

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Fresno  
Department of Behavioral Health  
1925 E. Dakota Avenue  
Fresno, California 93726

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
Butterfly Gardens

Agreement No. 21-137

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") is dated April 27, 2021 and is between the County of Fresno (the "County"), a political subdivision of the State of California, and UPH Butterfly Gardens, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Regulatory Agreement.

B. Borrower intends to purchase, or has purchased concurrently, that certain real property located in the City of Clovis, County of Fresno, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to develop thereon seventy-five (75) housing units located on the Property for rental to low income households, including two (2) manager's units. Together the Property and its improvements are the "Development".

C. Pursuant to a Promissory Note, dated December 15, 2020 the County is lending Borrower Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000) (the "County Loan") to assist in the construction of the Development.

D. In addition to the Promissory Note, the County Loan is evidenced by a deed of trust (the "Deed of Trust") among Borrower, as trustor, First American Title Company, as trustee, and the County, as beneficiary and this Regulatory Agreement (collectively, the "Loan Documents").

E. The County has agreed to make the County Loan on the condition that Borrower maintain and operate the Development in accordance with restrictions set forth in this Regulatory Agreement, and in the related documents evidencing the County Loan.

F. In consideration of receipt of the County Loan, Borrower agrees to observe all the terms and conditions set forth below.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS

#### 1.1 Definitions.

The following terms have the following meanings:

- (a) "City" means the City of Clovis, California, a municipal corporation.
- (b) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.
- (c) "County Loan" has the meaning set forth in Paragraph C of the Recitals.
- (d) "Deed of Trust" has the meaning set forth in the Recitals.
- (e) "Development" has the meaning set forth in Paragraph B of the Recitals.
- (f) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (g) "Investor Limited Partner" means Wincopin Circle, LLLP, a Delaware limited liability company.
- (h) "Loan Documents" has the meaning set forth in Paragraph D of the Recitals.
- (i) "Partnership Agreement" means the First Amended and Restated Agreement of Limited Partnership, dated on or about March 1, 2021, that governs the operation and organization of Borrower as a California limited partnership.
- (j) "Property" has the meaning set forth in Paragraph C of the Recitals.
- (k) "Regulatory Agreement" has the meaning set forth in the first paragraph of this Regulatory Agreement.
- (l) "Tenant" means the tenant household that occupies a Unit in the Development.
- (m) "Term" means the term of this Regulatory Agreement which commences as of the date of this Regulatory Agreement, and unless sooner terminated pursuant to the terms of this Regulatory Agreement, expires on the fifty-fifth (55th) anniversary of the Completion Date.
- (n) "Transfer" has the meaning set forth in Section 6.1.

- (o) "Unit(s)" means one (1) or more of the units in the Development.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

(a) During the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Borrower shall abide by the occupancy standards, occupancy assumptions, income limits, and rent levels that are permitted by TCAC in the TCAC Regulatory Agreement.

(b) During the term of that certain Regulatory Agreement and Declaration of Restrictive Covenants (the "Bond Regulatory Agreement"), entered into as of March 1, 2021, by and between the California Municipal Finance Authority, a joint exercise of powers authority duly organized and validly existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "Issuer") and Borrower, Borrower shall abide by the occupancy standards, occupancy assumptions, income limits, and rent levels that are permitted by Issuer in the Bond Regulatory Agreement

### (c) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

## ARTICLE 3 INCOME CERTIFICATION; REPORTING; RECORDS

3.1 Income Certification. Borrower shall obtain, complete, and maintain on file, before expected occupancy and annually thereafter, income certifications from each Tenant renting any of the Units. Borrower shall make a good faith effort to verify the accuracy of the income provided by the applicant or occupying household, as the case may be, in an income certification. To verify the information, Borrower shall abide by any terms in the TCAC Regulatory Agreement or the Bond Regulatory Agreement.

### 3.2 Reporting Requirements.

(a) Upon the request of County, Borrower shall submit to the County within one hundred eighty (180) days after the Completion Date, and not later than forty-five (45) days after the close of each calendar year, or such other date as may be requested by the County, a report that includes the following data for each Unit: (i) Tenant income, (ii) the number of

occupants, (iii) the Rent, (iv) the number of bedrooms, and (v) the initial address of each Tenant. To demonstrate continued compliance with Section 2.1 Borrower shall cause each annual report after the initial report to include a record of any subsequent Tenant substitutions and any vacancies in Units that have been filled.

(b) Borrower shall submit to the County within forty-five (45) days after receipt of a written request, or such other time agreed to by the County, any other information or completed forms requested by the County.

3.3 Tenant Records. Borrower shall maintain complete, accurate and current records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development are to be at all times: (i) separate and identifiable from any other business of Borrower, (ii) maintained as required by the County, in a reasonable condition for proper audit, and (iii) subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The County may examine and make copies of all books, records or other documents of Borrower that pertain to the Development.

#### 3.4 Development Records.

(a) Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Loan Documents to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Regulatory Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the County Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

## ARTICLE 4 OPERATION OF THE DEVELOPMENT

### 4.1 Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with all requirements of the Loan Documents.

## ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property manager shall reside at the Property.

5.2 Management Agent. Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with a demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (the "Management Agent").

## ARTICLE 6 MISCELLANEOUS

### 6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with this Regulatory Agreement.

(b) Except as otherwise permitted in this Section 6.1, or as set forth in the County Loan Documents, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its reasonable discretion.

