

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

**In Respect of the
CITY OF MERCED
acting solely as the Housing Successor Agency to the
Merced Redevelopment Agency**

(CC915 Merced, Inc. Affordable Housing Project)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this dated _____, ____, by and between the City of Merced, a California Charter Municipal Corporation, acting solely as the Housing Successor Agency to the Merced Redevelopment Agency, ("Agency") and CC915 Merced, Inc., a Florida Corporation (the "Developer") (collectively referred to as the "Parties").

RECITALS

A. The Agency desires to provide a grant of Two Hundred Thousand Dollars (\$200,000) from Low and Moderate Income Housing Asset Funds ("Housing Asset Funds") acting as the Housing Successor Agency to the former Redevelopment Agency of the City of Merced (the "Housing Successor Grant") to Developer for the construction of a multi-family affordable residential rental project (the "Project") on that certain real property generally known as 73 South "R" Street, Merced, California 95341 (APN 059-256-004), and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property" or "Site").

B. The Project consists of twenty-one (21) rental dwelling units. Twenty (20) units will be rented to extremely low income households with incomes at or below thirty percent (30%) of the Area Median Income (“AMI”) for Merced County, with adjustments for family size, as determined from time to time by the California Department of Housing and Community Development (“HCD”) pursuant to California Health and Safety Code (“HSC”) Section 50093; the units will be designated as housing units for veterans who are homeless or others at risk of homelessness and restricted to thirty percent (30%) AMI ; and one (1) unit will be designated as a manager unit. Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

C. The Housing Successor Grant is subject to the requirements of HSC Sections 34176 and 34176.1.

D. The City previously partnered with CC915 Merced, Inc. on a Homekey grant through the State Department of Housing and Community Development. The project was awarded \$4,420,000 in Homekey funding. The project also has a Disposition and Development agreement dated August 18, 2022, agreeing to the sale and transfer of the property from the Housing Successor Agency to the Developer. The property value was assessed at \$110,000 but was sold for the purposes of this project for \$1. The difference in value is considered the city’s contribution to the project.

E. The Housing Successor Grant is evidenced by a Deed Restriction Covenant and Grant Agreement, Notice of Affordability Restrictions on Transfer of Property, Agreement Containing Covenants Affecting Real Property, and any and all documents related thereto are collectively referred to herein as the “Grant Documents” pertinent to the Housing Successor Grant and incorporated herein by this reference. The Deed Restriction Covenant and Grant Agreement shall be recorded in the Official Records of Merced County (“Official Records”) concurrently herewith.

F. As a condition of receiving the Housing Successor Grant, Developer agrees to place specified restrictions upon the use and transfer of the Property, including without limitation the restrictions referenced in Recitals B and C.

G. The Parties intend that the covenants set forth in this Agreement shall run with the land and be binding upon Developer and Developer’s successors and assigns as further provided herein.

NOW THEREFORE, in consideration of the Housing Successor Grant and other valuable consideration, the Parties covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” shall be determined consistent with Section 50052.5(h) of the HSC and applicable federal rules and regulations. If the applicable federal rules and regulations conflict with such Section 50052.5(h), then the rules and regulations that result in the more restrictive income and rent limits shall control.

“Affordable Rent” means thirty percent (30%) of applicable percentage of Area Median Income, Adjusted for Family Size Appropriate for the Unit, for each Restricted Unit.

“Agreement” shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

“Area Median Income” or “AMI” means the median income for Merced County, adjusted for Actual Household Size, as determined from time to time by HCD pursuant to HSC Section 50093. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, the Agency shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculations to those previously published by the State.

“Eligible Household” means a household for which household income upon initial occupancy does not exceed the maximum income level for Restricted Unit.

“Extremely Low-Income Household” shall mean a household whose gross income does not exceed thirty percent (30%) of the Area Median Income, adjusted for Actual Household Size.

“Extremely Low-Income Units” shall mean one of the twenty (20), which, pursuant to Section 2.1, are required to be occupied by Extremely Low-Income Households.

“Homeless” means households that are Homeless as defined by the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)).

