

PROPERTY ACCESS LICENSE

This access license (“License”) is made and entered into as of June __, 2022 (“Effective Date”), by and between CC915 Merced, Inc., a Florida for-profit corporation, (“Developer”) and City of Merced (“City”).

RECITALS

WHEREAS, the Developer is contemplating purchasing and developing City’s property located at 73 South R Street, Merced CA 95341 and otherwise referred to by APN No. 059-256-004 (“Property”); and

WHEREAS, Developer requires access to the Property in order to conduct testing, investigations, or preliminary work, including but not limited to, any environmental conditions, title conditions, construction feasibility, financing, tenant commitment and entitlements (design review and CEQA) upon the Property; and

WHEREAS, the City desires to grant the Developer access to the Property for the purposes set forth herein, subject to the terms and conditions set forth in this License.

LICENSE

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Developer and City agree as follows:

1. Grant of Access. As of the Effective Date, the City grants to Developer and Developer’s agents, employees and consultants a nonexclusive, revocable license to enter upon the Property for the purpose of inspecting, testing, investigations, or preliminary work, including but not limited to, any environmental conditions, title conditions, construction feasibility, financing, tenant commitment and entitlements (design review and CEQA) efforts upon the Property. The Developer shall provide twenty-four (24) hours’ notice to the City before entry upon the Property, provided, however, that all entries on the Property shall be conducted during the City’s normal business hours and Developer shall provide the opportunity for City to have a representative present during the Developer’s access to the Property. The Parties shall cooperate and coordinate to ensure that representatives from both Parties are available prior to accessing the Property.
2. Term. The term of this License shall commence upon the Effective Date and shall end on the earlier to occur of either: (i) sixty (60) days after the Effective Date or (ii) the date on which the Parties enter into an executed agreement for the disposition and development of the Property whereupon ongoing access rights shall be defined and incorporated therein. Notwithstanding the foregoing, the City may terminate this License by notifying Developer in writing in the event Developer is in violation of the terms or conditions of this License, which violation has not been cured within three (3) business days after receipt of written notice from the City.

3. Care of Property. While exercising its right to entry under this License, Developer, at Developer's sole cost and expense, shall protect the Property from damage and shall promptly repair any damage caused by Developer and its agents, contractors, subcontractors, materialmen, consultants, employees, licensees, agents, representatives, invitees or others acting for or on behalf of Developer (collectively "Developer's Agents"). Developer and Developer's Agents shall keep the Property reasonably clean and clear of equipment, building materials, debris and similar materials brought onto the Property by Developer or Developer's Agents, except as such materials and equipment are necessary for inspecting or testing the Property for the purposes set forth in this Agreement. Developer shall at all times during its entry on to the Property comply with any and all laws and regulations applicable to activities on the Property and shall require the same of Developer's Agents. Developer shall leave the Property in the same condition it was prior to the Effective Date of this License.
4. Hazardous Substances. Developer shall not introduce or use any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Substance") on the Property in violation of any applicable law. In the event Developer brings a Hazardous Substance on the Property, Developer shall pay for all costs of testing and remediation, if any, and shall compensate the City for any additional costs incurred as a result of Developer's generation of a Hazardous Substance on the Property. In addition, Developer shall defend, indemnify and hold harmless Developer and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, Developer's introduction or use of Hazardous Substances on the Property. Developer shall promptly, and before the Hazardous Substance is disturbed, notify the City in writing if it discovers any Hazardous Substance on the Property not introduced by Developer, and City shall remediate the Hazardous Substance or contain the Hazardous Substance.

This section shall survive termination of the License.

5. Assumption of Risk. Each entry by Developer and Developer's Agents onto the Property shall be at his, her or its own risk at all times. Developer and Developer's Agents hereby acknowledge that the Property in its existing condition could present certain risks and dangers. Developer and Developer's Agents hereby assume the risk of, and waive all claims relating to, injury or death to persons and damage to property resulting from any such entry.
6. No Liens or Encumbrances. Developer shall not suffer or permit as an encumbrance against the Property, or any portion of the Property, any lien or encumbrance of any kind or nature arising from Developer's access to the Property.

7. Insurance.

Comprehensive General Liability and Automobile Insurance.

Without limiting Developer's indemnification, it is agreed that Developer shall maintain in force at all times during the performance of this License a comprehensive general liability and automobile policy utilizing an occurrence policy form, with combined single limits of Two Million Dollars (\$2,000,000.00) or One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000.00) per accident with no annual aggregate limit. Property damage limits shall be One Million Dollars (\$1,000,000.00) per loss.

Written notification by the carrier to the City at least five (5) days prior to cancellation, failure to renew, or other termination, is required.

Developer will, at its own expense, maintain coverage in conformance with above requirements. Prior to possession, Developer shall deliver to City a certificate of insurance evidencing the existence of the policies required hereunder and stating that such policy shall include a separate endorsement naming City as an additional insured for the limits specified.

8. Indemnification. Developer shall indemnify, defend and hold City, its officers, its City Council, members of its City Council, employees and agents free and harmless from all claims, demands, losses and liabilities, however caused, including, without limitation, attorneys' fees, arising out of or connected with Developer's or Developer's Agents' entry onto the Property pursuant to this License.
9. Assignment. Developer shall have no right to assign its rights under this License without the prior written consent of the City.
10. Entire Agreement. This License constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties, written or oral.
11. Notice. Any notice to be given hereunder to either party shall be in writing in any form acceptable to the parties and addressed as follows:

Developer:

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

City:

City of Merced
678 West 18th Street
Merced, California 95340
Attn: Scott McBride

- 12. Counterparts. This License may be executed in counterparts and a facsimile signature shall be sufficient to bind each party, subject to the terms set forth herein.
- 13. Effective Upon Approval. This License shall become effective when it has been signed by both parties.
- 14. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement may be instituted and maintained in state or federal courts located in the State of California only, and the venue for any such litigation shall be in Sacramento County.
- 15. Warranty of Authority. Each party executing this License hereby warrants that s/he is lawfully entitled and authorized to bind his or her entity to the terms of this License.
- 16. Definitions. All terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have executed this License as of the date first written above.

City

Developer

By: _____

By: _____

Its: _____

Its: _____