

COST SHARING AND REIMBURSEMENT AGREEMENT

THIS COST SHARING AND REIMBURSEMENT AGREEMENT is made and entered into as of _____, 2023 (the Effective Date) by and between Fresno Quality Homekey LP, a California limited partnership (the Owner), UP Holdings, LLC, an Illinois limited liability company; dba UP Holdings California, LLC (UPH) and the City of Fresno, a municipal corporation (the City) and collectively with the Owner and UPH, (the Parties).

RECITALS

WHEREAS, the Owner is the owner of that certain real property located in Fresno, California upon which the Owner shall rehabilitate, operate and maintain 59 permanent affordable housing units with Supportive Services (the Project);

WHEREAS, UPH shall act as developer of the Project;

WHEREAS, City, Owner and UPH are co-applicants for Homekey funding from the California Department of Housing and Community Development (HCD) in the amount of \$16,450,000 (the Homekey Award) for the Project;

WHEREAS, the City is making loans to the Owner in the amount of \$4,250,164.76 in CDBG funds and \$1,749,835.24 in HOME-ARP funds for land acquisition (collectively, the City Loan); and

WHEREAS, the Parties intend that certain costs associated with the operation and development of the Project be shared among the Parties as more fully set forth herein.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Predevelopment Expenses. City has agreed to pay for certain predevelopment expenses for the Project, as further described in Exhibit A (the Predevelopment Expenses). Upon closing of the Homekey Award, the Owner shall reimburse the City for the Predevelopment Expenses.

2. Homekey and City Bridge. The City agrees to bridge (i) the Homekey Award disbursements and (ii) the City Loan disbursements to permit the Owner and the Project to cause the rehabilitation to begin without impact in delays in funding from HCD and the City, under the City Loan. After closing on the Project and execution of the documents related to the Homekey Award and the City Loan, upon the submission of a disbursement request to HCD and/or the City of the Homekey Award or City Loan, respectively, the Owner will provide a copy of said disbursement request to the City and the City shall disburse (each, an Early Disbursement) to Owner the amount requested in said disbursement request within ten days of receipt. Owner shall repay to the City the Early Disbursements upon receipt by the Owner of the corresponding HCD and/or City disbursement. The City shall not provide any Early Disbursements prior to the Parties' execution of the Standard Agreement to secure Homekey Round 3 funds.

3. Development Fee. UPH and the City agree that UPH shall pay to the City (the City Share) an amount of up to \$300,000 of development fee paid to UPH from Owner

pursuant to a to be executed Development Fee Agreement, which City Share shall be paid as 28% of each payment of Development Fee received by UPH from Owner.

4. Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

5. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

6. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The signature of a Party to any counterpart shall be sufficient to legally bind such Party. Delivery of an executed counterpart of a signature page to this Agreement by telecopy, emailed portable document format (pdf), or tagged image file format (tiff) or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of an original executed counterpart of this Agreement. Any party sending an executed counterpart of a signature page to this Agreement by telecopy, pdf, tiff or any other electronic means shall also send the original thereof to the other within five days thereafter, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

7. California Law; Jurisdiction. This Agreement shall be construed under and in accordance with the laws of the State of California. Each Party to this Agreement agrees that the courts located in Fresno County, California shall have sole and exclusive personal jurisdiction over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement.

8. Further Assurances. Each Party shall execute and deliver all such further and additional instruments and agreements and shall take such further and additional actions, as may be reasonably requested by any other Party in order to evidence or carry out the provisions of this Agreement or to consummate the transactions contemplated hereby.

9. Amendment; Waiver. This Agreement may not be amended or any provision hereof waived except by a written instrument executed and delivered by the parties hereto. No waiver, modification or amendment of any provision of this Agreement shall be effective, binding or enforceable unless in writing and signed by each of the Parties.

10. Attorneys' Fees. In the event of any litigation, arbitration or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation, arbitration or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute. The attorneys' fees which the prevailing party is entitled to recover shall include fees for prosecuting or defending any appeal and

shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit or arbitration procedure on this Agreement shall be entitled to its reasonable attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment.