“Homeless Unit” shall mean one of the twenty (20) Extremely Low-Income Units in the Project that are reserved for occupancy by for those who are Homeless or at risk of homelessness and restricted to thirty percent (30%) AMI.

“Housing Successor Grant” shall mean all funds granted to the Developer by the Agency pursuant to the Grant Agreement.

“Grant Agreement” shall mean the Deed Restriction Covenant and Grant Agreement dated _____, _____ by and between the City and the Developer and pertaining to the Property and Project.

“Rent” means all charges, other than deposits, paid by a tenant for the use and occupancy of a Restricted Unit and any mandatory charge for direct or supportive tenant services in a rental

housing development, including a utility allowance in an amount determined by the local housing authority with jurisdiction over the Project.

“Restricted Unit” means one of the Extremely Low-Income Units.

“Term of this Agreement” means the period through the fifty-fifth (55th) anniversary of the issuance of the final certificate of occupancy for the Project.

ARTICLE 2

AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirement.

(a) Upon Issuance of a final certificate of occupancy and for the entire Period of Affordability (as defined in Section 2.8), the Project shall be rented to, at a Rent no greater than Affordable Rent, and occupied by (or if vacant, available for occupancy by) the following schedule:

Extremely Low-Income Units. Twenty (20) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low-Income Households. The Extremely Low-Income Units shall also be designated as Homeless or Homeless Veteran units restricted for those who are Homeless or at risk of homelessness or are Homeless Veterans.

The number of units by income and bedroom size are as follows:

Bedroom Size	Income Level	Number of Units
Studio	30% AMI	20
Manager Unit		1
Total		21

Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

(b) The Project shall be operated at all times in compliance with the provisions of: (a) the HSC; (b) the Unruh Act; (c) the United States Fair Housing Act, as amended; (d) the California Fair Employment and Housing Act; and any other applicable law or regulation (including the Americans with Disabilities Act, to the extent applicable to the Project). The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactorily to the City) the City and Agency and their respective board members, council members, officers and employees from all suits, actions, claims, causes of action, costs, demands, judgments, and liens arising out of the Developer’s failure to comply with any of the above laws or regulations. The provisions of this section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Pursuant to the requirements of the HSC, Developer and Agency shall execute a Notice of Affordability Restrictions on Transfer of Property and shall cause such notice to be recorded in the Official Records substantially concurrently with the recordation of this Agreement.

2.2 Allowable Rent.

(a) Subject to the provisions of Section 2.4(b), the Rent charged to tenants of the Extremely Low-Income Units designated as Homeless Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

(b) Initial rents for all Units shall be approved by the Agency prior to occupancy. All rent increases shall be based on published HCD rents or other applicable rents imposed on the Project by other funding sources. Should the annual rent limit differ between HCD and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) rent limits.

2.3 Tenant Selection Standards.

During the Period of Affordability the Developer shall select tenants in conformance with the requirements of all funding sources applicable to the Project, including but not limited to the California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

(a) Developer shall rent vacant Restricted Units only to Eligible Households in accordance with a Management Plan approved by Agency. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by Agency prior to use. The Management Plan shall include:

(1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

(2) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas;

(3) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

(A) Non-Veterans:

(a) Selection of tenants based on order of application, lottery or other reasonable method approved by Agency;

(B) Veterans:

(a) The Developer will coordinate the selection of the eligible Veteran households, homeless or at-risk of homelessness, with the United States Department of Veteran Affairs or through the local Coordinated Entry System.

(C) Prompt written notification to tenant applicants of eligibility for residency and, based on turnover history for Restricted Units, the approximate date when a Restricted Unit may be available;

(D) Prompt written notification of tenant applicants who are found ineligible to occupy a Restricted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

(E) Maintenance of a waiting list of applicant households eligible to occupy Restricted Units designated for various tenant income levels, which shall be made available at no charge to prospective tenants upon request;

(F) Targeting specific special needs populations in accordance with this Agreement and applicable laws; and

(G) Affirmative fair housing marketing procedures as specified in 24 CFR Part 92.351 or the Affirmative Fair Housing Marketing Plan Compliance Regulations of HUD, 24 CFR Part 200.620(a)-(c), or similar affirmative fair marketing housing plan that furthers the City of Merced Housing Element's Meaning Actions to Address Fair Housing Issues as approved by Agency.

