

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Merced
678 W. 18th Street
Merced, CA 95340
Attn: City Clerk

(No recording fee pursuant to
Gov. Code, §§ 6103, 27383 &
27388.1)

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

(Devonwood Apartments – 1535 Devonwood Drive)

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made and entered into as of _____, 2024, by and between the City of Merced, a California Charter Law Municipal Corporation (the "City"), and Devonwood Apartments, LP, a Delaware Limited Partnership (the "Owner"), with reference to the following facts:

RECITALS

A. Owner intends to develop that certain housing development project (the "Development") consisting of 156 rental units ("Units"), to be located at on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue in Merced, CA, Assessor's Parcel Number 058-220-048, more particularly described in Exhibit A and shown on the map at Exhibit B attached hereto (the "Property"). On October 4, 2023, the City's Planning Commission recommended approval of Density Bonus #23-02 to the City Council. On December 4, 2023, the City Council approved Density Bonus #23-02 approving the concessions and waivers outlined in Exhibit C attached hereto.

B. The Project will provide 154 apartments for low-income households, two (2) manager's unit, at least 200 uncovered parking spaces and open space as shown on the Site Plan at Exhibit D attached hereto.

C. Pursuant to Government Code Section 65915 (the "State Density Bonus Law"), the Development was approved certain waivers, incentives, and concessions, as set forth in Exhibit B. To qualify for these benefits, the Owner has agreed to provide one hundred fifty-four (154) of the units for lower-income households with an income averaging 60% or less than the Area Median Income (AMI). The Owner has selected the "Average Income test" set-aside option for the Development. The remaining two units are intended to be used as a manager's quarters.

D. In consideration of City's grant of entitlements for the Development, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner has agreed to record this Agreement to guarantee the continued affordability of the Development's affordable Units for a minimum period of fifty-five (55) years.

THEREFORE, the City and the Owner hereby agree as follows:

AGREEMENT
ARTICLE 1
PRELIMINARY
MATTERS

1.1 Recitals.

The foregoing Recitals are incorporated into this Agreement and made a part hereof by this reference.

1.2 Definitions.

When capitalized in this Agreement, the following terms shall have the following meanings:

- (a) "Actual Household Size" is the actual number of persons in the applicable household.
- (b) "Agreement" is defined in the opening paragraph.
- (c) "Area Median Income" is the area median income for Merced County as published and periodically updated by the United States Department of Housing and Urban Development ("HUD"), adjusted for Actual Household Size or Assumed Household Size as specified in this Agreement and as further defined by California Health and Safety Code Section 50079.5(c). If income determinations are no longer published by HUD or otherwise provided by the State of California pursuant to California Health and Safety Code Section 50079.5(a), or are not updated by either HUD or the State of California for a period of at least eighteen (18) months, the City shall provide the Owner with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD or the State of California.
- (d) "Assumed Household Size" for a Lower Income Unit shall mean one (1) person plus a number equal to the number of bedrooms in the Unit.
- (e) "City" is as defined in the opening paragraph.
- (f) "Default" is defined in Section 5.6.
- (g) "Owner" is as defined in the opening paragraph.
- (h) "Development" is defined in Recital A.
- (i) "Gross Income" has the meaning given in California Code of Regulations, Title 25, Section 6914.
- (j) "HUD" is the United States Department of Housing and Urban Development, or successor agency thereto.

(k) "Lower Income Household" shall mean a household with a Gross Income that does not exceed sixty percent (60%) of Area Median Income, adjusted for Actual Household Size; provided, however, for purposes of the "Average Income test" set-aside option, individuals whose income does not exceed the imputed income limitation designated by the Owner with respect to the respective unit, subject to the special rules relating to income limitation which require the Owner to designate the imputed income limitation of each unit taken into account for purposes of the Average Income test, such that the average of the imputed income limitations as designated by the Owner shall not exceed 60 percent (60%) of the area median gross income (adjusted for family size) within the meaning of Section 42(g)(1)(C) of the Code, as the same may be amended from time to time (but only to the extent such amendments apply to the Development).

(l) "Lower Income Rent" shall mean the maximum allowable Rent for a Unit occupied by a Lower Income Household pursuant to Section 2.2 below.

