

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)

DEED RESTRICTION COVENANT AND LOAN AGREEMENT

**In Respect of the
CITY OF MERCED
PERMANENT LOCAL HOUSING ALLOCATION**

(Mercy Village)

THIS DEED RESTRICTION COVENANT AND LOAN AGREEMENT ("Loan Agreement"), dated _____, __, ____, entered into by and between the City of Merced, a California Charter Municipal Corporation, ("City") and UP Mercy Village, L.P., a California limited partnership (the "Developer"):

A. On January 16, 2022, the City Council of the City of Merced authorized the commitment of One Million Three Hundred Twenty Four Thousand Nine Hundred Sixty Nine Dollars (\$1,324,969) in Permanent Local Housing Allocation ("PLHA") funds (the "Loan") to Developer for the construction of a multi-family affordable residential rental project (the "Project") on that certain real property consisting of approximately 1.5 acres located at 3015 Park Avenue (Assessor's Parcel No. or "APN" 007-350-018), and more particularly described in Exhibit A attached hereto and made a part hereof (the "Properties" or "Site").

B. The Project is intended to consist of sixty-six (66) dwelling units. Of the 66 units, one (1) unit will be reserved as Manager Unit. After completion of construction, Twenty-two (22) units will be assisted by the Loan and rented to households with incomes at or below thirty percent (30%) to sixty percent (60%) of the Area Median Income ("AMI") for Merced County in accordance with the Regulatory Agreement (as defined below). Should the Developer have multiple restrictions on unit affordability required by multiple funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

C. The Loan is being made pursuant to the PLHA funds allocated to the City by the California Department of Housing and Community Development (“HCD”).

ARTICLE I. LOAN OF FUNDS

SECTION 1.01 Loan. Subject to the satisfaction of the conditions set forth herein, the City loans to Developer the amount of One Million, Three Hundred Twenty-Four Thousand, Nine Hundred Sixty-Nine Dollars (\$1,324,969) in PLHA funds for the primary purpose of assisting with predevelopment and construction of dwelling units in the Project and for related expenses identified in the budget attached hereto as Exhibit “B”. Of the 22 units restricted by the PLHA funds, six (6) units will be rented to households earning up to 30% AMI, five (5) units will be rented to households earning up to 50% AMI, and eleven (11) will be rented to households earning up to 60% AMI. Should the Developer have multiple restrictions on unit affordability required by multiple funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

As a condition of the receipt of this Loan, Developer agrees to carry out the development of a sixty-six unit (66) one-bedroom permanent supportive housing project of which thirty-one (31) units are designated as No Place Like Home (NPLH) units and will service individuals that are experiencing or at-risk of homeless what also have severe mental illness, thirty-four (34) units will be affordable to special needs households including those experiencing homelessness and one (1) manager’s unit (“Project”).

In accordance with the State of California Permanent Local Housing Allocation Program, the PLHA eligible activities include predevelopment, development, acquisition of multi-family rental housing that is affordable to extremely low, very low, or moderate-income households. The City’s PLHA Loan proceeds of up to \$1,324,969 may be used for eligible predevelopment expenses identified in the budget (Exhibit “B”) that result in the development of the Project.

In addition to the City PLHA Loan (\$1,324,969), the Developer has applied for and/or secured No Place Like Home (\$7,401,329), and Low-Income Housing Tax Credits (\$16,737,457). If the Developer is unable to secure an allocation of the competitive No Place Like Home and Low Income Housing Tax Credits or other financial resources necessary to construct the Project within three (3) years of the initial disbursement of the Loan, then the Developer and/or its parent corporations, UP Holdings LLC, as guarantor (“Guarantor”) each agree to repay the City Loan in full within 90 days after the 3 year period.

Developer may periodically submit claims for disbursement of the Loan when the funds are needed for reimbursement or payment of eligible costs identified in the budget. The amount of each such request shall be limited to the amount expended or incurred. The request shall be accompanied by documentation of expenditures in such form as may be required by the City, including but not limited to submission of copies of documents such as paid invoices, payroll, time sheets, and other supporting source documents.

