded to City or its officers, officials, members, employees, volunteers, agents, and representatives;
- iii. shall be “per occurrence” rather than “claims made” insurance;
- iv. shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability;
- v. to the extent commercially available on a reasonable basis, shall provide that the policy will not be cancelled by the insurer or Owner unless there is a minimum of thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested to City;
- vi. shall be written by a California approved insurer with a Best rating of not less than A:VII;
- vii. to the extent commercially available on a reasonable basis, shall be endorsed to state that any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City and its officers, officials, members, employees, volunteers, agents, and representatives; and
- viii. shall contain a waiver by the insurer of any right to subrogation against City, and its officers, officials, members, employees, volunteers, agents, and representatives which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of City or its officers, officials, members, employees, agents, or representatives.

13. Repair of Damage. If any improvements on the Property shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner shall

promptly proceed to obtain insurance proceeds and, provided the insurance proceeds are sufficient to restore the Property and the insurance proceeds are made available therefor by the secured lenders, take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the improvements to substantially the same condition as the improvements are required to be maintained pursuant to the Density Bonus Agreement and this Agreement, and Owner shall complete the same as soon as possible thereafter so that the Project can continue to be operated and occupied in accordance with the Density Bonus Agreement and this Agreement. In no event shall the repair, replacement, or restoration period exceed two years from the date of the destruction subject to events of force majeure unless City, in its reasonable discretion, approves a longer period of time; provided however, that to the extent there are delays caused by the City or any other governmental agency in processing permits, inspections or any other City police power responsibilities, or there are delays by the insurance company in processing and providing payment for a claim, each day of delay shall extend the time period by one day in which Owner shall carry out its obligations pursuant to this section. Nothing in this Section 13 is or shall be deemed to be a waiver or delegation away of any of City's police power and ability to enforce the law, policies, and regulations enacted pursuant thereto, including but not limited to the City's power and procedures to issue permits, conduct inspections, or any other police power responsibility that applies to the Property and Project.

14. Defaults and Remedies.

14.1 Defaults. Failure or delay by any Party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other Party specifying the default (or such other period specifically provided herein) constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting Party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure has expired. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

14.2 Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

15. Miscellaneous.

15.1 Entire Agreement. This Agreement and the Density Bonus Agreement and all of the exhibits and attachments thereto set forth and contain the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein or therein. No testimony or evidence of any such representations, understandings or

covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

15.2 Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party.

15.3 Assignment and Transfer by Owner.

15.3.1 Prohibited Transfers or Assignments. The qualifications and identity of Owner are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement. Except for the lease of a Rental Unit or the sale to a homeowner of a condominium or single-family Residential Unit, Developer may sell, transfer, or assign the Property or Project in whole or in part, or transfer or assign Developer's rights and obligations in this Agreement, solely in accordance with Section 7.1 of the Density Bonus Agreement. Developer shall: (i) notify City in writing of the sale, transfer, or assignment of all or any portion of the Property, Project, and/or this Agreement, and (ii) deliver to City an assignment and assumption agreement (or other agreement) in a form approved by City and executed by Developer and its transferee/assignee pursuant to which Developer's transferee/assignee assumes all of Developer's covenants and obligations set forth herein with respect to the Property or the portion thereof so transferred, and (iii) otherwise comply with the terms and conditions of Section 7.1 of the Density Bonus Agreement.

15.3.2 Release of Assigning Owner. Upon any sale, transfer, or assignment that complies with the provisions of Section 15.3.1 above, City shall deliver to the transferring/assigning Owner upon request a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring/assigning Owner of the following conditions:

- i. Owner no longer has a legal or equitable interest in all or any part of the Property or Project assigned;
- ii. Owner is not then in default under this Agreement; and
- iii. Owner has provided City with written evidence of the assignment and assumption of the rights, duties and obligations arising under or from this Agreement.

15.3.3 Subsequent Assignment. As used in this Agreement, the term "Owner" shall be deemed to include any such transferee or assignee after the date such sale, transfer, or assignment occurs in compliance with this Agreement.

15.3.4 Unpermitted Assignments Void. Any sale, transfer, or assignment made in violation of this Agreement shall be null and void, and City shall have the right to pursue any right or remedy at law or in equity to enforce the provisions of the restriction against unpermitted sales, transfers, or assignments.

15.4 Interpretation; Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

15.5 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

15.6 Third Party Beneficiaries. No person or entity, other than City and Owner, shall have any right of action based upon any provision of this Agreement.

15.7 Notices.

15.7.1 Delivery. As used in this Agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as Fed Ex), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider; or (v) the first business day following the date of transmittal of any e-mail or facsimile, provided confirmation of successful transmittal is retained by the sending Party. All notices shall be addressed as follows:

If to CITY:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Manager

Copy to:

Barbara Leibold
City Attorney
Leibold McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618

If to OWNER: 3rd & Dexter, LLC
30767 Gateway Place
Unit 144
Rancho Mission Viejo, CA 92694

15.7.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

15.8 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

15.9 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

15.10 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.12 Joint and Several Obligations. If at any time during the term of this Agreement, the Property and/or Project is owned, in whole or in part, by more than one Owner, all obligations of such Owner under this Agreement shall be joint and several, and the default of any such Owner shall be the default of all such Owners.

