

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)

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

**in respect to
CITY OF MERCED
AMERICAN RESCUE PLAN ACT
CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS**

(TwelveThirteen Apartments Project)

THIS AGREEMENT (this "Agreement") is entered into this ____ day of _____, _____, by and between the City of Merced (a California charter municipal corporation hereinafter referred to as the "City") and TwelveThirteen Homekey LP, a California Limited Partnership (the "Developer"), pursuant to that certain Deed Restriction Covenant and Grant Agreement dated _____, _____ (the "Grant Agreement" attached hereto as Exhibit B) between the Developer and the City, with reference to the following:

A. The Developer is the present owner of the real property (the "Site") located in the City of Merced, County of Merced, State of California, legally described in the attached Exhibit "A".

WHEREAS, The City has received Coronavirus Local Fiscal Recovery Funds as established under the American Rescue Plan Act ("ARPA") pursuant to Title 31 of the Code of Federal Regulations ("CFR") Part 35 from the United States Government.

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) To use, devote and maintain the Site and each part thereof, for the purposes and uses specified in the City's General Plan and in accordance with the City zoning requirements. 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.

(b) 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, 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, or ancestry 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:

(1) 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 groups of persons on account of race, color, creed, religion, sex, disability, marital status, ancestry or national origin 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, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) 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 or national origin 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, sublessees, subtenants, or vendees in the land herein leased.”

(3) 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 or national origin 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, sublessees 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, or ancestry 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, sublessees, or vendees of the Site or any part thereof.

3. 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, and its successors and assigns. Except as set forth in the following sentence and as otherwise set forth in the Grant Documents with respect to the City Grant, as such terms are defined in the Deed Restriction Covenant and Grant Agreement, dated as of _____, ____, by and between the City and the Developer, the covenants in paragraph 1 of this Agreement shall remain in effect until 55 years from the issuance of a final certificate of occupancy for the Project. The covenants against discrimination contained in paragraphs 1 and 2 of this Agreement shall remain in perpetuity.

4. 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 Property or any person or entity having any interest in any such other real property.

5. 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 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: TwelveThirteen Homekey LP
c/o UP TwelveThirteen LLC
6083 N. Figarden Drive #656
Fresno, CA 93722
Attention: Cullen J. Davis

With a Copy to: Bocarsly Emden Cowan Esmain & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Nichole M. Berklas

TO CO-GENERAL PARTNERS:

RHCB TwelveThirteen LLC
c/o WRBH LLC
352 W. Bedford Avenue #110
Fresno, California 93711
Attn: Wayne Rutledge, Manager

Housing on Merit XVII LLX
c/o Housing on Merit
1901 Avenue of the Stars, Suite 395
Los Angeles, CA 90067
Attention: Executive Director

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 twenty-one (21) 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 sixty (60) days, and such cure is diligently prosecuted to its conclusion. The foregoing is in addition to any of the provisions contained herein.

[Signatures on Next Page]

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement by duly authorized representatives, all on the date first above written.


CITY OF MERCED

BY: _____
City Manager

ATTEST:
STEPHANIE DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  _____ 8/24/2022
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

“DEVELOPER”

TWELVETHIRTEEN HOMEKEY LP,
A California limited partnership

BY: HOM XXVIII LLC,
a California limited liability company,
Its Managing General Partner

By: Housing on Merit,
a California nonprofit public benefit
corporation,
its Manager

Date: _____

By: _____
Jennifer Litwak
Executive Director

BY: RHC TWELVETHIRTEEN LLC,
a California limited liability company,
Its Co-General Partner

By: RH Community Builders LP,
a California limited partnership,
Its Manager

By: WRBH LLC,
a California limited liability company,
its General Partner

Date: _____

By: _____
Wayne Rutledge
Manager

BY: UP TWELVETHIRTEEN , LLC,
a California limited liability company
Its Co-General Partner

By: UP Holdings California, LLC,
an Illinois limited liability company registered
to do business in the State of California,
its Sole Member

Date: _____

By: _____
Cullen J. Davis
Manager

c/o
Bocarsly Emden Cowan Esmain & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Nichole M. Berklas

Phone: (213) 239-8059

Fax: (213) 239-0410

E-Mail: nberklas@bocarsly.com

ACKNOWLEDGEMENT

State of California

County of Merced

On _____, _____, before me, _____, a Notary
Public, personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public

(seal)

ACKNOWLEDGEMENT

State of California

County of Merced

On _____, _____, before me, _____, a Notary
Public, personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public

(seal)

Exhibit A: Legal Description of Property

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

PARCEL 1:

Parcel 2 as per Parcel Map filed February 29, 1988 in Vol. 60 of Parcel Maps, Pages 44 and 45, Merced County Records.

PARCEL 2:

An Easement for pool equipment and incidental purposes thereto, as conveyed in that certain instrument entitled "Easement Agreement" Recorded March 8, 2000 in Vol. 3979, Page 513, Document Number 7392 Official Records and more particularly described as follows:

Commencing at the corner common to Parcel 1 and Parcel 2 on the Westerly line of "V" Street as shown on the Parcel Map for Ray Douglas, Recorded on February 29, 1988 in Volume 60, Parcel Maps, Page 44, Merced County Records; thence along common line between the parcels N. 65° 20' 00" W. 86.70 feet, said point being the True Point of Beginning for this description; thence N. 24° 40' 00" E. 3.80 feet thence N. 65° 20' 00" W. 15.90 feet; thence S. 24° 40' 00" W. 3.80 feet to the common line between the parcels; thence along said common line S. 65° 20' 00" E. 15.90 feet to the point of beginning.

APN: 031-271-017

Exhibit B: Grant Agreement