

**LICENSE AGREEMENT FOR USE OF REAL PROPERTY RIGHT OF ENTRY AND  
ACCESS AGREEMENT**

THIS LICENSE AGREEMENT FOR USE OF REAL PROPERTY (herein called this “**Agreement**”) is dated for reference purposes only as of December 1, 2022, and is entered into by the CITY OF TEMECULA, a municipal corporation (“**Owner**”), and GREYSTAR, LP, a Delaware limited partnership (“**Contractor**”).

**RECITALS**

A. Owner is the owner of the land described on Exhibit “A” and depicted on Exhibit “B” attached hereto and incorporated herein (the “**Property**”) and located in the City of Temecula, California and identified under Riverside County Tax Assessor’s Parcel No. 910-262-061.

B. Contractor intends to construct a 260-unit apartment community located on the north and south sides of Buecking Drive at its intersection with Jefferson Avenue (the “**Project**”).

C. Contractor has requested that Contractor be given a license, on a temporary basis, to access the Property and use a portion thereof to stage certain equipment, material and supplies during the construction of the Project and Owner is willing to permit such use subject to the terms set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other consideration, the sufficiency of which is hereby acknowledged, Owner and Contractor agree as follows:

1. License. Owner hereby grants to Contractor a non-exclusive license to access the Property and use the site area designated on the Property for the staging and temporary placement of certain equipment, materials, supplies and other associated construction items and/or work related to the Project (referred to herein as the “**Contractor Staging Area**”). This license, however, does not allow or permit Contractor, or any of its employees, agents, representatives, invitees, licensees, contractors or subcontractors to engage in any of the following activities on, over or under the Property: (a) excavation of any portion of the Property; (b) use of the Property for the storage of any “Hazardous Materials” (as defined in [Section 9] below); (c) the placement of any tank or other container on the Property which has been or will be used for storage of any Hazardous Substances; (d) use or allow the deposit or disposal of any Hazardous Materials on the Property; or (e) loitering on the Property after the hours of operation.

2. Conditions of Use. Entrance into the Property is provided by a gate secured by a lock. Contractor shall not duplicate the keys for the gate accessing the Subject Property without prior written approval from the Owner. Contractor and any of its employees, agents, representatives, invitees, contractors or subcontractors are responsible for ensuring that Property is closed and secure when entering or exiting the Property. Contractor shall not allow any other party other than Contractor’s employees, agents, representatives, invitees or subcontractors to access the Property. Contractor’s access to the Property shall be limited to 6:30 a.m. to 6:30 p.m. daily, so as to minimize disruption to neighboring properties. Contractor shall keep the

Contractor Staging Area and any property used by it, in a good, clean and safe condition, free of waste and debris, at all times. Contractor shall properly dispose of all waste in compliance with applicable laws. Contractor shall not impede Owner's use of the Property by virtue of Contractor's activities on the Property.

3. No Alterations; Repair or Damage. Contractor shall not in any way remove, damage, alter, or improve the Property, including with respect to any existing improvements on the Property, without Owner's prior written approval and in the Owner's sole and absolute discretion. Contractor, at Contractor's sole cost and expense, shall promptly restore or repair any damage to the Property, including the Contractor Staging Area, to the same condition that existed before the damage, reasonable wear and tear excepted (unless directly caused by activities of Owner, and not by Contractor or its employees, agents, representatives, invitees, licensees, contractors or subcontractors).

4. Term of License. Subject to the terms of this Agreement, the term of the license hereunder shall be from May 1, 2023 or an earlier date to be designated by the Contractor upon five (5) business days' prior written notice to the Owner (the "**Commencement Date**") through October 31, 2024, as may be extended by the Owner in writing (collectively, the "**Term**"); provided, however, that Contractor shall have the right to terminate this Agreement prior to October 31, 2024, upon five (5) business days' prior written notice to Owner, if the Contractor has received a Certificate of Occupancy for the Project from the City of Temecula and no other obligations remain outstanding under this Agreement. Upon the expiration or earlier termination of this Agreement, Contractor's right to occupy the Property, including the Contractor Staging Area, and exercise the privileges and rights granted under this Agreement shall cease, and Contractor shall surrender the entirety of the Property to Owner. Moreover, upon the expiration or termination of this Agreement, Contractor shall promptly remove all of its equipment, materials, supplies and all other property placed by or for the benefit of Contractor or the Project on the Contractor Staging Area and return the Contractor Staging Area to Owner in the same condition as received on the Commencement Date; if Contractor fails to do so within ten (10) days after written notice by Owner to Contractor that Contractor has failed to do so, then Owner may do so and Contractor shall reimburse Owner for all costs thereof within ten (10) days after written demand from Owner with evidence of the costs (and in that regard, Owner may dispose of or retain any property without liability or payment to Contractor).