2.4 Certification of Tenant Income.

(a) The income and household size of all households occupying Restricted Units shall be certified by Developer prior to occupancy and recertified annually thereafter in a manner approved by Agency and specified in the Project's Management Plan and Section 3.1 hereof.

(b) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the tenant must pay as rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the households adjusted monthly income for rent and utilities; except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

(c) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the Developer shall work to assist the tenant to find a more appropriate housing unit that they are eligible for.

2.6 Unit Standards.

For the full grant term, the number, size, type and amenity level of Restricted Units shall not be fewer than the number nor different from the size, type and amenity level described in Section 2.1 and Recital B.

2.7 Rental Agreement and Grievance Procedures.

The rental agreement and grievance procedures shall be in accordance with the California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, section 8307.

(a) All rental or occupancy agreements shall be for a term of not less than one (1) year unless by mutual agreement between the tenant and Developer.

(b) All rental or occupancy agreements are subject to City approval; and shall include the following:

(1) Provisions requiring good cause for termination of tenancy;

(2) A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

(3) A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

(4) A requirement that the tenant annually recertify household income and size.

(c) Developer shall not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause.

(d) To terminate or refuse to renew tenancy, Developer must serve written notice upon the tenant in compliance with State law, specifying the grounds for the action, and served at least thirty (30) days prior to the termination of the tenancy.

(e) One or more of the following, without limitation, may constitute "good cause":

(1) Failure by the tenant to maintain applicable eligibility requirements under the HSC or other eligibility requirements as imposed by Agency or other state or federal funding sources or tax credits;

(2) Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:

A. Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;

B. Substantially interfere with the management, maintenance, or operation of the Project; or

C. Result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the three (3) day notice period;

(3) Material Failure by the tenant to carry out obligations under federal, State, or local law;

(4) Subletting by the tenant of all or any portion of any Project Unit;

(5) Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided Developer has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size.

(6) Notwithstanding the foregoing, if any part of this Section 2.7(e) is determined not to be "good cause" pursuant to Section 42 of the Internal Revenue Code of 1986, Section 42 of the Internal Revenue Code of 1986 shall control.

(f) The lease may not contain any of the following provisions:

(1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of Developer or Developer's agent in a lawsuit brought in connection with the lease;

(2) Agreement by the tenant that Developer may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, shall not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Developer may dispose of this personal property in accordance with State law;

(3) Agreement by the tenant not to hold Developer or Developer's agent(s) legally responsible for any action or failure to act, whether intentional or negligent;

(4) Agreement of the tenant that Developer or Developer's agent may institute a lawsuit without notice to the tenant;

(5) Agreement by the tenant that Developer or Developer's agent may evict the tenant or household members without instituting a civil court proceeding in which the

tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Agreement by the tenant to waive any right to a trial by jury;

(7) Agreement by the tenant to waive tenants right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(g) Developer shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and federal regulations. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than thirty (30) days after giving written notice thereof to each tenant household.

(h) Developer shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Developer with respect to tenant's occupancy in the Project, and prospective tenants applications for occupancy. Developer's appeal and grievance procedures shall be subject to Agency's approval and, at a minimum, shall include the following:

(1) A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

(2) Procedures for informal dispute resolution;

(3) A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

(4) Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

2.8 Period of Affordability.

Developer acknowledges that the Housing Successor Grant is being made to Developer under the terms and conditions of the HSC as part of a public program to ensure affordable housing for Project tenants. To preserve affordability of the Restricted Units, Developer covenants that the Restricted Units shall remain affordable for a period of fifty-five (55) years of the issuance of the final certificate of occupancy for the Project (hereinafter referred to as the "Period of Affordability"). It is intent of the parties to this Agreement, that this covenant shall run with the land, with the benefit of this covenant running to the City and/or Agency, in order to preserve the public interest in maintaining the affordability of the Restricted Units. The Period of Affordability will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

ARTICLE 3

INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

The Developer will obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each tenant renting any of the Units.