15.13 Computation of Days. Unless otherwise specified in this Agreement or any attachment hereto, use of the term “days” shall mean calendar days. For purposes of this Agreement and all attachments hereto, “business days” shall mean every day of the week except Saturdays, Sundays, and official State holidays as recognized in Government Code Section 19853(a) or successor statute.

15.14 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party’s right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

15.15 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

15.16 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Property and Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development and use of the Property: (a) is for the

benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest approved pursuant to this Agreement during ownership of the Property or any portion thereof.

15.17 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

15.18 Further Actions and Instruments; City Manager Authority. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager, on behalf of the City, to interpret and implement the terms and conditions of this Agreement, to take such other actions as necessary and appropriate to effectuate the terms and conditions of this Agreement, and to negotiate and execute any additional documents, amendments, or agreements as may be necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate their powers and duties under this Agreement to an authorized management level employee of the City.

15.19 Covenants Run with the Land. The Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Owner and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by City which real property shall be deemed the benefited property of such covenants and this Agreement shall create equitable servitudes and covenants appurtenant to all real property owned by City and running with the Property in accordance with the provisions of Civil Code Section 1468. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of City. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the

Owner's interest in the Property is rendered less valuable thereby. Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of City and by furthering the health, safety, and welfare of the residents of City.

15.20 Restriction on Subordination. City's approval of the necessary land use entitlements that authorize Owner to develop, operate, and maintain the Project was based upon Owner's obligation to provide the Affordable Units pursuant to the State Density Bonus Law and the terms and conditions of the Density Bonus Agreement and this Agreement. For the Density Bonus Agreement Term, this Agreement and the Density Bonus Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property or any portion thereof, subject to the subordination provisions of Section 8.20 of the Density Bonus Agreement including but not limited to City's obligation to reasonably subordinate the Density Bonus Agreement and this Agreement to a reputable lender's financing instruments. Notwithstanding the foregoing, the exercise of any remedies shall not defeat the lien of any deed of trust or regulatory agreement of any lender. Owner expressly understands and acknowledges that state law requires preservation of affordability covenants in connection with the approval of this density bonus project.

15.21 Authority to Execute. The person or persons executing this Agreement on behalf of each Party represents and warrants that he/she/they have the authority to execute this Agreement on behalf of his/her/their organization, corporation, partnership or other business entity, and represents and warrants that he/she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

15.22 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, fires, pandemic, public health emergency, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control, including delays by any governmental entity (although the City may not benefit from this provision for a delay that results from City's failure to perform its obligations under this Agreement), or an insurance company of either party. If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance.

15.23 Counterparts. This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. The Parties hereunder authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

[signatures on next page]

IN WITNESS WHEREOF, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date set forth above.

“CITY”

CITY OF LAKE ELSINORE, a California
municipal corporation

By: _____
Jason Simpson
Its: City Manager

APPROVED AS TO FORM:

By: _____
David H. Mann, Acting City Attorney

[SIGNATURE PAGE 1 OF 2 TO REGULATORY AGREEMENT]

“OWNER”

3RD & DEXTER, LLC,
a Delaware limited liability company

By: _____,

Name: _____

Title: _____

[SIGNATURE PAGE 2 OF 2 TO REGULATORY AGREEMENT]

DRAFT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who 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.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who 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.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**ATTACHMENT 1
To Regulatory Agreement**

LEGAL DESCRIPTION OF PROPERTY

The land referred to is situated in the County of Riverside, City of Lake Elsinore, State of California, and is described as follows:

[to be inserted]

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ATTACHMENT NO. 1

**ATTACHMENT 2
To Regulatory Agreement**

MAP SHOWING PROPERTY AND LOCATION OF AFFORDABLE UNITS

DRAFT

ATTACHMENT NO. 2

ATTACHMENT 3
To Regulatory Agreement
INCOME CERTIFICATION FORM

[Attached]

DRAFT

ATTACHMENT NO. 3

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 \$	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	RECERTIFICATION ONLY: Current Income Limit x 140%: \$ _____ Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
Current Income Limit per Family Size: \$ _____	Household Income at Move-in: \$ _____	Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____ Utility Allowance \$ _____	Rent Assistance: \$ _____ Other non-optional charges: \$ _____	GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges) \$
Maximum Rent Limit for this unit: \$ _____	Unit Meets Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS? <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, Enter student explanation* (also attach documentation)	*Student Explanation: 1 TANF assistance 2 Job Training Program 3 Single parent/dependent child 4 Married/joint return
	Enter 1-4 	

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	e. _____ <input type="checkbox"/> <i>(Name of Program)</i> <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
---	--	--	---	--

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the address of the building.

Unit Number Enter the unit number.

Bedrooms Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

- Total Annual Household Income from all Sources Enter the number from item (L).
- Current Income Limit per Family Size Enter the Current Move-in Income Limit for the household size.

Household income at move-in For recertifications, only. Enter the household income from the move-in certification.
Household size at move-in On the adjacent line, enter the number of household members from the move-in certification.

Household Meets Income Restriction Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Current Income Limit x 140% For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).

Rent Assistance Enter the amount of rent assistance, if any.

Utility Allowance Enter the utility allowance. If the owner pays all utilities, enter zero.

Other non-optional charges Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.

Gross Rent for Unit Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.

Maximum Rent Limit for this unit Enter the maximum allowable gross rent for the unit.

Unit Meets Rent Restriction at Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

If all household members are full time* students, check “yes”. If at least one household member is not a full time student, check “no”.

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

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