Developer shall be liable for repayment of any PLHA proceeds disbursed to Developer that are subsequently determined to constitute disallowed costs if Developer is not able to reallocate

the PLHA proceeds to an eligible cost, provided that the amount so repaid shall subsequently be available for eligible costs. Disallowed costs may be identified through audits, monitoring, or other sources. City shall make the final determination of disallowed costs subject to provisions of applicable PLHA regulations.

The Loan is to be evidenced by a Note executed by Developer, guaranteed until construction of the Project by UP Holdings LLC in favor of City and delivered to City concurrently herewith (the "Note"). Repayment of the Note is to be secured by the Deed of Trust, Security Agreement, and Fixture Filing of even date hereof (the "Deed of Trust"), covering the Properties and the Project. Developer shall execute the Deed of Trust in favor of Commonwealth Land Title Company located at 601 S. Figueroa Street, Suite 4000, Los Angeles, California 90017 as Trustor in trust for the benefit of City and deliver it to escrow for recordation.

That certain Regulatory Agreement and Declaration of Restriction Covenants of even date hereof (the "Regulatory Agreement") imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Loan. Developer shall execute the Regulatory Agreement and deliver it to escrow for recordation. This Loan Agreement, the Note, Deed of Trust, Regulatory Agreement and documents related thereto, are referred to herein as the "Loan Documents."

SECTION 1.02 Conditions of Funding. The obligation of the City to disburse Loan proceeds pursuant to this Loan Agreement is subject to the following conditions:

1. Developer shall provide the City with a corporate resolution or similar document approving and authorizing execution of this Loan Agreement and all documents contemplated hereby and with such other documents required by the City regarding Developer's corporate status and ability to enter into this transaction.

2. Developer shall provide the City with Certificates of Insurance in form and with insurers admitted in California acceptable to the City, evidencing compliance with the insurance requirements of this Loan Agreement on or prior to close of escrow on the property and upon demand by City at any time subsequent. If requested by the City, Developer shall also provide copies of the required insurance policies.

3. As a material inducement to City to enter into this Loan Agreement and to make the Loan to Developer, Developer unconditionally represents and warrants to City, as of the date hereof, as follows:

(a) Developer is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

(b) Developer has full authority to execute this Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement and all of the other Loan Documents, to

undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

(c) This Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement and each of the other Loan Documents constitutes a legal and binding obligation of, and is valid and enforceable against, each party other than City, in accordance with the terms of each.

(d) There are no actions, suits, or proceedings pending or, to the actual knowledge of Developer, threatened against or affecting Developer, the Properties, or any part of thereof, or involving the validity or enforceability of the Deed of Trust, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any local, state or federal governmental agency. Developer is not in default with respect to any order, writ, injunction, decree, or demand of any court or other local, state or federal governmental agency.

(e) The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Developer or any of its general partners is a party or by which it or they or the Properties may be bound or affected.

(f) There is no event of default or potential default on the part of Developer under the Loan Documents or any other document relating to the financing of the Project.

(g) Developer has not received financing for the construction or the permanent financing of the Project except as has been specifically disclosed to and approved by City in writing.

(h) All proceeds of the Loan will be disbursed as provided in this Loan Agreement and used only for reimbursement of eligible predevelopment costs of the Project in accordance with other purposes specified in this Loan Agreement.

(i) All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to City concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

SECTION 1.03 Terms and Repayment of Loan. The parties agree that assistance in the Project is being provided by the City in the form of the Loan. The City shall provide a loan from PLHA funds for predevelopment and construction of the Project as restricted by the Regulatory

Agreement. The Loan shall be repaid in accordance with the Note. The City shall provide funds for expenses up to a cumulative total of One Million, Three Hundred Twenty-Four Thousand, Nine Hundred Sixty-Nine Dollars (\$1,324,969).

If the Developer is unable to secure an allocation of the resources necessary to construct the Project within three (3) years of the initial disbursement of the Loan, then the Developer and/or its affiliated corporation, UP Holdings, LLC, an Illinois limited liability company, dba UP Holdings California, LLC, will repay the Loan in full.

Upon completion of construction of the Project, the payment of the Loan or any obligation of the Loan shall be non-recourse as to the Developer, and Developer's principals, partners, members, agents, officers, and successors in interest..

