

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:
City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

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

APN: 007-350-018

(Above for Recorder's Use Only)

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

**MERCY VILLAGE
3015 PARK AVENUE
APN: 007-350-018
MERCED, CALIFORNIA**

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 ("City"), a California Charter Municipal Corporation, and UP Mercy Village, L.P., a California limited partnership (the "Developer") (collectively referred to as the "Parties").

RECITALS

A. The City intends to create affordable housing rental opportunities for extremely low to low income persons and families. Pursuant to the City Commitment Letter, dated as of _____, 20__ (the "Commitment Letter"), the Developer has acquired certain real property located at 3015 Park Avenue (Assessor's Parcel No. or "APN" 007-350-018), (the "Property" or "Site"), as described in Exhibit A attached hereto and incorporated herein.

B. Developer has agreed to construct sixty-six (65) one (1) bedroom multifamily residential rental units and one (1) manager unit for a total of sixty-six (66) units on the Property. Of the sixty-five (65) units, twenty-two (22) units shall be restricted for extremely low to low income households earning 30% to 60% of the Area Median Income for Merced County, adjusted for family size ("AMI").

C. Of the sixty-five (65) affordable units, thirty-one (31) will be designated for residents who are experiencing or at risk of homelessness and have severe mental illnesses who qualify for the California No Place Like Home program, administered by the California Housing and Community Development Department. The remaining affordable units, thirty-four (34) units,

will house residents who are special needs households including those experiencing homelessness. The Developer is obligated to provide resident wrap-around services.

D. Pursuant to the Deed Restriction Covenant and Loan Agreement (the “Loan Agreement”), the City will provide provided a One Million, Three Hundred Twenty-Four Thousand, Nine Hundred Sixty Nine Dollars (\$1,324,969) loan from Permanent Local Housing Allocation (“PLHA”) funds in order to assist with the cost of predevelopment and constructing the 30%-60% AMI units (“City Assistance”).

E. The City Assistance is evidenced by the Loan Agreement and is secured by a Deed of Trust on the Property.

F. The City and Developer desire by the execution of this Agreement to assure that the Property and the Affordable Units constructed or to be constructed thereon, will be rented to Qualified Households at an Affordable Housing Cost in accordance with the terms and conditions of the Loan Agreement and this Agreement.

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, the parties acknowledge and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

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

“30% AMI Units” shall mean one of the six (6) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 30% AMI Households.

“50% AMI Household” shall mean a household whose gross income does not exceed fifty percent (50%) of the Area Median Income, adjusted for Actual Household Size.

“50% AMI Units” shall mean one of the five (5) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 50% AMI Households.

“60% AMI Household” shall mean a household whose gross income does not exceed sixty percent (60%) of the Area Median Income, adjusted for Actual Household Size.

“60% AMI Units” shall mean one of the eleven (11) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 60% AMI Households.

“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 applicable federal and state rules and regulations. If the applicable federal rules and regulations conflict with state regulations, then the applicable federal rules and regulations shall control the Restricted Units.

“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” for the Restricted Units means the median income for Merced County, adjusted for Actual Household Size, as determined from time to time by the California Department of Housing and Community Development (“HCD”); provided, however, that to the extent that any Restricted Unit is restricted by TCAC at the same AMI level, then Developer may use the TCAC standards instead of HCD standards. Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the definition of median income that results in more restrictive (lower) income limits. 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 City 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.

"City" shall mean the City of Merced.

“City Loan” shall mean all funds loaned to the Developer by the City pursuant to the Loan Agreement.

“Eligible Household” means a household for which household income upon initial occupancy does not exceed the maximum income level for Restricted Unit, based on No Place Like Home or Permanent Supportive Housing program requirements, as applicable to the Restricted Unit.

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

"HCD" shall mean the California Department of Housing and Community Development.

"HUD" shall mean the United States Department of Housing and Urban Development.

“PLHA” shall mean the State of California Permanent Local Housing Allocation Program.

“NPLH” shall mean the State of California No Place Like HOME program.

“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 30% AMI Units, 50% AMI Units, or 60% AMI Units described in Section 2.1(a).

“TCAC” means the California Tax Credit Allocation Committee.

“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 2.9 below), 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:

30% AMI Units. Six (6) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 30% AMI Households.

50% AMI Units. Five (5) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 50% AMI Households.

60% AMI Units. Eleven (11) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 60% AMI Households.

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. Should the annual income limit differ between HCD and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) income limits.

(b) As a condition of the receipt of said Loan, Developer agrees to carry out the development of a sixty-six unit 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").

(c) The Project shall be operated at all times in compliance with the provisions of: (a) the Unruh Act; (b) the United States Fair Housing Act, as amended; (c) the California Fair Employment and Housing Act; and 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 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.

2.2 Allowable Rent.

(a) Subject to the provisions of Section 2.4(b), the Allowable Rent charged to tenants of the Restricted Units means thirty percent (30%) of applicable percentage of Area Median Income, Adjusted for Family Size Appropriate for the Unit, for each Restricted Unit.

(b) Initial rents for all Restricted Units shall be approved by the City prior to occupancy. 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 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 City. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by City 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) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

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

(B) 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;

(C) 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;

(D) 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; and

(E) Targeting specific special needs populations in accordance with this Agreement and applicable laws.

