

RECORDING REQUESTED BY:

City of Merced, a charter city of the State of
California

WHEN RECORDED MAIL TO:

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

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

(Above for Recorder's Use Only)

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

**73 SOUTH "R" STREET
MERCED, CALIFORNIA**

THIS AGREEMENT is entered into this _____ day of _____, 20____
(this "Agreement"), by and between the City of Merced, a charter city of the State of California
(hereinafter referred to as the "City") and CC915 Merced, Inc., a Florida corporation (hereinafter
referred to as the "Developer"), with reference to the following:

WHEREAS, The City is to transfer to the Developer real property (the "Site") located at 73
South "R" Street in the City of Merced, County of Merced, State of California (APN 059-256-
004), legally described in Exhibit "A". This Agreement is being entered into pursuant to the terms
of that certain Disposition and Development Agreement dated _____ by and between the City
and Developer to transfer the Site from the City to the Developer (the "DDA") and Standard
Agreement No. 21-HK-17162 dated March 16, 2022 by and between the California Department
of Housing and Community Development ("HCD"), the City, and Developer related to the award
of up to \$4,420,000 in Homekey Program funds ("Homekey Standard Agreement"), provided as
Exhibit "B". Capitalized terms not otherwise defined herein shall have the meanings set forth in
the DDA.

NOW, THEREFORE, THE CITY AND THE DEVELOPER AGREE AS FOLLOWS:

1. The Developer, on behalf of itself and its successors, assigns, and each successor in
interest to the Site or any part thereof, hereby covenants and agrees:

a. The Site will be used for twenty-one (21) rental dwelling units, including twenty
(20) studio units restricted to "extremely low income households" as defined in California Health

and Safety Code (“HSC”) Section 50106 (“ELI Units”) and accompanying regulations of HCD and one (1) manager unit (the “Project”). The 20 ELI Units shall be restricted for providing permanent supportive housing for veterans who are “homeless” or “at risk of homelessness” as defined in Part 578.3 of Title 24 of the Code of Federal Regulations (“CFR”), and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. Of the 20 ELI Units, 5 units shall be restricted for veterans who are “chronically homeless” as defined in 24 CFR Part 578.3.

The maximum rent for ELI Units shall not exceed the affordable rent for “extremely low income households” as defined in HSC Section 50053(b)(1) and accompanying regulations of HCD, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities.

The occupancy requirements described in this section shall apply for a period of fifty-five (55) years from the issuance of a final certificate of occupancy. The Developer shall adhere to the requirements of HSC Section 34176.1 and the Homekey Standard Agreement.

The Project may have additional affordability requirements imposed by the United States Housing and Urban Development VA Supportive Housing (“HUD-VASH”) Program as regulated by Section 8(o)(19) of the United States Housing Act of 1937.

b. The Developer shall use, devote, and maintain the Site and each part thereof, for the purposes and uses specified in accordance with the zoning requirements of the Low Density Residential (R-1-6) Zone. Developer shall develop the Project on the Site in conformity with the DDA, Homekey Standard Agreement, and this Agreement; in the event of inconsistency among such provisions and covenants of record, the most restrictive restrictions then in effect shall apply. The Site shall be operated as an affordable housing project and devoted only to the uses specified in the DDA and the Homekey Standard Agreement for the periods of time specified therein and herein. No building or any tenant space within a building may include visible bars or grates over or behind any window visible from a public street or right of way. Any permanent signage affixed to the building or windows must be of high quality materials, not including tempera paint.

If in the future, should the building be rezoned to allow commercial uses, the retail and commercial spaces on the Site shall be developed to a high standard and shall not be leased, rented to, or occupied by pawn shops, tattoo parlors, fortune-tellers, skateboard shops, or bail bonds businesses.

c. To maintain the improvements and landscaping on the Site and keep the Site free from any accumulation of debris and waste materials.

d. Not to discriminate upon the basis of sex, marital status, disability, race, color, creed, religion, age, national origin, ancestry or sexual orientation or identity in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon, or of any part thereof. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

i. In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, 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, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

ii. In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, disability, color, creed, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, 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, sub-lessees, subtenants, or vendees in the land herein leased.”

iii. In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, 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, sub-lessees or vendees of the land.”

2. There shall be no discrimination against or segregation of any person, or groups of persons, on account of sex, marital status, disability, race, color, creed, religion, age, national origin, ancestry, or sexual orientation or identity in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof, nor shall the Developer, its successors, assigns, or successors in interest to the Site or any part thereof, or any person claiming under or through them, 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, sub-lessees, or vendees of the Site or any part thereof.

3. The Developer shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the City and HCD. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan required by the Homekey Standard Agreement to ensure positive outreach and informational efforts to those who are least likely to know about an

apply for permanent supportive housing. The Developer shall refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by HUD. The Developer shall comply with all applicable state and federal fair housing laws.

4. The Developer shall submit and implement a supportive services plan to HCD for its review pursuant to the terms of the Homekey Standard Agreement.

5. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the City, its successor and assigns, and the City of Merced. Except as set forth in the following sentence, the covenants contained in paragraph 1 of this Agreement shall remain in effect for 55 years from obtaining a final certificate of occupancy for the Project. The covenants against discrimination contained in paragraphs 1 and 2 shall remain in perpetuity.