SECTION 1.04. Loan Documents. To the extent of any conflict or inconsistency between this Loan Agreement and the Note or Regulatory Agreement, the terms of the Note and Regulatory, Agreement, as applicable, shall control.

SECTION 1.05. Subordination of Loan. The City agrees that each of the deeds of trust securing the Loan and regulatory agreements entered into in connection with the Loan shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements securing affordable housing tax credits financing (collectively, the "Senior Loans") subject to the following conditions: (1) the City shall receive copies of any notices of default issued by the Senior Lenders to the Developer; and (2) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default, except as provided in a separate subordination agreement between the City and any Senior Lender.

ARTICLE II. OPERATION OF THE PROJECT

SECTION 2.01. Acceptance of Obligations. In consideration of the Loan to be provided hereunder, Developer agrees to and accepts the restrictions, obligations, and conditions contained in this Loan Agreement, including without limitation, the occupancy and rent requirements set forth in Section 2.04 below.

SECTION 2.02. Development and Operation of Project. Developer shall maintain the Properties for rental housing in accordance with this Loan Agreement, and all other applicable legal requirements. Developer shall at all times maintain in full force and effect all applicable licenses required by the City of Merced, the County of Merced, and/or the State of California to operate and manage the property.

SECTION 2.03 PLHA Requirements. Developer shall comply with all applicable laws and regulations governing the use of the PLHA funds including, but not limited to, the PLHA Final Guidelines published by HCD in October 2019 provided as Exhibit "D".

In the event HCD formally amends, waives or repeals any administrative regulation previously applicable to Developer's performance under this Loan Agreement, the City expressly

reserves the right upon giving notice to HCD and Developer, to require performance of Developer as though the regulation was not amended, waived, or repealed subject only to the written and binding direction or instruction from HCD.

SECTION 2.04. Occupancy and Rent Requirements.

A. Occupancy Requirement. During the term of this Loan Agreement, Developer agrees to rent the property in accordance with the Regulatory Agreement. This provision shall operate as a deed restriction during the term of this Loan Agreement.

B. Rent Requirement. Initial rent shall be established in accordance with the Regulatory Agreement. Should the annual rent limit differ between the CFR and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) rent limits.

C. Records Relating to Occupancy and Rental Requirements. Developer shall maintain all documents used in determining the qualifications of occupants, complete records of rent and other charges billed to and received from all occupants, and such other documents and reports as are necessary to enable the City to monitor compliance with the Regulatory Agreement. The records and documents described in the preceding sentence shall be maintained for the periods and in the manner set forth in Section 2.06 below. The City shall have the right to review and audit such documents and records for compliance with requirements of this Section.

SECTION 2.05. Corporate Status. At all times during the term of this Loan Agreement, Developer shall maintain its existence and shall comply with all provisions of the California Law (Corporations Code Section 5000 *et. seq.*).

SECTION 2.06. Records and Audits.

A. Maintenance of Records. Developer shall maintain records including, but not limited to, books, financial records, supporting documents, statistical records, and all other pertinent records sufficient to accurately reflect all expenditures under this Loan Agreement, and all other matters covered by this Loan Agreement.

Developer shall preserve and make available its records relating to receipt and use of Loan proceeds until the expiration of seven (7) years from the date of final disbursement of loan proceeds to the City, or for such longer period, if any, as required by law.

B. Annual Audit. Each year in which Loan proceeds are received or expended, Developer shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted auditing principles, which audit shall identify the Loan proceeds received and expended.

Upon completion, Developer shall provide the City with a copy of each annual independent fiscal audit.

C. Examination of Records and Facilities. Any time during normal business hours, and as often as may be deemed necessary, the Developer agrees that HCD or the City or any duly authorized employee or representative, shall have access to and the right to examine Developer's offices or facilities engaged in performance of this Loan Agreement, and all the Developer's records with respect to all matters covered by this Loan Agreement.

SECTION 2.07. Insurance. Developer shall maintain, throughout the term of this Loan Agreement, insurance from companies admitted in California, and approved by the City, in amounts as follows:

A. Workers' Compensation Insurance, including Employers' Liability coverage, with limits not less than required by California law.