5. Termination of License; Default. Contractor's failure to comply with any of the terms and conditions of this Agreement shall be cause for Owner to immediately terminate this Agreement. Upon the occurrence of such default by Contractor, the Owner may, at its option, grant to Contractor a ten (10) day period within which to cure such default. Should this option to cure be granted to Contractor by Owner, whether the default has been cured shall be left to the sole determination and discretion of Owner. In addition, the Contractor or Owner may terminate this Agreement for any reason or no reason upon providing the other parties with thirty (30) days' written notice of the same at the addresses set forth under the Parties' respective signatures below. Notwithstanding the foregoing, prior to the Commencement Date, Contractor may terminate this Agreement upon five (5) business days' prior written notice to Owner.

6. License Fee. Contractor shall pay Owner a fee of Six Thousand Three Hundred and No/100 (\$6,300.00) per month, commencing on the Commencement Date and then prepaid in

advance on the first day of each subsequent calendar month for the duration of the Term to Owner at the address set forth under the Owner's signature below, for access to and use of the Property, including without limitation the Contractor Staging Area, during the Term.

7. License Not Transferable. The license granted herein is personal to Contractor only and is not transferable in any manner whatsoever without the prior written consent of the Owner. Transfer of this license or the rights granted herein shall be void and of no force unless such transfer complies with this Section.

8. Nature of Rights. The rights created hereunder are purely contractual in nature; Owner and Contractor do not by this instrument intend to create a lease, easement or other real property interest. This License is by and between the Owner and Contractor. It is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the Owner and Contractor. Contractor understands and agrees to bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of Contractor pursuant to this License.

9. Hazardous Materials. Contractor shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Property by Contractor Parties (as defined below). In the event of a breach of the covenant contained in the immediately preceding sentence, or in the event Hazardous Materials are otherwise caused to be located in, on, under or about the Property by the Contractor Parties, Contractor shall be solely responsible for and shall indemnify, defend and hold Owner harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in valuation of the Property, and sums paid in settlement of claims and for reasonable attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of any contamination directly or indirectly arising from the activities which are the basis for such breach. This indemnification of Owner by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work. Contractor shall promptly take all actions, at its sole cost and expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided Owner's approval of such actions shall first be obtained and Contractor shall fully cooperate in connection with any such clean-up, restoration or other work, at Contractor's sole cost and expense. Furthermore, Contractor shall immediately notify Owner of any inquiry, test, investigation or enforcement proceeding by or against Contractor or the Property concerning the presence of any Hazardous Materials. Contractor acknowledges that Owner, at Owner's election, shall have the sole right, at Contractor's sole cost and expense, to negotiate, defend, approve and appeal any action taken or order issued by any governmental authority with regard to any Hazardous Materials contamination which Contractor is obligated hereunder to remediate. The covenants of Contractor under this Section shall survive the expiration of the Term or earlier termination of this Agreement. Hazardous materials are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et. seq., or those which meet the toxicity, reactivity, corrosively or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to

the environment, including, without limitation, asbestos, pesticides, fuel or other petroleum or refined petroleum products (collectively, “**Hazardous Materials**”).

10. Indemnification. Contractor shall indemnify, defend and hold Owner, and its officers, officials, agents, licensees (other than Contractor), employees and volunteers (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, liabilities, losses, damages, costs (including attorney’s fees and costs), liens, judgments and expenses suffered, incurred or sustained by Indemnified Parties as a result of, by reason of, or in connection with the entry upon or use of the Property, including without limitation the Contractor Staging Area, or failure to remove any equipment or other property upon the expiration or earlier termination of this Agreement, or breach of this Agreement, or any releases of Hazardous Materials on or about the Property by Contractor and/or its officers, officials, agents, employees and volunteers (collectively, the “**Contractor Parties**”). This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Liens. Contractor shall not directly or indirectly create or permit to be created or to remain any mortgage, lien, encumbrance, charge or pledge of the Property. Contractor shall defend, indemnify and hold Owner harmless, pursuant to Section 9 (Indemnification) hereof from any liens that may attach to the Property arising from the use of the Subject Property.

