

RECORDING REQUESTED BY:

City of Merced, A California Charter Municipal Corporation

WHEN RECORDED MAIL TO:

City of Merced City
Clerk's Office
678 West 18th Street Merced,
California 95340

(Above for Recorder's Use Only)

AGREEMENT AND LIEN AFFECTING REAL PROPERTY

Loan of Water and Sewer Connection Fees

THIS AGREEMENT AND LIEN AFFECTING REAL PROPERTY

("Agreement") is made and entered into this ____ day of _____ 2024, by and between Devonwood Apartments, LP ("Grantor"), and the City of Merced, a California Charter Municipal Corporation ("Grantee").

WHEREAS, Grantor has applied to the City of Merced for water and sewer connections on the property located at 1535 Devonwood Drive, Merced, California 95348 in the City of Merced, California, more fully described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and,

WHEREAS, Grantor agrees to pay the City a total payment of One Million Three Hundred Eleven Thousand Five Hundred Seventy-One Dollars and Ninety-One Cent (\$1,311,571.91) for the water and sewer connection for the

Property to the City's water and sewer system, which sum includes all water and sewer facilitation fees (collectively, the "Connection Fee"); and,

WHEREAS, Grantor acknowledges that they will need to pay a \$43,000 deposit for water and sewer services, not included in the "Connection Fee"; and,

WHEREAS, Grantor has agreed to construct a Project consisting of one hundred fifty-six (156) rental dwelling units. One hundred and fifty-four (154) units will be rented to households with incomes ranging from thirty percent (30%) to seventy percent (70%) AMI for Merced County, with adjustments for family size, as determined from time to time by the California Tax Credit Allocation Committee ("CTCAC"). Two (2) two-bedroom units will be reserved as Manager's Units.

WHEREAS, Grantor requests the Grantee to loan the Connection Fee to the Grantor in the amount of One Million Three Hundred Eleven Thousand Five Hundred Seventy-One Dollars and Ninety-One Cent (\$1,311,571.91) to facilitate the financing of the Project; and,

WHEREAS, Grantee is willing to loan the Connection Fee to Grantor for a term of fifty-five (55) years from issuance of certificate of occupancy. The Connection Fee Loan shall bear simple interest at the rate of zero percent (0%) per annum from the date of building permit issuance until a certificate of occupancy has been issued by the City. Thereafter, the Connection Fee Loan shall bear simple interest at the rate of three percent (3%), until repaid, if a Default occurs, 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 seven percent (7%), compounded annually; and,

WHEREAS, the Connection Fee Loan does not include a loan of the Engineering Deposit. The \$43,000 Engineering Deposit must be paid prior to

construction begins in order to have water turned on.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. The Recitals above are true and correct and constitute an enforceable provision of this Agreement.
2. Grantor acknowledges that it owes Grantee the sum of One Million Three Hundred Eleven Thousand Five Hundred Seventy-One Dollars and Ninety-One Cent (\$1,311,571.91) for the Connection Fee, with an interest rate of three percent (3%) per annum starting to accrue as of the date of building permit issuance until a certificate of occupancy has been issued by the City until all principal and interest are fully paid. If a Default occurs, 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 seven percent (7%), compounded annually.
3. The Connection Fee Loan term shall be fifty-five (55) years following the completion of construction of the Project, as evidenced by the issuance of the certificate of occupancy for the Project (the "Conversion Date"), with payments deferred until the Net Cash Flow (as defined in Section 4) of the Project shall provide for payments to begin. The annual principal and interest, if any, payments shall be made by the 1st of the sixth month following the conclusion of each fiscal year 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.
4. Net Cash Flow for the purposes described in Section 3 of this

Connection Fee Loan, shall be defined as follows:

Gross Income Less Total Operating Expenses & Reserves and Third Party Loan and Asset Management Fee and Deferred Development Fee.

Gross Income shall mean and include all revenue, income, receipts, and other consideration actually received by Grantor 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).

Third Party Loans shall include debt service on senior project debt and partner loans made pursuant to the Grantor's Amended and Restated Agreement of Limited Partnership.

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.

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

Deferred Development Fee shall be defined as the portion of the development fee that had not been paid upon the completion of the construction of the Project. 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 Grantor
- (ii) 50% (allocated to pay the HOME Loan and other public soft lenders on a pro rata basis and used to pay residual receipts loans for the Project).

5. To secure the payment, Grantor hereby grants a lien to Grantee in the property identified in Exhibit "A."

6. Acceleration upon Sale, Transfer, Bankruptcy, or Death. The amount deferred under this Agreement shall become due and immediately payable upon the occurrence of any one of the following events: (i) sale or transfer of the Property, including, without limitation, lease, exchange or other disposition of the Property or any interest therein whether voluntary or involuntary; or (ii) the filing of bankruptcy petition by Grantor.

7. Grantor acknowledges and agrees that Grantee may seek all available remedies in equity or at law if the amounts owed to Grantee under this Agreement are not paid when due as specified in this Agreement.

8. Grantor further agrees to comply with all requirements and provisions of the Merced Municipal Code.

9. Grantor acknowledges that Grantee is not obligated but is entering into this Agreement as an accommodation to Grantor.

10. This Agreement shall be governed by and construed and enforced under the Constitution and laws of the State of California. Venue for any legal actions involving this Agreement shall rest solely with the Superior Court in the County of Merced.

11. The waiver by any party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

15. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

16. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

17. All parties to this Agreement declare that, prior to the execution of this Agreement, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Agreement and making the

decision to execute it. The parties each represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Agreement or their respective legal counsel with regard to the subject matter, basis or effect of this Agreement.

18. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Agreement and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

19. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

GRANTOR:

DEVONWOOD APARTMENTS, LP,
a Delaware limited partnership

By: CVCAH Devonwood Apartments,
LLC, a California limited liability
company, its managing general partner

By: Central Valley Coalition for
Affordable Housing, a California non-
profit public benefit corporation, its
manager

By: _____
Christina Alley
Chief Executive Officer

By: Devonwood GP, LLC, a Delaware
limited liability company, its
administrative general partner

By: TRG Devonwood Member, LLC, a
Delaware limited liability company, its
sole member and manager

By: _____
Rick Westberg
Executive Vice President

By: The Richman Group of California
Development Company LLC, a
California limited liability company, its
co-general partner

By: _____
Rick Westberg
Executive Vice President

[Signatures continued on next page.]

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
D. Scott McBride,
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 1/4/24
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

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 Description of Property