B. Comprehensive General Liability Insurance with limits of not less than \$1,000,000 for each occurrence combined single limit bodily injury and property damage, including coverage for contractual liability.

C. Property Insurance covering the Properties in a form appropriate for the nature of the Properties covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with a deductible, if any, acceptable to the City, naming City as loss payee as its interest may appear.

D. The General Liability Insurance provided hereunder shall name the City as an additional insured and all insurance shall provide the City with thirty (30) days written notice of any cancellation.

ARTICLE III. DEFAULT, ENFORCEMENT, AND REMEDIES

SECTION 3.01. Default. Failure by either party to timely perform any material term or provision of this Loan Agreement (including, without limitation, failure by Developer to comply with the occupancy and rent requirements of Section 2.04 above), shall be considered a Default by that party under this Loan Agreement. The non-defaulting party shall serve written notice of a Default upon the defaulting party. If such Default is not cured by the defaulting party within thirty (30) calendar days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such Default; provided, however, that if the cure cannot be effectuated within such thirty (30) day period, the defaulting party shall have a reasonable additional time period to effectuate such cure so long as it commences such cure within the initial 30 day period, but no event shall such cure period exceed ninety (90) calendar days after service of the notice of default; and provided, however, the non-defaulting party may, at its sole and complete discretion, waive any damage from the defaulting party by written notice to the defaulting party.

ARTICLE IV. GENERAL PROVISIONS

SECTION 4.01 Notices. Any notice, tender, or delivery to be given hereunder by either party to the other may be affected in writing either by personal delivery or sent by first class mail through the United States Postal Service, addressed as set forth below. Either party may change its address by written notice in accordance with this section.

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: UP Mercy Village L.P.
7370 N. Lincoln Avenue Ste A
Lincolnwood, IL 60712

SECTION 4.02 Assignment. Developer acknowledges and agrees that the Loan is being provided in consideration of its special expertise, skill, and ability of Developer to operate and maintain the Properties in a manner that will achieve the City's objective to provide quality affordable housing for lower income households. Consequently, Developer shall not permit any voluntary transfer, assignment, or encumbrance of this Loan Agreement without first obtaining the City's written consent, which shall not be unreasonably withheld. Any transfer, assignment, encumbrance, or lease without the City's consent shall be voidable and, at the City's sole discretion, shall constitute a material breach of this Loan Agreement. Notwithstanding the above, the City agrees that Developer shall be permitted to transfer its limited partnership interest to a low income housing tax credit investor in connection with the construction loan closing for the Project. Further such tax credit investor shall have a right, without the consent of the City, to transfer its rights as limited partner pursuant to the terms of the Developer's partnership agreement.

SECTION 4.03 Non-Discrimination. The Developer covenants by and for itself and any successors-in-interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it 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 Site. The foregoing covenants shall run with the land.

SECTION 4.04 No Third Party Beneficiaries. Nothing contained in this Loan Agreement shall be construed as creating a relationship of employer and employee or principal and agent between the City and Developer or Developer's agents or employees. Nothing contained in this Loan Agreement shall create or justify any claim against City by any third person with whom Developer may have employed or contracted.

SECTION 4.05 Indemnification. As a separate and independent covenant and irrespective of any insurance coverage, Developer shall take all responsibility for its performance, and shall bear all losses and damage directly resulting to it, and for performance of any of its contractors, subcontractors or agents.

Developer agrees to defend with counsel selected by the City, protect, indemnify, and hold harmless the City, its officers, employees, representative, and agents, on account of any breach of this Agreement or negligent act, error, or omission of Developer in the performance of this Loan Agreement.

Developer agrees to indemnify, protect, to assume the defense of with counsel selected by the City, and to hold harmless the City, its officers, employees, and agents from every claim, loss, damage, injury, expense, including attorney's fees, judgment, and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance of this Loan Agreement, except to the extent caused by the willful misconduct of the City, its officers, employees, and/or agents.

SECTION 4.06 Term. The term of this Loan Agreement shall commence upon the date of this Loan Agreement and shall continue until the full repayment of the Loan. Upon such full repayment of the Loan, City and Developer shall cause to be executed and recorded a termination of this Loan Agreement.