The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicants current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant received assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return or income verification, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request.

3.2 Recordkeeping and Reports.

Developer or the management agent designated by Developer, as approved by City, will be responsible for recordkeeping and reports. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of Developer in order to assist Agency in meeting Federal and State recordkeeping and reporting requirements. All records, books and accounts will be subject to examination at reasonable hours by any authorized representative of Agency. All such records and books shall be kept for a period of at least seven (7) years in a manner designed to protect them from destruction or tampering and shall be subject to inspection and audit by the Agency or their respective authorized agents.

3.3 Additional Information.

The Developer shall provide any additional information reasonably requested by the Agency. The Agency shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Project.

3.4 On-Site Inspection.

Developer shall allow City access to the Project to conduct inspections on an annual basis, or more frequently, with fourteen (14) days written notice to Developer. Developer shall provide tenants with a minimum of twenty-four (24) hours written notice prior to seeking access to a tenant unit for inspection purposes. In said notice, Developer shall clearly inform tenant of the purposes of the inspection.

ARTICLE 4

MISCELLANEOUS

4.1 Restrictions on Sale, Transfer or Conversion.

(a) Agency shall approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (i) the existing Developer is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement; (ii) the successor-in-interest to Developer agrees to assume all obligations of the existing Developer pursuant to this Agreement; (iii) the successor-in-interest demonstrates to City's satisfaction that it can own and operate the Project in full compliance with all Federal, State, and local requirements; and (iv) Agency determines, in the sole exercise of its reasonable discretion, that no terms of the sale transfer or conveyance threaten City's security or the successors ability to comply with all Federal, State, and local requirements and this Agreement.

(b) Developer shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project or any part thereof during the Period of Affordability.

4.2 Restrictions on Encumbrances.

Developer covenants that Developer has not and shall not enter into or execute any other agreement with provisions contrary to the provisions of this Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 2.8; provided, however, that Developer may, without the written consent of City, enter into a Regulatory Agreement with the CTCAC with regard to tax credits. Developer further covenants that, it has not, and shall not, otherwise encumber the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien without Agency's prior written consent.

4.3 Non-Discrimination; Compliance with Fair Housing Laws.

(a) Developer shall comply with State and Federal fair housing laws in the marketing and rental of the units in the Project.

(b) Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 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, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

(c) The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective Tenants.

4.4 Default and Remedies.

(a) The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") hereunder:

(1) The occurrence of a transfer, sale or conversion in violation of Section 4.1 hereof or an encumbrance in violation of Section 4.2 hereof;

(2) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(3) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtors relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(4) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after

such event (unless a lesser time period is permitted for cure under any other mortgage on the property or the improvements thereon, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution.

(5) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated; or

(6) Any material breach by Developer or any of its successors of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City or Agency, or, if a cure is not possible within thirty (30) days, where cure is not commenced within thirty (30) days and thereafter diligently prosecuted to completion.

(b) If an Event of Default occurs under this Agreement or the Grant Documents, City or Agency, as applicable, may give written notice to the Developer by certified mail or any express delivery service with a delivery receipt requested. If the breach or violation is not cured to the satisfaction of the Party so notifying Developer within the time period specified in the notice, which shall not be fewer than thirty (30) days, the notifying Party may declare a default and may seek legal remedies including the following:

(1) Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(2) Take possession of the Project and bring any action necessary to enforce any rights of the Developer arising from the operation of the Project and operate the Project in accordance with the terms of this Agreement until such time as the City, in its sole discretion, shall determine that the Developer is again in a position to operate the Project in accordance with the terms of this Agreement.

(3) Apply to the applicable state or federal court for an order of specific performance of this Agreement, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Developer that the injury to the City and Agency arising from a default under any of the terms of this Agreement would be irreparable, and that the amount of compensation which would provide adequate relief to the City and Agency, in light of the purposes of the Housing Successor, would be impossible to ascertain.

