

RENTAL ASSISTANCE AGREEMENT

FRESNO QUALITY HOMEKEY LP, a California limited partnership (the Partnership) and CITY OF FRESNO, a municipal corporation (the City), enter into this Rental Assistance Agreement (the Agreement), dated _____, 2023.

Recitals

WHEREAS, the Partnership owns certain real property in the City of Fresno, State of California and more particularly described in Exhibit A attached hereto (the Property), which is improved with a previous Inn, and which shall be rehabilitated into a 59-unit permanent supportive housing site (the Project);

WHEREAS, the City, the Partnership, and UP Holdings, LLC, an Illinois limited liability company, dba UP Holdings California, LLC (UPH), are co-applicants on that certain Homekey funding application from the California Department of Housing and Community Development (HCD), for which the applicants were awarded the amount of \$16,450,000.00 (Homekey Award) for the Project.

WHEREAS, pursuant to the terms of a letter from the City to HCD, dated September 7, 2023, the City has agreed to provide an amount not to exceed \$690,000 in rental assistance (the Rental Subsidy Funds) to the Project for a term of 15 years as set forth in this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Rental Assistance. The City hereby agrees that it shall use the Rental Subsidy Funds to provide (a) rental assistance to qualified tenants in the Rent Subsidy Units equal to the difference between the tenant-obligated rental amounts permitted under the Regulatory Agreement (defined below) (Restricted Rent Portion) and the Fair Market Rent for the Rental Subsidy Units, (b) a rental deposit for qualified tenants in the amount of two months' rent for the applicable Rental Subsidy Unit due at execution of said lease, and (c) rental assistance for the full Fair Market Rent for vacancies of any Rental Subsidy Unit which is tenant ready but which unit is not covered by a signed lease term (collectively, the Rental Assistance or Rental Subsidy) "Fair Market Rent" shall be determined based on the fair market rents determined by the United States Department of Housing and Urban Development (HUD) for the Fresno, CA MSA. On each anniversary of the Effective Date, the Fair Market Rents for the Rental Subsidy Units shall be adjusted upward, if applicable, to an amount equal to the then applicable Fair Market Rents for the applicable unit, as published by HUD for the Fresno CA MSA. Rental Subsidy Funds shall only be applicable to Rental Subsidy Units not subsidized by other sources.

2. Rental Subsidy Units. The "Rental Subsidy Units" refer to the 58 units at the Project, which shall be occupied by households restricted to the rental restrictions set forth in the HCD Regulatory Agreement (the Regulatory Agreement) related to the Homekey Award. Rental Subsidy Units do not include any manager's unit in the Project. The Partnership shall ensure that tenants of each Rental Subsidy Unit meet the qualifications for occupancy pursuant to the terms of the Homekey Award and Regulatory Agreement (an Eligible Housing Household). During the term of the Agreement, the City shall make monthly Rental Subsidy payments to the Partnership for the months during

which a Rental Subsidy Unit is leased to and occupied by an Eligible Housing Household. On or before the third day of each month, Partnership shall submit a request for disbursement equal to the amount by Rental Subsidy for the Rental Subsidy Units for the immediately preceding calendar month (the Request). The parties agree and acknowledge that, for the administrative convenience of the parties, the City shall pay the total Rental Subsidy for all Rental Subsidy Units, in one "lump-sum" payment by check, wire transfer, or such other payment method mutually acceptable to the Parties, no later than the tenth day of each month following the date of the request (the Payment Date). If a Rental Subsidy Unit tenant moves out of the Rental Subsidy Unit on any day other than the last day of the month, the rent must be pro-rated for both the tenant and the City. The Partnership shall notify the City once a Rental Subsidy Unit has been occupied by an Eligible Household, and Rental Subsidy payments shall then commence under terms of this Agreement. When a new Rental Subsidy tenant moves in on any day other than the first day of the month, the rent for the partial first month must be pro-rated in the second month after move-in for both the tenant and the City.

3. Term. This Agreement shall commence as of the date hereof and shall remain in effect 15 years from the date of initial lease-up of the first Rental Subsidy Unit (Term). This Agreement may renew for up to three, one-year extensions at the end of the Term, unless terminated by either party prior to the end of the Term.

4. Non-Appropriation. In the event of non-appropriation relating to the Agreement, City shall have the right to terminate the Agreement at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than 60 days prior to the end of such fiscal year and shall notify the Partnership of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the 12-month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Agreement by City.