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 City 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 restrict the next available vacant unit at the appropriate income level to come into compliance with the Occupancy Requirement, which shall mean for the purposes of this Agreement, those requirements set forth in Section 2.1, and Allowable Rent provisions of this Regulatory Agreement, as well as any applicable state and federal requirements.

During the Period of Affordability, the Developer may request an increase in the rent for Restricted Units to 80% AMI Rents ("Float Request") if there is a reduction, termination or nonrenewal of project-based vouchers or if the Project generates insufficient income to pay: (a) Project operating costs, (b) deposits to replace lender required reserves, and (c) debt service on approved financing. The Float Request must be supported by a pro forma and narrative explanation, including an accounting, that the increased rents are necessary to achieve financial feasibility and close a financial operating gap. City shall have the sole and absolute discretion to

approve or deny any Float Request and impose any conditions thereon, including future adjustments if vouchers are re-instated or otherwise available for the Project.

2.5 Marketing Plan.

(a) Not later than thirty (30) days prior to the anticipated date of issuance of a certificate of occupancy for the Project, Developer shall submit a Marketing Plan for City's review and approval and shall implement such plan after approval by the City. The Marketing Plan shall specify how Developer intends to market the Project to prospective tenants in the Project's market area in accordance with fair housing laws and this Agreement. The Marketing Plan shall specifically address how Developer intends to market the Project to underserved populations in the Project's market area and the frequency of marketing efforts. City agrees that Developer may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.

(b) Developer agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved populations that are not being reached. Any revised Marketing Plan shall be submitted to City for approval prior to implementation.

2.6 Unit Standards.

For the full Agreement term, the size, type and amenity level of Restricted Units shall not be substantially different from the size, type and amenity level for non-Restricted Units, if any.

2.7 Rental Agreement and Grievance Procedures.

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

(a) 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.

(b) 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.

(c) 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.

(d) One or more of the following, without limitation, may constitute “good cause”:

(1) Failure by the tenant to maintain applicable eligibility requirements under this Agreement or other eligibility requirements as imposed by City 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 Restricted 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 to not 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.

(e) 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.

(f) Developer shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state and federal law. 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.

(g) Developer shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Developer with respect to tenants occupancy in the Project, and prospective tenants applications for occupancy. Developer's appeal and grievance procedures shall be subject to City'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.

2.9 Period of Affordability.

Developer acknowledges that the City Loan is being made to Developer under the terms and conditions of California Health and Safety Code Section 34176.1, California Government Code Section 54221(f)(1)(A), and the PLHA 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 (hereinafter referred to as the "Period of Affordability") from the date a final certificate of occupancy is issued for the Project. It is intended by the parties to this Agreement, that this covenant shall run with the land, with the benefit of this covenant running to the City, 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 to comply with the terms of the Agreement. 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 City 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 City. 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 City or their respective authorized agents.

3.3 Additional Information.

The Developer shall provide any additional information reasonably requested by the City. The City 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) Upon any sale or transfer, including transfer by gift, devise, descent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, or voluntary or involuntary bankruptcy, of the Property without the prior written approval of City, all principal, interest and costs then owing upon the City Loan will become immediately due and payable to City.

(b) City may 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 requirements of the Agreement; and (iv) City 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 requirements of the Agreement.

(c) 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.

(d) 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.

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 2.9, above.

4.5 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.

4.6 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, which has not been released within 90 days, (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, 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 Loan Agreement, City 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 reasonable satisfaction of City within the time period specified in the notice, which shall not be fewer than thirty (30) days, City 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) 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 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 would be impossible to ascertain.

(3) Accelerate all amounts, including outstanding principal and interest, due under the City Loan, and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

(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 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.

4.7 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 4.6 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 4.7(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 for cause and without penalty with no more than thirty (30) days notice. Upon determination by City 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 City 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 determines that the Project is not being operated in accordance with this Agreement, City 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.

4.8 Governing Law.

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

4.9 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.

4.10 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 provision negates the purpose of 31 CFR Part 35 and/or threatens the security for the City Loan.

4.11 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 attorney's fees, costs and expenses.

4.12 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.

4.13 Amendment.

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

4.14 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.

4.15 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.

4.16 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.

4.17 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 hold harmless the City 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, except to the extent caused by the willful misconduct of any of the Indemnitees.

4.18 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.

4.19 Interpretation of Affordability.

It is the intention of the parties to this Agreement that affordability be interpreted in view of the express goals of California Health & Safety Code Section 34176.1, Government Code Section 54221(f)(1)(A), the PLHA program administered by the City and HCD, and any amendments thereto. 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.

4.20 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.

4.21 Covenants to Run with the Land.

The City 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, the 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. This Agreement shall be recorded in the Official Records of Merced County concurrent with funding of the City Loan.

4.22 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.

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

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

4.24 Subordination.

The City agrees that this Agreement shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements securing low-income 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.

[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 written above.

CITY OF MERCED

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

Date: _____

By: _____
Cullen J. Davis, Manager

Taxpayer I.D. No. _____

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 DESCRIPTIONS

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.