(4) The City may seek such other remedies as may be available under law or equity.

(5) In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City or Agency may

demand, and seek as an additional remedy, the return of such excess rents or other charges to the affected households.

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

4.5 Maintenance & Management.

(a) Developer is solely and specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and recertification of household income and size, evictions, collection rents, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security.

Developer shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building and housing codes. The City shall not have any responsibility for management or maintenance of the Property or the Project but shall have the remedies provided for in Section 4.4 hereof, which they may exercise at their option as applicable.

(b) Developer may contract with a management agent for the performance of the services or duties required in Section 4.5(a) above. However, doing so shall not relieve Developer of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing Developer to terminate the contract without penalty with no more than thirty (30) days notice. Upon determination by City or Agency and notice to Developer that the contracted management agent has failed to operate the Project in accordance with this Agreement, Developer shall exercise such right of termination forthwith and shall immediately make arrangements, subject to Agency approval, for continuing performance of the requirements of this Agreement.

(c) If Developer operates the Project directly without contracting with a management agent and City or Agency determines that the Project is not being operated in accordance with this Agreement, City or Agency may provide notice to Developer thereof, and may require Developer to contract with a management agent to operate the Project, or to make such other arrangement as City deems necessary to ensure performance of the requirements of this Agreement.

4.6 Governing Law.

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

4.7 Successors and Assigns.

This Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the Parties and their respective legal and personal representatives, devisees, heirs, successors, and assigns.

4.8 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of City, the invalidity, or unenforceability of the threatens the security for the City's Housing Successor Grant.

4.9 Costs of Enforcement.

Developer agrees to pay any and all of City's costs with respect to enforcement of this Agreement, including City's reasonable attorneys' fees, costs and expenses.

4.10 Counterparts/Originals.

This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one (1) entire Agreement.

4.11 Amendment.

This Agreement shall not be altered or amended except in a writing executed by the Parties.

4.12 No Waiver.

No waiver by the City of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

4.13 Captions.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this Agreement.

4.14 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or shall establish the Parties as partners, coventurers, or principal and agent with one another.

4.15 Hold Harmless.

Except to the extent arising from the City's willful misconduct, Developer agrees to indemnify, defend with legal counsel selected by the City and Agency and hold harmless the City and Agency and their respective agents, employees and officers (collectively, "Indemnitees") from and against any and all claims, losses, liabilities, causes of action or costs (including reasonable attorney's fees) arising from or in connection with Developer's development, management, maintenance or operation of the Project.

4.16 Compliance With Standard Agreement Terms and Conditions.

Developer has received a copy of and has reviewed the Standard Agreement including Exhibits A through G thereto, incorporated herein by this reference, and to the extent applicable to Developer, hereby agrees to comply with all of the terms and conditions therein.

4.17 Venue.

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

4.18 Interpretation of Affordability.

It is the purpose of this Agreement to limit and restrict use and resale of the Property in order to maintain the Project's affordability for the entire Period of Affordability.

4.19 Affordability Protocols.

To the extent that State, Federal and local laws and regulations may conflict with respect to household income levels, rent levels, or similar provisions relating to affordability of the Project, the Parties acknowledge and agree that the intent of this Agreement is to provide the maximum affordability restrictions.

4.20 Covenants to Run With the Land.

The City and Agency and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property, provided however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

4.21 Attorneys Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

4.22 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied upon the earliest of receipt or three business days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

TO CITY: City of Merced
678 West 18th Street
Merced, CA 95340
Attention: Housing Division & City Clerk

With a Copy to: City Attorney's Office
City of Merced
678 West 18th Street
Merced, CA 95340

TO DEVELOPER: CC915 Merced, Inc.
ATTN: Christine Ettore
35640 Seneca Reserve Drive
Eustis, FL 32736

Such addresses may be changed by notice to the other party given in the same manner as provided above.

[Signatures on next page.]

IN WITNESS WHEREOF the Agency and the Developer hereby warrant and represent they have the legal authority to enter into this Agreement and have executed this Agreement by duly authorized representatives, all on the date first written above.

