

**CITY OF MERCED  
PROMISSORY NOTE**

(Devonwood Apartments—CDBG Loan)

**\$2,375,314**

**Merced, California**

\_\_\_\_\_, 2024

FOR VALUE RECEIVED, Central Valley Coalition for Affordable Housing, a California nonprofit corporation, (“Borrower”), promises to pay to the City of Merced, a California Charter Municipal Corporation (the “City”), or order, the principal sum of Two Million, Three Hundred Seventy-Five Thousand, Three Hundred Fourteen Dollars (\$2,375,314), or so much thereof as may be advanced by the City to or on behalf of the Borrower pursuant to a Deed Restriction Covenant and Loan Agreement dated as of the date hereof (the “CDBG Loan Agreement”), by and between the Borrower and the City (B-23-MC-06-0044 under the Community Development and Block Grant (CDBG) and administered by the U.S. Department of Housing and Urban Development (“HUD”) (14.218-Entitlement Grant) with a Federal Award Date of August 28, 2023), together with interest thereon as specified herein (the “CDBG Loan Agreement”). The obligation of the Borrower in respect of all such advances is subject to the terms of dated s of the date hereof, (a) Regulatory Agreement and Declaration of Restrictive Covenants between the Borrower and the City dated s of the date hereof (the “CDBG Regulatory Agreement”), (b) this CDBG Promissory Note (“CDBG Note”), (c) the Deed of Trust and Security Agreement of even date hereof, securing this CDBG Note, recorded in the Official Records of the County Recorder of Merced County, California (the “CDBG Deed of Trust”), and (d) the CDBG Loan Agreement, which together with all other loan related documents and instruments required by the City are collectively referred to as the “CDBG Loan Documents.”

1. Borrower’s Obligation. This CDBG Note evidences the Borrower’s obligation to pay the City the principal amount of Two Million, Three Hundred Seventy-Five Thousand, Three Hundred Fourteen Dollars (\$2,375,314) for the funds advanced to the Borrower by City to finance the acquisition of the Property (the “Development”) for the purposes and pursuant to the terms set forth in the DDA. Borrower shall submit a draw requests, up to a cumulative total of \$2,375,314. All capitalized terms not otherwise defined in this CDBG Note shall have the meanings set forth in the CDBG Loan Documents.

2. Interest. The outstanding principal balance of this CDBG Note shall bear simple interest at the rate of zero percent (0%) from the date of initial advance by the City until completion of construction of the Development, as evidenced by the issuance of the certificate of occupancy for the Development (the “Conversion Date”), and thereafter, shall bear simple interest at the rate of three percent (3%) per annum until repaid; provided, however, 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 the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this CDBG Note (the "Term"), shall commence with the date of this CDBG Note and shall expire on the date that is fifty-five (55) years following the Conversion Date. This CDBG Note shall be due and payable as set forth in the CDBG Deed Restriction Covenant and Loan Agreement. Payments shall be paid annually in arrears, no later than June 1 of each year with respect to the previous calendar year, with payments deferred until the Net Cash Flow (of the Project provide that payments should begin by Conversion Date and in the priority as described in the CDBG Loan Documents.

Borrower shall have the right to prepay this CDBG Note in whole or in part without penalty or premium, provided that any prepayment of principal must be accompanied by interest, if any, accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest, if any, and then to principal.

Unless otherwise specified hereinabove, each payment shall be credited first on interest (if any) then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited.

4. Net Cash Flow. For the purposes described in Section 3, Net Cash Flow shall be defined as follows pursuant to the definitions provided in the CHDO HOME Loan Documents:

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 Developer from operation of leasing of the Development 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 Developer'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 Developer for all management and oversight of the project, including any and all regulatory filings and surveys required of the Developer by the City in accordance to the project's funding sources. Said fee shall remain at \$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 by Developer 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 Developer
- (ii) 50% (allocated to the CDBG Loan and other public soft lenders on a pro rata basis and used to pay residual receipts loans for the Project).

5. Subordination. This CDBG Note shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements securing low-income housing tax credits financing (collectively, the "Senior Loans") subject to the following conditions: (1) the City shall receive copies of any notices of default issued by the Senior Lenders to the Developer; and (2) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default.

6. No Assumption. This CDBG Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the CDBG Loan Agreement and CDBG Regulatory Agreement.

7. Security. This CDBG Note is secured by the CDBG Deed of Trust, wherein the Developer is the Trustor and the City is the Beneficiary, covering the Property.

8. Terms of Payment.

(a) All payments due under this CDBG Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this CDBG Note shall be paid to City at the office of the City, 678 West 18<sup>th</sup> Street, Merced, CA 95340, Attn: Housing Division & City Clerk, or to such other place as the City may from time to time designate in writing.

(c) All payments on this CDBG Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this CDBG Note and the release of any security hereof.

(d) Notwithstanding any other provision of this CDBG Note, or any instrument securing the obligations of the Borrower under this CDBG Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this CDBG Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this CDBG Note, so that in no event shall the Borrower be obligated under the terms of this CDBG Note to pay any interest which would exceed the lawful rate.

(e) This CDBG Note shall be nonrecourse to Borrower and its partners.

#### 9. Default.

(a) Any of the following shall constitute an Event of Default under this CDBG Note:

(i) Any failure to pay, in full, any regularly scheduled payment required under this CDBG Note when due following written notice by City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any terms, condition, provision or covenant set forth in this CDBG Note subject to the notice and cure period set forth in the DDA; and

(iii) The occurrence of any Event of Default under the CDBG Loan Agreement, the CDBG Deed of Trust, or the CDBG Regulatory Agreement, or other instrument securing the obligations of the Borrower under this CDBG Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the CDBG Loan Agreement or the CDBG Deed of Trust, subject to notice and cure period, if any, set forth therein.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Developer's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same

basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to

Devonwood Apartments, L.P., 777 West Putnam Avenue, Greenwich CT 06830, Attention: President with a copy to USA Institutional Devonwood LLC, c/o JDF, LLC, 777 West Putnam Avenue, Greenwich, CT 06830, Attn: Joanne D. Flanagan, Esq.

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, if any, and together with all other sums then payable under this CDBG Note and CDBG Deed of Trust shall, at the option of the City, become due and payable in full, without further demand.

(c) The failure to exercise the remedy set forth in Subsection 9(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

#### 10. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand and notice of protest, notice of demand, and notice of dishonor of this CDBG Note. The Borrower expressly agrees that this CDBG Note or any payment hereunder may be extended from time to time and that the City may accept further security or release any security for this CDBG Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this CDBG Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this CDBG Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this CDBG Note, either in whole or in part.

(c) The obligations of the Borrower under this CDBG Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this CDBG Note for any reason whatsoever.

#### 11. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in the CDBG Loan Agreement, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the City in the enforcement of the provision of this CDBG Note, regardless of whether suit is filed to seek enforcement.

(c) This CDBG Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This CDBG Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the CDBG Loan Documents, contains the entire agreement between the parties as to the CDBG Loan. It may not be modified except upon written consent of the parties.

[Signatures on Next Page]

**“BORROWER”**

**Central Valley Coalition for Affordable  
Housing**, a California nonprofit corporation

By:

Christina Alley, Chief Executive  
Officer

ADDRESS:

3351 “M” Street, Suite 100  
Merced, California 95348  
Attention: Christina Alley

TELEPHONE:

FACSIMILE:

E-MAIL:

Taxpayer I.D. No.