(c) The County hereby approves the admission of the Investor Limited Partner, to Borrower as limited partner. The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement (as such capital contributions may be adjusted pursuant to the terms therein); and (ii) in subsequent Transfers, the Investor Limited Partner or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The County hereby approves a Transfer of the Property from Borrower to either general partner of the Borrower, or its affiliate, and an assumption of the County Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Borrower under the Loan Documents, and (iii) the County is provided executed copies of all documents evidencing the Transfer.

(e) The County hereby approves the purchase of the Investor Limited Partner interest by either general partner of the Borrower, or its affiliate, at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the County is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, that is selected by the Investor Limited Partner and approved by the County, and (ii) the Investor Limited Partner or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

6.2 Application of Provisions. The provisions of this Regulatory Agreement apply to the Property for the entire Term, unless the County Loan is paid in full prior to the end of the Term, in which event this Regulatory Agreement shall terminate. This Regulatory Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County is making the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.3 Intentionally Deleted.

6.4 Covenants to Run With the Land. The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this Regulatory Agreement run with the land, and bind all successors in title to the Property, provided, however, that on the expiration of the Term said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to the covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Regulatory Agreement.

6.5 Enforcement by the County.

(a) If Borrower fails to perform any obligation under this Regulatory Agreement, and fails to cure the default within sixty (60) days after the County has notified Borrower in writing of the default, the County may enforce this Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this Regulatory Agreement, and may seek damages.

(2) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the Loan Documents.

6.6 Attorneys' Fees and Costs. In any action brought to enforce this Regulatory Agreement, the prevailing party must be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section must be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.7 Recording and Filing. The County and Borrower shall cause this Regulatory Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Fresno.

6.8 Governing Law. This Regulatory Agreement is governed by the laws of the State of California.

6.9 Waiver of Requirements. Any of the requirements of this Regulatory Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Regulatory Agreement extends to or affects any other provision of this Regulatory Agreement, and may not be deemed to do so.

6.10 Amendments. This Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title that is duly recorded in the official records of the County of Fresno.

6.11 Notices. Any notice requirement set forth herein will be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

County: County of Fresno  
Department of Behavioral Health  
1925 E. Dakota Avenue  
Fresno, California 93726  
Attn:

Borrower: UPH Butterfly Gardens, L.P.,  
6083 N. Figarden Drive  
#656  
Fresno, California 93722

Investor Limited Partner:

Wincopin Circle LLLP  
c/o Enterprise Community Asset Management,  
Inc.  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044  
Attention: General Counsel

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

6.12 Severability. If any provision of this Regulatory Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Regulatory Agreement will not in any way be affected or impaired thereby.

6.13 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.14 Foreclosure. Upon a foreclosure of the Property, or the acceptance of a deed in lieu of foreclosure, this Regulatory Agreement and the restrictions contained herein shall automatically terminate, provide that the Borrower does not obtain an ownership interest in the Property pursuant to such foreclosure or deed in lieu of foreclosure.

*[remainder of page intentionally left blank]*



## 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 Fresno

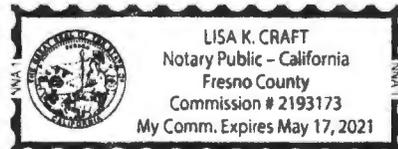
On April 27, 2021 before me, Lisa K. Craft, Notary Public  
(insert name and title of the officer)

personally appeared Steve Brandon,  
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 Lisa K. Craft (Seal)



WHEREAS, this Regulatory Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF FRESNO, a political subdivision of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_  
Director,

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

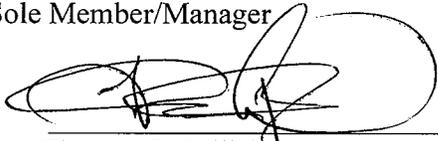
Counterpart signature page(s) attached hereto and made a part hereof.

**Borrower:**

UPH BUTTERFLY GARDENS, L.P.,  
a California limited partnership

By: Butterfly Gardens SHE LLC,  
a California limited liability company,  
Its Managing General Partner

By: Self-Help Enterprises,  
a California nonprofit corporation  
Its Sole Member/Manager

By:   
\_\_\_\_\_  
Thomas J. Collishaw  
President and Chief Executive Officer

By: UPH Butterfly Gardens, LLC,  
a California limited liability company,  
Its Administrative General Partner

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

Counterpart signature page(s) attached hereto and made a part hereof.



WHEREAS, this Regulatory Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF FRESNO, a political subdivision of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_  
Director;

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

Counterpart signature page(s) attached hereto and made a part hereof.

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UPH BUTTERFLY GARDENS, L.P.,  
a California limited partnership

By: Butterfly Gardens SHE LLC,  
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Its Managing General Partner

By: Self-Help Enterprises,  
a California nonprofit corporation  
Its Sole Member/Manager

Counterpart signature page(s) attached hereto and made a part hereof.

By: \_\_\_\_\_  
Thomas J. Collishaw  
President and Chief Executive Officer

By: UPH Butterfly Gardens, LLC,  
a California limited liability company,  
Its Administrative General Partner

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

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.

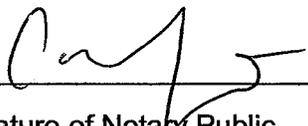
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On APRIL 21, 2021, before me, CAITLIN SARACENO, Notary Public,

personally appeared CULLEN J. DAVIS, 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 of Notary Public

Caitlin Saraceno



(affix seal in above space)

EXHIBIT A

Legal Description

The land described herein is situated in the State of California, County of Fresno, City of Clovis, described as follows:

The West 253.25 feet of the North 314.00 feet of Lot 26 of Helm Colony, according to the official map thereof recorded on December 22, 1899 in Book 1 at Page 77 of Record of Surveys, Fresno County Records.

APN: 430-601-01