(m) "Lower Income Units" shall mean Units required to be rented to and occupied by or, if vacant, available for occupancy by, Lower Income Households.

(n) "Property" is defined in Recital A.

(o) "Rent" shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking;; an allowance for the cost of an adequate level of service for utilities actually paid by the Tenant consistent with the schedule of utility allowances published annually by the Merced County Housing Authority for heating, cooking, other electric/lighting uses, or air conditioning within the Unit, but not telephone service, cable television, or other utility charges paid by the Owner or its property manager; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Owner, and paid by the Tenant.

(p) "State Density Bonus Law" is defined in Recital C.

(q) "TCAC" means the California Tax Credit Allocation Committee, or successor agency.

(r) "Tenant" is a household legally occupying a Lower Income Unit pursuant to a valid lease with the Owner.

(s) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary of the date of issuance of the last certificate of occupancy or equivalent certification provided by the building official for the Development. If the termination date of this Agreement cannot be determined because no record of the date of such certificate of occupancy or equivalent certification is recorded in the official records or maintained by the City or the Owner for future reference, then the Term shall be deemed to expire fifty-eight (58) years plus one hundred eighty-one (181) days after the recordation date of this Agreement.

1.3 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- EXHIBIT A: Legal Description of the Property.
EXHIBIT B: Location Map
EXHIBIT C: Concessions and Waivers
EXHIBIT D: Site Plan

1.4 Administrator.

It is expressly agreed and understood between the parties that the City may assign any or all its rights or obligations under this Agreement to a third party independent contractor hired by the City to administer any or all the City's affordable housing programs and this Agreement. To the extent of any such assignment, reference to the City herein shall mean or include reference to such third party administrator. Every action that the City may take under this Agreement to enforce its terms and conditions may be taken by the third party administrator on the City's behalf.

1.5 Conflicts.

Owner understands and agrees that this Agreement is intended to ensure the continued affordability of the Lower Income Units pursuant to the State Density Bonus Law. Notwithstanding anything to the contrary in this Agreement, if a provision of this Agreement that is not required expressly under the State Density Bonus Law conflicts with, (a) state or federal law (including TCAC requirements applicable to the Development), or (b) a regulatory agreement superior in priority to this Agreement, such law or agreement shall control over the conflicting provision of this Agreement to the limited extent that it is not possible to comply both with that provision and with such contrary law or agreement.

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

One hundred fifty-four (154) of the Units in the Development shall be for Lower-Income Individuals or Households.

2.2 Rent Limitations; City Approval of Rent.

(a) Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of the imputed income limitation applicable to such unit, adjusted for Assumed Household Size.

(b) Notwithstanding subsection (a), rents for not more than one hundred fifty-four (154) of the Lower Income Units may be set at an amount consistent with the maximum rent level allowed for a housing development that receives an allocation of state or federal low-income housing tax credits from TCAC. This subsection is intended to implement, and shall be construed consistently with, the State Density Bonus Law's requirements at Government Code Section 65915, subdivision (c)(1)(B)(ii)(II), in effect as of the date of this Agreement.

(c) The City shall have the right, but not the duty, to require its review and approval of initial Rents for the Units, which approval it shall not unreasonably withhold or delay; provided, however, that the City shall approve such initial Rents for the Units if the Rents comply

with the TCAC requirements.

(d) The Owner shall not charge any fee other than Rent to any Tenant of Units for any housing or other services provided by the Owner, except that Owner may charge additional fees for credit applications, late payments, damages to the property created by the Tenant during Tenant's residency, returned checks (NSF), lost keys, or other similar reasonable and customary charges, to include additional rent for pets or individual storage units, if applicable.

2.3 Effects of Increase in Income.

If, upon recertification of a Tenant's income, the Owner determines that a Tenant of a Permanent Supportive Unit no longer qualifies for assistance, then the provisions of Section 42(g)(2)(D) of the Internal Revenue Code shall apply with respect to any Unit subject to a regulatory agreement between Owner and TCAC. For any Unit not subject to a TCAC regulatory agreement, and absent any contrary applicable provision of federal or state law or of a regulatory agreement superior in priority to this Agreement, the following provisions shall apply with respect to over-income Tenants upon recertification:

(a) If the Tenant's Gross Income does not exceed one hundred twenty percent (120%) of the maximum income that would qualify the Tenant as a Lower Income Household, the Tenant shall be allowed to remain in the Unit at a Lower Income Rent.