CITY OF MERCED

BY: _____
D. Scott McBride,
City Manager/

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 3/7/2025
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

"DEVELOPER"

CC915 Merced, Inc.

A Florida Corporation

By: CC915 Merced, Inc., a Florida
Corporation

Its: Agency for Service of Process

By: C. Ettore

Christine Ettore

Taxpayer I.D. No. 87-3752951

ADDRESS:

35640 Seneca Reserve Drive

Eustis, FL 32736

TELEPHONE: 407-733-8073

E-MAIL: cettore@ettore
enterprises.com

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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, _____,
(insert name and title of the officer)

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)

FLORIDA NOTARY ACKNOWLEDGEMENT (CORPORATION)

STATE OF FLORIDA

COUNTY OF Lake

The foregoing instrument was acknowledged before me by means of ☒ physical presence ☐ online notarization, this 17th day of March, 2025, by

Christine Ethore (Name of Officer or Agent, Title of Officer or Agent) of CC 915 Mercedes LLC (Name of Corporation Acknowledging), a Florida (State or Place of Incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (Type of Identification) as identification.

Shana Brown
Signature of Notary Public

(Seal)

Shana Brown
Print, Type or Stamp Name of Notary

n/a
Title or Rank

n/a
Serial Number, if any



Exhibit A:
Legal Description of Property

Real property in the City of Merced, County of Merced, State of California, described as follows:

ALL THAT PORTION OF LOT 9, AS SHOWN ON THE MAP ENTITLED, "MAP OF HARTLEY COLONY", FILED JANUARY 03, 1911, IN THE OFFICE OF THE COUNTY RECORDER OF MERCED COUNTY, IN VOL. 4 OF OFFICIAL PLATS, AT PAGE 41, DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT A POINT ON THE WEST LINE OF A 40 FOOT AVENUE ALONG THE EAST SIDE OF SAID LOT 9, DISTANT THEREON SOUTH 0° 54' 30" WEST 210 FEET FROM THE INTERSECTION OF SAID LINE WITH THE SOUTH LINE OF THE 60 FOOT COUNTY ROAD ALONG THE NORTH SIDE OF SAID LOT 9; THENCE SOUTH 89° 38' WEST, A DISTANCE OF 214.24 FEET TO THE WEST LINE OF THE PROPERTY CONVEYED TO SAMUEL G. R. DANIELS BY DEED RECORDED MAY 2, 1946 AS FILE NO. 5994; THENCE SOUTH 0° 33' 15" WEST, AND ALONG THE WEST LINE OF SAID DANIELS PROPERTY, A DISTANCE OF 100 FEET; THENCE NORTH 89° 38' EAST, A DISTANCE OF 214.24 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF THE 40 FOOT AVENUE, KNOWN AS "SOUTH R STREET", THENCE NORTH AND ALONG THE WEST LINE OF SAID AVENUE, A DISTANCE OF 100 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN THE STRIP OF LAND CONVEYED TO THE CITY OF MERCED, BY DEED DATED MARCH 25, 1901, AND RECORDED IN VOL. 55 OF DEEDS AT PAGE 86.

ALSO EXCEPTING THEREFROM 1/16TH INTEREST OF ALL COAL, OIL, GAS, HYDROCARBON AND OTHER MINERAL DEPOSITS CONTAINED, IN OR UNDER SAID REAL PROPERTY DESCRIBED AND OTHER LAND, AS RESERVED IN THE DEED FROM FLOYD W. WEST AND BERNICE WEST, HIS WIFE, TO JOSEPH L. PADEN, DATED APRIL 18, 1932, AND RECORDED NOVEMBER 16, 1932, IN VOL. 378 OF OFFICIAL RECORDS, AT PAGE 394.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN THE STRIP OF LAND CONVEYED TO THE CITY OF MERCED BY DEED DATED JULY 20, 1976 AND RECORDED AUGUST 02, 1976, VOL. 2040 OFFICIAL RECORDS, PAGE 75.

APN: 059-256-004