11. No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

12. Indemnification To the furthest extent allowed by law, OWNER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, OWNER or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. OWNER'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active or sole negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If OWNER should subcontract all or any portion of the work to be performed under this Agreement, OWNER shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have caused this Cost Sharing and Reimbursement Agreement to be duly executed as of the date first written above.

OWNER

FRESNO QUALITY HOMEKEY LP
a California limited partnership

By: UP FRESNO QUALITY LLC, a
California limited liability company,
Its Co-General Partner

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

By: 
Cullen J. Davis, Manager

By: RHCB FRESNO QUALITY LLC, a
California limited liability company,
Its Co-General Partner

By: RHCB Development LP, a
California limited partnership,
Its Sole Member

By: RHCB Development LP, a
California limited partnership
Its Sole Member

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

By: _____
Wayne Rutledge, Manager

IN WITNESS WHEREOF, the parties have caused this Cost Sharing and Reimbursement Agreement to be duly executed as of the date first written above.

OWNER

FRESNO QUALITY HOMEKEY LP
a California limited partnership

By: UP FRESNO QUALITY LLC, a
California limited liability company,
Its Co-General Partner

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

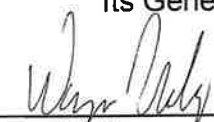
By: _____
Cullen J. Davis, Manager

By: RHCB FRESNO QUALITY LLC, a
California limited liability company,
Its Co-General Partner

By: RHCB Development LP, a
California limited partnership,
Its Sole Member

By: RHCB Development LP, a
California limited partnership
Its Sole Member

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

By:  _____
Wayne Rutledge, Manager


By: HOME XXXVI LLC, a Delaware limited liability company,
Its Managing General Partner

By: Housing on Merit, a California nonprofit public benefit corporation,
Its Sole Member

By: _____
Name: Miguel Garcia
Its: Vice President of Real Estate Development

UPH:

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

By:  _____
Cullen J. Davis, Manager

By: HOME XXXVI LLC, a Delaware limited liability company,
Its Managing General Partner

By: Housing on Merit, a California nonprofit public benefit corporation,
Its Sole Member

By: 
Name: Miguel Garcia
Its: Vice President of Real Estate Development

UPH:

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

By: _____
Cullen J. Davis, Manager

CITY:

CITY OF FRESNO,
a municipal corporation

Dated: _____

By: _____

Georgeanne A. White
City Manager

Its:

APPROVED AS TO FORM:

ANDREW JANZ

City Attorney

By:



Tracy N. Parvianian Date

Supervising Deputy City Attorney 11-30-23

ATTEST:

TODD STERMER, CMC

City Clerk

By: _____

Date

Deputy

Attachments:

Exhibit A – Schedule of Predevelopment Expense Reimbursements

EXHIBIT A

SCHEDULE OF PREDEVELOPMENT EXPENSE REIMBURSEMENTS

(See Closing Draw Attached)