(b) If the Tenant's Gross Income exceeds one hundred twenty percent (120%) of the maximum income that would qualify the Tenant as a Lower Income Household, then, subject to applicable fair housing, rent control, and just cause eviction laws, the Tenant shall be given written notice that the Tenant no longer qualifies to occupy the Tenant's Unit, but the Tenant shall be permitted to continue to occupy the Unit at the Tenant's then current Rent until the later of one hundred twenty (120) days of such notice or the termination of the Tenant's then current lease.

2.4 Section 8 Voucher and Certificate Holders.

The Owner may not refuse to lease a Unit in the Development to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate; provided, however, that such prospective Tenant will be subject to the same credit and criminal history review that would apply to any other prospective Tenant of the Development in compliance with Fair Housing Law

2.5 Lease Provisions.

Except to the extent inconsistent with the requirements of state or federal law or of a regulatory agreement superior in priority to this Agreement, the Owner shall use a form of Tenant lease that shall, among other matters:

(a) provide for termination of the lease for failure: (1) to provide any information required for the recertification of Tenant income, or (2) to qualify as a Lower Income Household as a result of any material misrepresentation made by such Tenant with respect to income certification or recertification;

(b) be for an initial term of not less than one (1) year. After the initial year of

tenancy, the lease may be month to month by mutual agreement of the Owner and the Tenant; however, the Rent may not be raised more often than once every twelve (12) months after such initial year. The Owner will provide each Tenant with such notice of any rental increase as may be required by law; and

(c) prohibit subleasing of the Unit.

2.6 Security Deposits.

The Owner may require Tenants to pay a cleaning and/or security deposit totaling in aggregate not more than the monthly Rent for a Unit plus a reasonable pet deposit, if applicable. Any security deposits collected by Owner or Owner's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

ARTICLE 3 **INCOME CERTIFICATION AND REPORTING**

3.1 Marketing Plan.

Owner shall develop a marketing plan, which shall include provision for affirmatively marketing the Units by advertising their existence and through outreach to organizations and agencies providing services to Lower Income Households. The marketing plan shall also include provisions for Tenant selection, and will be made available for inspection by the City upon request.

3.2 Income Certification.

During any period that income certifications (including recertifications) from each Tenant are required to be submitted to any federal, state, and/or county agency or agencies under the terms of any agreement recorded against the Development, Owner shall submit copies of those certifications to the City at the same time that submittal of such certifications is required to be made to the applicable agency or agencies. During any period when income certifications are not required to be submitted as specified above:

(a) Owner will obtain, complete, and maintain, immediately prior to initial occupancy and annually thereafter, income certifications for each applicant or Tenant of any of the Lower Income Units.

(b) Owner shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) at the time of initial certification, obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) if the prospective Tenant is self-employed, obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of

independent verification.

(c) Copies of income certifications, including supporting documentation, shall be retained by the Owner for a period of at least three (3) years, and shall be made available to the City upon request during normal business hours.

(d) If requested by the Owner, the City may perform income certifications on the Owner's behalf; provided, however, that the City may charge the Owner a fee for this service.

3.3 Reporting Information to City.

Owner shall report any information reasonably requested by the City in connection with Owner's obligations under this Agreement.

3.4 On-site Inspection.

The City shall have the right, but not the duty, to perform on-site inspections of the Development, including the Units, as is reasonably required to ensure compliance with this Agreement, but in any case at least once per year. The Owner agrees to cooperate in such inspection(s). If City desires to inspect the interior of any Units, City shall give Owner sufficient notice to allow Owner to give seventy-two (72) hours' notice to Tenants. City shall not inspect individual Units unless the City has reasonable cause to believe that Owner has failed or is failing to maintain such Units in compliance with Section 4.3 of this Agreement.