12. Insurance. Contractor shall maintain: (i) commercial general liability for bodily injury and property damage, including premises and operation, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage; (ii) automobile insurance for all owned, hired and non-owned automobiles or other licensed vehicles with limits of liability not less than \$1,000,000 per accident for bodily injury and property; and (iii) workers compensation insurance as required under the California Labor Code with limits of not less than \$1,000,000 per occurrence at all times during the term of this Agreement. All policies of insurance shall be with an insurance company(ies) either (i) admitted to do business in the State of California and rated not less than “A-VII” in Best’s Insurance Rating Guide, or (ii) as authorized by Owner’s Risk Manager. The commercial general liability insurance shall name the Owner and its officers, officials, employees and agents as additional insureds, and Contractor shall provide reasonable evidence of insurance to Owner prior to entering the Property. Any deductibles or self-insured retentions must be declared to and approved by the Owner’s Risk Manager and all policies of insurance shall be primary and no contribution shall be required by Owner. All policies of insurance shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to the Owner. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provision of this Agreement.

13. AS IS; No Representations or Warranties. Contractor has inspected the Property, including the Contractor Staging Area, and accepts it in its current “as is” condition, without representation or warranty, express or implied, subject to all matters of record (it being understood that Contractor may obtain a title report at its expense from a title company of its choosing). Owner has made no representations or warranties, express or implied, regarding the

Property. Furthermore, Contractor waives and releases and agrees to hold free and harmless, and to not sue the Owner, its elected officials, officers, contractors, employees or agents with respect to any and all liabilities, claims, judgments or actions for damages arising out of or in any way connected with Contractor's use of the Property, to the extent permitted by law. The Owner assumes no responsibility whatsoever for the safe condition, security or maintenance of the Property, nor for the protection of persons and property thereon, and during the term of this Agreement. This Section 13 shall survive the expiration or earlier termination of this Agreement.

14. Damage or Destruction to Property or Person. Owner is not responsible or liable for the following: (i) any loss or damage to the property of Contractor, including its equipment, materials, supplies and other items, or any property of others located in or on the Property, including the Contractor's Staging Area, whether caused by theft, vandalism or any other cause; (ii) any injury, including death, of any person caused by any occupants of the Property, including any third parties or the public; or (iii) any latent defect of the Property. In addition, the Owner has no obligation to reimburse Contractor for the loss of or damage to any property of the Contractors. Contractor may insure all equipment, materials, supplies or other personal property for its own protection if it so desires.

15. Notice. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be delivered by certified mail, postage prepaid, return receipt requested, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below the respective signatures of the parties, or to such other addresses as are specified by written notice given in accordance herewith. All notices, demands, or requests given by mailing shall be deemed given on the date of delivery, or attempted delivery shown on the return receipt; and those given by commercial courier shall be deemed given one (1) business day after the date of deposit with the commercial courier for overnight delivery.

16. Assignment. This Agreement may not be assigned.

17. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

19. No Recording. This Agreement does not grant any interest in the Property. In no event shall this Agreement or any memorandum hereof be recorded.

20. Attorneys' Fees. In the event an action is filed by either party in connection with this Agreement, the prevailing party (as determined by the trier of fact) shall be entitled to receiving from the other party all of the prevailing party's attorney's fees and costs incurred in connection therewith.

21. Rules and Regulations. Contractor shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the use of the Property, including the Contractor Staging Area, including all laws, ordinances, rules and regulations adopted after the Commencement Date. Contractor shall display to Owner, upon request, any permits, licenses or other evidence of compliance with the law.

22. Possessory Interest Taxes. Notwithstanding any provision herein, Contractor acknowledges that this Agreement may create a possessory interest subject to taxation and that the Contractor may be subject to payment of any and all taxes levied on that possessory interest.

