

**PROMISSORY NOTE  
CITY OF MERCED**

(UP Mercy Village, L.P. Permanent Local Housing Allocation)

**\$1,324,969**

**Merced, California**

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, UP Mercy Village, L.P., a California limited partnership (“Borrower”), promises to pay to the City of Merced, a California Charter Municipal Corporation (the “City”), or order, the principal sum of One Million, Three Hundred Twenty Four Thousand, Nine Hundred Sixty Nine Dollars (\$1,324,969), or so much thereof as may be advanced by the City to or on behalf of the Borrower pursuant to a Deed Restriction Covenant and Loan Agreement dated \_\_\_\_\_, \_\_\_\_ (the “Loan Agreement”), by and between the Borrower and the City, together with interest thereon as specified herein (for the construction of an affordable multi-family residential rental project (the “Project”) on that certain real property consisting of approximately 1.52 acres combined located at 3015 Park Avenue, Merced, California (Assessor’s Parcel No. or “APN” 007-350-018), (“Property”). The obligation of the Borrower in respect of all such advances is subject to the terms of (a) Loan Agreement dated \_\_\_\_\_, \_\_\_\_ (“Loan Agreement”) (b) Regulatory Agreement and Declaration of Restrictive Covenants between the Borrower and the City dated \_\_\_\_\_, \_\_\_\_ (the “Regulatory Agreement”), (c) this Promissory Note (“Note”), and (d) the Deed of Trust, Security Agreement and Fixture Filing of even date hereof, securing this Note, recorded in the Official Records of the County Recorder of Merced County, California (the “Deed of Trust”), which together with all other loan related documents and instruments required by the City are collectively referred to as the “Loan Documents.”

1. Borrower’s Obligation. This Note evidences the Borrower’s obligation to pay the City the principal amount of One Million, Three Hundred Twenty Four Thousand, Nine Hundred Sixty Nine Dollars (\$1,324,969) for the funds to the Borrower by City to finance the construction of the Properties where the Project will be constructed for the purposes and pursuant to the terms set forth in the Regulatory Agreement and Declaration of Restrictive Covenants. Disbursement requests of funds shall be made by the Developer to the City upon the close of construction financing. 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). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Regulatory Agreement and Declaration of Restrictive Covenants.

2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum from the date of initial -disbursement of Loan funds by the Developer until repaid; provided, however, if a Default occurs and is continuing, interest on the principal balance shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this Note (the “Term”) shall commence with the date of this Note and shall expire on the date that is fifty-five (55) years from the conversion of the Project from its construction phase to its permanent phase (the “Conversion Date”). This Note shall be due and payable as set forth in Section 1.03 of the Loan Agreement. Payments shall be paid annually in arrears, no later than the 1<sup>st</sup> of the sixth month following the conclusion of each fiscal year of the Project, with payments deferred until the Net Cash Flow (as defined in Section 4) of the Project. The payment shall be accompanied by a copy of the Project’s annual audited financial statement and an explanation of how the payment amount was calculated based on Net Cash Flow.

Any unpaid balance due shall be payable at the end of the Note Term. Borrower shall have the right to prepay this Note in whole or in part without penalty or premium, provided that any prepayment of principal must be accompanied by interest, if any, accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest, if any, and then to principal.

Unless otherwise specified hereinabove, each payment shall be credited first on interest (if any) then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited.

If the Developer is unable to secure an allocation of the competitive No Place Like Home, Low Income Housing Tax Credits or other financing necessary to construct the Project within three (3) years of the initial disbursement of the Loan, then the Developer and/or its parent corporation, UP Holdings, LLC, as guarantor (“Guarantor”) all agree to be responsible to repay the City PLHA Loan in full within 90 days after the three year period.

4. Net Cash Flow. For the purposes described in Section 3, Net Cash Flow shall be defined as follows:

Gross Income less Total Operating Expenses & Reserves and Asset Management Fee and Deferred Development Fee.

“Gross Income” shall mean and include all revenue, income, receipts, and other consideration actually received by Developer from operation of leasing of the Project shall include all rental receipts, laundry income, tenant charges and interest, but shall specifically exclude tenants’ security deposits, interest on security deposits, loan proceeds, capital contributions or similar advances, amounts released from reserves or interest on reserves, condemnation proceeds, or insurance proceeds (other than the proceeds from any business interruption insurance).

“Total Operating Expenses & Reserves” shall include all taxes and assessments, insurance, license, utilities, building maintenance and repairs, landscaping, management fees, on site manager, payroll, cleaning supplies, all benefits and legal and accounting and all deposits to replacement, operating and transition reserves required by the Project lenders and equity investors, social services fees, Asset Management Fee (as defined below), Deferred Development Fee (as defined below), mandatory payments (including debt service) to Project lenders and equity investors as reflected in the applicable loan documents and Borrower’s partnership agreement, organizational costs and expenses, taxes, utility services, and other general administrative expenses.

“Asset Management Fee” is the annual fee(s) to pay the limited partner and/or the general partners for all management and oversight of the project, including any and all regulatory filings and surveys required of the Developer by the City in accordance to the project’s funding sources. Said fee shall be no higher than \$25,000 for calendar year 2023 increasing at 3% per year thereafter.

“Deferred Development Fee” shall be defined as the portion of the development fee that had not been paid upon Conversion. The total development fee shall be capped at the maximum amount permitted by the California Tax Credit Allocation Committee.

The uses of each annual Net Cash Flow shall be as follows:

- (i) 50% to the Developer
- (ii) 50% (allocated on a pro rata basis and used to pay residual receipts loans for the Project).

5. Subordination. This Note 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.

6. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the Loan Agreement and Regulatory Agreement.

7. Security. This Note is secured by the Deed of Trust, wherein the Borrower is the Trustor and the City is the Beneficiary, covering the Properties.

8. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to City at the office of the City, 678 West 18<sup>th</sup> Street, Merced, CA 95340, Attn: Housing Division & City Clerk, or to such other place as the City may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

(e) Except as otherwise provided in Section 1.03 of the Deed Restriction Covenant and Loan Agreement, after construction of the Project, the payment of the Note or any obligation of the Note shall be non-recourse as to the Borrower's principals, partners, members, agents, officers, and successors in interest.

9. Default.

(a) Any of the following shall constitute an Event of Default under this Note:

(i) Any failure to pay, in full, any regularly scheduled payment required under this Note when due following written notice by City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any terms, condition, provision or covenant set forth in this Note subject to Section 4.5 Default and Remedies, set in the Regulatory Agreement;

(iii) The occurrence of any Event of Default under the Loan Agreement, the Deed of Trust, or the Regulatory Agreement, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the Loan Agreement or the Deed of Trust, subject to notice and cure period, if any, set forth therein.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices shall be sent to Developers partners upon notice of such partner's address. Copies of all notices which are sent to Borrower hereunder shall also be sent to Borrower's tax credit limited partner, at an address to be provided to City at such time as such part shall be admitted to the Borrower's partnership agreement.

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, if any, and together with all other sums then payable under this Note and Deed of Trust shall, at the option of the City, become due and payable in full, without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

#### 10. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

#### 11. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the City in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

[Signatures on Next Page]

**“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

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

**“GUARANTOR”**

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

By: \_\_\_\_\_  
Cullen J. Davis, Manager

Date: \_\_\_\_\_