ARTICLE 4 **OPERATION OF THE DEVELOPMENT**

4.1 Residential Use; No Short-Term Rental.

The Development shall be used only for residential purposes, and no part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

4.2 Taxes and Assessments.

To ensure the long-term affordability of the Units, the Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as necessary to prevent any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Owner exercises its right to contest any tax, assessment, or charge against it, the Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges, and interest.

4.3 Property Maintenance.

The Owner shall comply with every condition of the Permit and shall, at all times, maintain the Development and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Development and the Property in a good,

clean, safe, and sanitary condition.

4.4 Management.

The City shall have no responsibility over management of the Units.

ARTICLE 5 **MISCELLANEOUS**

5.1 Nondiscrimination.

There shall be no unlawful discrimination against, or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons in the leasing, use, or occupancy of the Units, on the basis of race, color, ancestry, national origin, religion, creed, age, disability (mental or physical), sex, gender (including, without limitation, because of pregnancy, childbirth, or breastfeeding), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military or veteran status, or any other basis forbidden by federal, state, or local law. During the Term, all deeds, leases, or contracts made or entered into by the Owner as to the Property, the Development, or the Units, or any portion thereof, shall contain a prohibition against discrimination and segregation on terms set forth in this section.

5.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir, or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City in a recorded written instrument.

5.3 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term, the Owner shall provide by first- class mail, postage prepaid, a notice to all Tenants containing the anticipated date of the expiration of the Term and any anticipated Rent increase upon the expiration of the Term. In addition, Owner shall comply, as applicable, with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

5.4 Covenants to Run with the Land.

This Agreement is a condition of approval of the Development, and as required under the State Density Bonus Law. The covenants and restrictions set forth in this Agreement shall apply uniformly to all Units to establish and carry out a common plan for the use of the Property. The covenants and restrictions contained in this Agreement shall be covenants running with the land pursuant to Civil Code Section 1460, et seq. The burden of the covenants and restrictions set forth in this Agreement touch and concern the Property in that the value of the Owner's legal interest in the Property and all improvements thereon may be affected thereby. The benefit of the covenants and restrictions set forth in this Agreement also touch and concern the Property by enhancing and increasing the enjoyment and use of the Property by Lower Income Households,

furthering the public purpose for which a density bonus is being granted under the Permit for the Development.

Notwithstanding the foregoing, without regard to technical classifications and without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate, the City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property; provided, however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire except as to the Owner's indemnification and defense obligations set forth herein.

Each grant deed for all or any portion of the Development shall state expressly that the grant is made subject to the terms and conditions set forth in this Agreement. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

5.5 Indemnification.

(a) To the fullest extent permitted by law, the Owner shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City its officers, employees, elected and appointed officials, and agents, harmless against any and all claims, suits, actions, losses and liability of every kind, nature, and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the Development, construction, marketing and operation of the Development, except to the extent any such claim arises from the grossly negligent or willful misconduct of the City or Indemnitees. Each party shall notify the other party promptly in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product doctrine.

(b) The provisions of this Section shall survive the expiration of the Term.

5.6 Enforcement by the City.

If the Owner fails to perform any obligation under this Agreement ("Default"), and fails to cure the Default within thirty (30) days after the City has notified the Owner in writing of the Default, or, if the Default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the City in writing, the City shall have the right to bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages or restitution.

5.7 Attorneys' Fees and Costs.

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

5.8 Recording and Filing.

The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the official records of the County of Merced.

5.9 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be proper in the County of Merced.

5.10 Interpretation.

This Agreement shall not be construed against the drafter. There are no third-party intended beneficiaries of this Agreement. This Agreement is not intended to confer, and shall not be interpreted to confer, on the City any duty for the benefit of the Owner or any other person to monitor compliance herewith. Any monitoring activities conducted by the City or on its behalf are intended for the City's sole benefit.

5.11 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the City in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or Default of the Owner or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by the Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

5.12 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the official records of the County of Merced.

5.13 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice by first-class United States mail, postage prepaid, addressed to the appropriate party as follows, or to such other address as either party may by notice provide to the other:

Owner: Devonwood Apartments, L.P.
777 West Putnam Avenue
Greenwich, CT 06830

City: City of Merced
Attn: City Clerk
678 W. 18th St.
Merced, CA 95340

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section.