5. Disputes. Notwithstanding anything in this Agreement to the contrary, the City acknowledges that the failure by the City to timely advance the Rental Subsidy for all Rental Subsidy Units on the Payment Date to the Partnership will have a material adverse effect on the Project as a whole and, in the event the City disputes or disapproves the payment of the Rental Subsidy for any Rental Subsidy Unit, the City shall immediately notify the Partnership and in all events within two business days of the Payment Date (Dispute Notice). Each such Dispute Notice shall specify the basis of the dispute and shall identify the exact amounts and items being disputed. Within 30 days of the issuance of a Dispute Notice, the City will call and attend a meeting with the Partnership to clarify and understand the nature of the dispute. As soon as practical after this meeting, but in any event within five Business Days after the meeting, the City will notify the Partnership of (I) its intent to proceed with funding Rental Subsidy, (II) its intent to refuse to fund the such Rental Subsidy until the outstanding issue is resolved, or (III) its intent to fund a lesser amount of the Rental Subsidy in an amount equal to the undisputed amount of such Rental Subsidy. The City agrees to proceed diligently and in good faith with the Partnership to attempt to resolve any dispute relating to a Rental Subsidy payment

provided, however, in the event any dispute has not been resolved within ten days, the Partnership hereby reserves all of its rights and remedies against the City, including without limitation the right to offset any payments due from the Partnership to the City pursuant to the Letter. Partnership hereby agrees that this dispute resolution process shall be a condition precedent to any remedy Partnership shall have for the failure of the City to timely advance the Rental Subsidy for all Rental Subsidy Units, and that under no circumstances will the City's failure to make a timely payment result in a default under the terms of this Agreement.

6. Partnership's Remedies Against City.

a. City agrees that in the event of a breach, violation or default of this Agreement by City, all the Partnership's remedies under this Agreement and under law or equity shall be available to the Partnership upon failure of City to perform its obligations and guarantees under this Agreement.

b. If City is in default under this Agreement, but the Partnership is not in default under the Regulatory Agreement or this Agreement, Partnership may take any one or more of the following actions:

i. Apply to any court of competent jurisdiction for specific performance of this Agreement, or for such other relief against City as may be appropriate. It is agreed by the City that the injury to the Partnership arising from a default of the City under this Agreement may be irreparable and that the amount of the compensation that would provide adequate relief to the Partnership in light of the purposes and requirements of this Agreement may be impossible to ascertain.

ii. Seek such other appropriate remedies against the City, including money damages, as may be available against the City under law.

c. Notwithstanding any other provision of this Agreement to the contrary, any award of damages, including attorneys' fees and costs, shall be limited to the remaining amount of Rental Subsidy Funds for the year at the time damages are awarded.

d. No right, power, or remedy given to the Partnership by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Partnership by the terms of any such instrument, or by any statute or otherwise against the City and any other person. Neither the failure nor any delay on the part of the Partnership to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Partnership of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

7. Partnership Agreement. Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

8. Notices and Demands. All notices or other communications required or permitted between City and Partnership under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage

prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the parties at the following addresses, subject to the right of either party to designate a different address for itself by notice similarly given:

To City: City of Fresno
2600 Fresno Street
Fresno, California 93721-3600
Attention:

To Partnership: Fresno Quality Homekey LP
6083 N. Figarden Drive #636
Fresno, California 93722

Any notice so given by registered or certified United States mail shall be deemed to have been received on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

9. Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. No party may assign this Agreement without the consent of the other party.

10. Severability of Provisions. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the 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 that are valid.

11. No Continuing Waiver. None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. 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. Defined Terms. Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

13. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

14. Headings. All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

15. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

16. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

17. Assignment. This Agreement may not be assigned without the prior written consent of the Partnership's investor member.

18. Indemnification. To the furthest extent allowed by law, PARTNERSHIP 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, PARTNERSHIP 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. PARTNERSHIP'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 PARTNERSHIP should subcontract all or any portion of the work to be performed under this Agreement, PARTNERSHIP 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.

[signature page follows]

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

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. Parvanyan

Tracy N. Parvanyan Date
Supervising Deputy City Attorney

11-30-22

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Date

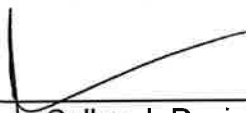
Deputy

PARTNERSHIP:

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

PARTNERSHIP:

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

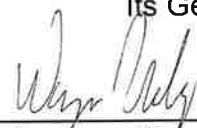
By: _____
Cullen J. Davis, Manager

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

Exhibit A

Legal Description

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

Parcel "B" of Parcel Map No. 89-25, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in [Book 50, Pages 43 and 44 of Plats, Fresno County Records](#).

APN: 409-200-43