23. Right of Entry Reserved. This is a non-exclusive license. The Owner may, at any time, enter the Contractor Staging Area for any lawful purpose, so long as the action does not unreasonably interfere with the Contractor's use or occupancy of such property. Exercise of any of the foregoing rights by the Owner or others pursuant to Owner's rights shall not constitute an eviction of the Contractor nor be made the grounds for any abatement of rent or any claim for damages.

24. Severability. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

25. Time is of the Essence. Time is of the essence of every provision hereof in which time is a factor.

25. Limitations. It is expressly understood that in licensing the right to use the Property, no estate or interest in real property is being conveyed to Contractor, and that the right to use is only a nonexclusive, revocable and unassignable permission to temporarily use the Property in accordance with the terms and conditions of this Agreement. This Agreement provides only a right of use of temporary duration and does not give the Contractor any added interest, title, estate or right of any kind or extent whatsoever, whether legal or equitable prescriptive or otherwise, in the Property, no matter how much money is expended on the Property nor how long this Agreement runs. Neither a partnership nor a joint venture is in any way intended by this Agreement. The Contractor agrees that it will not claim at any time any interest, estate or right in the Property by virtue of this Agreement or by virtue of the Contractor's occupancy, use or expenditures under this Agreement.

26. Authority to Enter Into Agreement. Each person signing below personally warrants and represents to the Owner that the Contractor has approved this Contractor, intends to be bound by its terms and that they are duly authorized to execute this Agreement on behalf of the Contractor.

27. Entire Agreement. This Agreement and any documents attached hereto or mentioned herein, contain all of the Agreements of the parties regarding the Property, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

28. Amendments. No provision of this Agreement may be amended except by the written agreement of both parties.

[Signature Page to Follow]

IN WITNESS WHEREOF, Contractor and Owner have caused this Agreement to be executed on the day and year first written above.

**CONTRACTOR:**

GREYSTAR, LP,  
a Delaware limited partnership

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

380 Stevens Avenue, Suite 200  
Solana Beach, CA 92075

**OWNER:**

CITY OF TEMECULA,  
a municipal corporation

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Randi Johl, City Clerk

Address for notices:

41000 Main Street  
Temecula, California 92590  
Attn: Luke Watson, Deputy City Manager

APPROVED AS TO FORM:

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

Peter M. Thorson, City Attorney

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

A PORTION OF PARCELS 11 AND 15 OF PARCEL MAP NO. 23561-2, AS SHOWN BY MAP ON FILE IN BOOK 168 OF PARCEL MAPS, AT PAGES 71 THROUGH 73, INCLUSIVE, OFFICIAL RECORDS OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE MOST NORTHERLY CORNER OF SAID PARCEL 15;

THENCE SOUTH 41° 58' 53" EAST 97.63 FEET ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 15 TO A POINT ON A LINE LYING 97.63 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL 15 SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**;

THENCE ALONG SAID PARALLEL LINE SOUTH 48° 01' 07" WEST 281.66 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL 15;

THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 48° 01' 07" WEST 222.59 FEET;

THENCE LEAVING SAID PARALLEL LINE, SOUTH 00° 39' 13" EAST 48.55 FEET TO A POINT ON A LINE LYING 18.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID PARCEL 11;

THENCE ALONG SAID PARALLEL LINE SOUTH 48° 39' 30" EAST 122.89 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 11;

THENCE NORTH 41° 20' 30" EAST 242.00 FEET ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 11 TO THE MOST EASTERLY CORNER OF SAID PARCEL 11 SAID POINT ALSO BEING ON THE SOUTHWESTERLY LINE OF SAID PARCEL 15;

THENCE SOUTH 48° 39' 33" EAST 20.00 FEET ALONG SAID SOUTHWESTERLY LINE TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 15;

THENCE NORTH 53° 42' 26" EAST 233.35 FEET ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 15 TO THE MOST SOUTHEASTERLY CORNER OF SAID PARCEL 15 ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 61.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 48° 01' 07" WEST;

THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL 15 AND SAID CURVE THROUGH A CENTRAL ANGLE OF 76° 51' 25" AN ARC DISTANCE OF 81.83 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL 15;

THENCE NORTH 41° 58' 53" WEST 113.97 FEET ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 15 TO THE **TRUE POINT OF BEGINNING**.

**EXHIBIT "B"**

**DEPICTION OF PROPERTY**