5.14 Severability.

Should any provision of this Agreement prove to be invalid or illegal, the court is authorized and instructed to modify the same to effectuate the original intent of the parties to the extent possible. It is agreed and understood that the paramount purpose for which the parties have entered into this Agreement is to protect the long-term affordability of the Lower Income Units.

5.15 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

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

ACCOUNTY DATA:

BY: _____
Verified by Finance Officer

OWNER:

DEVONWOOD APARTMENTS, L.P.,
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: Richmond Group of California Development
Company, LLC, a California Limited Liability
Company
Its: Co-General Partner

By: _____
Rick Westberg
Executive Vice President

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 _____

Print Name _____

(Seal)

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 _____

Print Name _____

(Seal)

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "A"

DESCRIPTION
FOR
P.U.E VACATION

Being a portion of Mistwood Drive between Southwest right-of-way line of Loughborough Drive and the Northeast right-of-way line of the A.T. & S.F. Railroad as shown on "Parcel Map for Bianchi Land Co.", recorded in Volume 73 of Parcel Maps at Page 39, Merced County Records, being more particularly described as follows:

BEGINNING at the southeast corner of Parcel 2 as shown on said Map; thence North 24 degree 48' 34" East, 99.60 feet along the east line of said Parcel 2; thence along a tangent curve concave to the southeast with a radius of 544.71 feet through a central angle of 11 degree 08' 05", a distance of 105.86 feet along the curve; thence North 35 degree 56' 39" East, 76.57 feet along the east line of said Parcel 2; thence along a tangent curve concave to the southwest with a radius of 30.00 feet through a central angle of 86 degree 28' 55", a distance of 45.28 feet along the curve; thence southeasterly along a non-tangent curve concave to the northeast with a radius of 982.00 feet through a central angle of 07 degree 01' 29", a distance of 120.40 feet along the curve; thence westerly and southwesterly along a non-tangent curve concave to the southeast with a radius of 30.00 feet through a central angle of 86 degree 29' 36", a distance of 45.29 feet along the curve; thence South 35 degree 56' 39" West, 76.56 feet along the west line of Lot 6 as shown on the map for "Olivewood 2" of the City of Merced recorded in Volume 27, official plats, Page 8, Merced County Records; thence along a tangent curve concave to the southeast with a radius of 480.71 feet through a central angle of 11 degree 08' 55", a distance of 93.42 feet along the curve; thence South 24 degree 48' 34" West, 99.60 feet to the southwest corner of said Lot 6; thence North 65 degree 11' 26" West, 64.00 feet to **POINT OF BEGINNING**.

EXHIBIT "B"
LOCATION MAP

EXHIBIT "C"
CONCESSIONS AND WAIVERS

DENSITY BONUS#23-02
Concessions and Waivers

Private Outdoor Space (Concession)

Merced Municipal Code (MMC) Section 20.46.040 establishes design standards for any multi-family dwelling with 5 or more units (or 3 or more units on corner lots). Section 20.46.030 (l) - Private Outdoor Space, subsection (1) states: "Ground Floor Units. Every dwelling unit which is on the ground floor should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet." Subsection (2) of this section states: "Units Above Ground Floor. Every dwelling unit which is above the ground floor should, if feasible, have a usable outdoor balcony space of a minimum size of 5 feet by 8 feet.

Justification:

The applicant has requested this concession primarily due to the increased costs involved with providing private outdoor space. The cost of including patios/balconies would have a significant impact on structural design, material cost, waterproofing, and long-term maintenance.

Additionally, the noise pollution related to the nearby train tracks would expose the private outdoor spaces to above-average noise pollution levels. An acoustic study concluded that the exterior noise level is 75 DNL, which is an above-average level. Without the requested concessions, the project would not be feasible to build.

Roof Mounted Equipment (Concession)

The applicant is requesting a relief from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.

Justification:

Allowing roof-mounted mechanical equipment screened from public view, allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could be otherwise used for open space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space, but adds cost to the apartment unit. Without the requested concessions, the project would not be feasible to build.

EXHIBIT "D"
SITE PLAN

EXHIBIT D