6. HCD shall be a third-party beneficiary to this Agreement, with the right and privilege, but not the obligation, to enforce the requirements thereof.

7. The covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Project or any person or entity having any interest in any such other real property.

8. Any notice, request, demands, approvals or other communications given hereunder or in connection herewith shall be sent by registered or certified mail, return receipt requested, postage and fees prepaid and addressed to the party hereto to receive such notice, at its address as set forth as follows:

To Developer: CC915 Merced, Inc., a Florida corporation
CC915 Merced, Inc.
520 Lobelia Drive
Lake Mary, Florida 32746
Attn: John Glavin

To City/Agency: 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, A 95340

Attachment No. 8

Either party may, by notice given as aforesaid, change its address for any subsequent notice. Any notice shall be deemed given on the second day following its deposit in the United States mail.

No party hereto shall be deemed to be in default of any provision hereof unless and until thirty (30) days' notice thereof shall be given by one party to the other, and then the party in default shall have the absolute right to cure said default so long as such cure is commenced within a reasonable time, in no event longer than ninety (90) days, and such cure is diligently prosecuted to its conclusion. The foregoing is in addition to any of the provisions contained herein. If written request is made by Developer's limited partner, City shall also deliver a copy of default notice to such limited partner. Any partner of Developer shall have the right to cure any default within the applicable cure periods set forth hereinabove, whether in its own capacity or on behalf of Developer and City shall accept such cure as if tendered by Developer.

[Signatures on next page]

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IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first above written.

“CITY”

CITY OF MERCED

BY: _____

ATTEST:

BY: _____

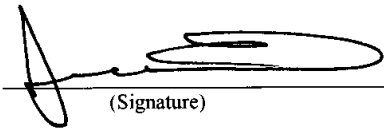
APPROVED AS TO FORM:

 _____

(Signatures continued on next page)

“DEVELOPER”

CC915 Merced, Inc.,
a Florida corporation

By: _____
(Signature)

JOHN GLAUTZ
(Print Name)

Its: Pres.

By: _____
(Signature)

(Print Name)

Its: _____

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FACSIMILE: _____

E-MAIL: _____

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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Merced

On July 29, 2022
Date

before me,

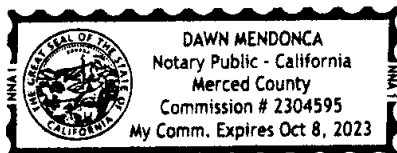
Dawn Mendonca, Notary Public,
Here Insert Name and Title of the Officer

personally appeared

John GLAVIN

Name(s) of Signer(s)

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.



Place Notary Seal Above

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

Dawn Mendonca

Signature of Notary Public

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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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.

Place Notary Seal Above

Signature

Signature of Notary Public

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

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

Attachment No. 8

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

EXHIBIT B

HOMEKEY GRANT STANDARD AGREEMENT

Attached as a separate document

EXHIBIT C

DENSITY BONUS #22-02

Concessions and Waivers

Parking (Concession)

The applicant has requested a reduction in the number of parking spaces from 7 spaces to 4 spaces. State Density Bonus Law (SDBL) allows a decrease in the parking ratio required for each unit. The 4 proposed affordable permanent supportive housing units have a total of 22 bedrooms plus 1 managers office. SBDL does not show the number or parking required for units with more than 4 bedrooms, as requested by the developer. However, based on 4 bedrooms per unit, the total required parking under the density bonus requirements is over 10 spaces.

Under the City's Zoning Ordinance requirements, the project would be required to provide 7 parking spaces, which is less than referenced in the SDBL. The project includes 4 parking spaces, which is less than the 7 required per the City's parking requirements (refer to the Site Plan at Attachment D).

Justification:

The reduction in parking decreases the amount of paving required of the site, which decreases the overall cost of the project. Additionally, decreasing parking also enables greater utilization of the land for housing, which further decreases project costs.

Lot Area Per Unit (Waiver)

As previously described, staff is relying on the standards for the R-1-6 Zoning district. This standard allows one unit for every 6,000 square feet of lot area. The development proposes one unit for every 5,103 square feet of lot area.

Justification:

Decreasing lot area per dwelling unit allows for a greater building envelope which increases the efficiency of the development and decreases project costs per unit.

Maximum Number of Units on an R-1-6 Zone Lot (Waiver)

Per Chapter 20.08.040 – Additional Dwelling Units on R-1 Lots, the maximum number of units on an R-1-6 Zone lot is 3.

Justification:

The applicant is requesting an additional unit (as allowed per Density Bonus based on residents AMI) to sustain the financing plan for this development. The applicant could achieve the desired number of units by conducting a lot split, but that would result in an increase in entitlement fees and require separate utility connection fees for each newly created parcel; resulting in substantial increase in development cost.

Duplex in R-1-6 Zone (Waiver)

Per Chapter 20.08.020 (B) – Land Use Regulations for Residential Zoning Districts, duplexes are allowed on residential lots with distinct frontages (generally corner lots).

Justification:

The subject site is an interior lot with one street frontage. Developing this site with duplexes provides cost saving benefits compared to developing 4 stand-alone residential units that require separate roofs, meters, and stand-alone foundation pads.