| Predevelopment expenses | | | | | | | |
|---------------------------------------|-----------------|--------------|------------------|------------------|------------------|-----------------|---------------|
| Vendor/activity | Previously Paid | Invoiced | Quarter '4' 2023 | Quarter '1' 2024 | Quarter '2' 2024 | Total Projected | Grand Total |
| Construction Loan Interest | | | | | | \$ - | \$ - |
| Acquisition | \$ 50,000.00 | \$ 50,000.00 | | | | \$ - | \$ 100,000.00 |
| Demolition | | | | | | \$ - | \$ - |
| Construction Contract | | | \$ 48,200.00 | | | \$ 48,200.00 | \$ 48,200.00 |
| Hard Cost Contingency | | | \$ 50,854.00 | \$ 3,432.00 | | \$ 54,286.00 | \$ 54,286.00 |
| Soft Cost Contingency | | | | | | \$ - | \$ - |
| Environmental Contingency | | | | | | \$ - | \$ - |
| Solar | | | | | | \$ - | \$ - |
| Furniture Fixtures & Equipment (FF&E) | | | | | | \$ - | \$ - |
| Remediation | | | | | | \$ - | \$ - |
| Architect Design | \$ 40,401.25 | | \$ 300,000.00 | | | \$ 300,000.00 | \$ 340,401.25 |
| Construction Administration | \$ 1,522.50 | | \$ 7,840.00 | \$ 2,320.00 | | \$ 10,160.00 | \$ 11,682.50 |
| Engineering, Survey, Landscape Design | \$ 7,640.00 | | \$ 55,000.00 | | | \$ 55,000.00 | \$ 62,640.00 |
| Construction Period Testing | | | | | | \$ - | \$ - |
| Third-Party Studies & Reports | \$ 10,000.00 | | \$ 14,500.00 | \$ 5,000.00 | | \$ 19,500.00 | \$ 29,500.00 |
| Low Voltage Systems | | | | | | \$ - | \$ - |
| Utility Fees | | | | | | \$ - | \$ - |
| Relocation | \$ 1,350.00 | | \$ 23,000.00 | \$ 25,000.00 | | \$ 48,000.00 | \$ 49,350.00 |
| Supportive Services Consultant | | | | | | \$ - | \$ - |
| Accounting | | | | | | \$ - | \$ - |
| Dry Utility Coordination | | | | | | \$ - | \$ - |
| Energy Consultant | | | | | | \$ - | \$ - |
| Financial Consultant | | | | | | \$ - | \$ - |
| Labor Compliance | | | | | | \$ - | \$ - |
| Insurance (Construction) | | | | | | \$ - | \$ - |
| Insurance (Permanent) | | | | | | \$ - | \$ - |
| Marketing | | | | | | \$ - | \$ - |
| Leaseup | | | | | | \$ - | \$ - |
| Interim Property Costs | | | | | | \$ - | \$ - |
| Planning & Development Fees | \$ 30.00 | \$ 30.00 | \$ 50,000.00 | | | \$ 50,000.00 | \$ 50,030.00 |
| Property Taxes | | | | | | \$ - | \$ - |
| Predevelopment Loans Interest & Fees | | | | | | \$ - | \$ - |
| Application Fees | | | | | | \$ - | \$ - |
| Housing Finance Agency Fees | | | | | | \$ - | \$ - |
| Title & Recording (Construction) | | | | | | \$ - | \$ - |
| Title & Recording (Permanent) | | | | | | \$ - | \$ - |
| Construction Loan Origination Fee | | | | | | \$ - | \$ - |
| Lender Fees | | | | | | \$ - | \$ - |
| Lender Legal | | | | | | \$ - | \$ - |
| UP Owner Legal | \$ 832.50 | \$ 832.50 | \$ 10,000.00 | \$ 2,000.00 | | \$ 12,000.00 | \$ 12,832.50 |
| GP Owner Legal | | | | | | \$ - | \$ - |
| Syndication Legal | | | | | | \$ - | \$ - |
| Organizational Fees & Reimbursements | \$ 87.76 | \$ 1,201.00 | | | | \$ - | \$ 1,288.76 |
| Developer Fee (Realized) | | | | | | \$ - | \$ - |
| RESERVE 01 | | | | | | \$ - | \$ - |
| RESERVE 02 | | | | | | \$ - | \$ - |
| RESERVE 03 | | | | | | \$ - | \$ - |
| RESERVE 04 | | | | | | \$ - | \$ - |
| RESERVE 05 | | | | | | \$ - | \$ - |
| RESERVE 06 | | | | | | \$ - | \$ - |
| Totals | \$ 111,001.51 | \$ 52,063.50 | \$ 559,394.00 | \$ 37,752.00 | \$ - | \$ 597,146.00 | \$ 760,211.01 |
| CoF Est. Contribution | \$ 60,913.75 | | \$ 499,394.00 | \$ 35,752.00 | | | |
| UPH Est. Contribution | \$ 52,063.50 | \$ 52,063.50 | \$ 60,000.00 | \$ 2,000.00 | | | |
| RHCB Est. Contribution | \$ 50,087.76 | | | | | | |