SECTION 4.07 Entire Agreement. This Loan Agreement constitutes the entire Agreement between the City and Developer with respect to the subject matter hereof.

SECTION 4.08 Amendments. The City and Developer reserve the right to amend this Loan Agreement by mutual consent. It is understood and agreed that no alteration or variation of the terms of this Loan Agreement shall be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Loan Agreement shall be binding on either of the parties, unless made in writing and signed by both of the parties.

SECTION 4.09 Severability. The invalidity of any clause, part, or provision of this Loan Agreement shall not affect the validity of the remaining portions thereof.

SECTION 4.10 Exhibits. The following referenced exhibits are attached to this Loan Agreement and are incorporated in this Loan Agreement as though fully set forth herein.

Exhibit A: Legal Description of Properties

Exhibit B: Project Budget
Exhibit C: Commitment Letter

SECTION 4.11 Venue. This Loan 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 Loan Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 4.12 Covenant Running With Land. The provisions of this Loan Agreement shall constitute covenants which shall run with the land and be binding upon Developer and Developer's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including, but not limited to, leasehold interests, in and to any part of the Properties except that, subject to the Regulatory Agreement and if specifically referenced herein, the same shall terminate as provided in Section 4.06 above. Any attempt to transfer title or any interest therein in violation of these covenants, except as provided herein, the Loan Documents shall be void.

[Signatures on Next Page]

IN WITNESS WHEREOF the parties hereto have executed this Loan Agreement as of the date first above written.

CITY OF MERCED
A California Charter
Municipal Corporation

BY: _____
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Craig Cornwell 1/8/24
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

“DEVELOPER”

UP MERCY VILLAGE, L.P., a California
limited partnership

By: UP Mercy Village, LLC, a California
limited liability company, Its General
Partner

By: UP Holdings, LLC, an Illinois
limited liability company, dba
UP Holdings California, LLC,
Its Sole Member

By:

Cullen J. Davis, Manager

Taxpayer I.D. No. _____

The party signing below only for purposes of hereby acknowledging and agreeing to be held to the terms set forth in Section 1.01, Paragraph 4 of this Agreement.

“GUARANTOR”

UP Holdings, LLC, an Illinois limited
liability company, dba UP Holdings
California, LLC

By: _____

Cullen J. Davis, Manager

Dated: _____

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)

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)

Exhibit A: Legal Description

3015 Park Avenue (APN 007-350-018)

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

Parcel C, as shown upon that certain Parcel Map recorded December 27, 1996 in Volume 81 of Parcel Maps, Page 42, Merced County Records, being a division of Parcel C, as shown upon that certain Parcel Map recorded November 13, 1970 in Volume 12 of Parcel Maps, Page 34, Merced County Records, being a Division of portions of Lots 114, 115, 116 and 118 through 120 and 127 and 128 of "Crocker Colony".

EXCEPTING THEREFROM an undivided 3/4 Interest in and to (a) all oil, gas and other hydrocarbons in and under that portion of the above described land herein after described, as the "mineral property" and (b) all other mines and minerals found in solid, gaseous, viscid state in or under the mineral property, one-half thereof being Reserved in the Deed from Crocker Land Company, recorded August 4, 1962 in Book 1539, Page 594, Official Records; and one-quarter thereof being Reserved in the Deeds from Yosemite Land and Cattle Co., a Delaware corporation and CHM Company, a California corporation, recorded April 7, 1967 in Book 1740, Page 823, Official Records and recorded August 18, 1965 in Book 1696, Page 189, Official Records and recorded February 7, 1968 in Book 1763, Page 93, Official Records.

TOGETHER WITH (1) the right to use the "mineral property" to slant-drill wells for any purposes and to drill or dig tunnels for any purpose, the surface location of which wells or tunnels are on properties other than the above described property and the producing intervals of which wells or tunnels are in the "mineral property" and (2) the right to store, inject in and remove from the "mineral property", oil, gas, water or other fluids and other mines and minerals of any kind by wells or tunnels, the surface location of which are on properties other than the above described real property, the "mineral property" shall be that portion of the above described real property (or any portion thereof) which is more than 500 feet vertically below the surface of the above described real property.

Exhibit B: Project Budget

Exhibit C: Commitment Letter