

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

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

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

**In Respect of the
CITY OF MERCED
CDBG INVESTMENT PARTNERSHIPS PROGRAM LOAN
(Devonwood Apartments Project)**

THIS AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2024, by and between the City of Merced (a California charter municipal corporation hereinafter referred to as the "City") and Central Valley Coalition for Affordable Housing, a California nonprofit corporation ("Sponsor" or "Grantee"), Devonwood Apartments LP, a Delaware Limited Partnership (the "Developer"), pursuant to that certain Deed Restriction Covenant and Loan Agreement dated as of the date hereof (the "CDBG Loan Agreement" attached hereto) between the Sponsor and the City, with reference to the following:

WHEREAS, the Developer has or will be acquiring that certain real property generally known as 1535 Devonwood Drive, Merced, California 95341 (APN 058-220-048), incorporated herein by this reference (the "Property" or "Site"), legally described in the attached Exhibit "A" with proceeds of a loan from Sponsor in the same amount as the CDBG Loan;

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended ("HCD Act"), Public Law 93-383 (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.

NOW, THEREFORE, THE CITY AND THE DEVELOPER AGREE AS FOLLOWS:

1. The Developer, on behalf of itself and its successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees:

(a) To use, devote and maintain the Site and each part thereof, for the purposes and uses specified in the City's General Plan and in accordance with the City zoning requirements. No building or any tenant space within a building may include visible bars or grates over or behind any window visible from a public street or right of way. Any permanent signage affixed to the building or windows must be of high-quality materials, not including tempera paint.

(b) Reserved.

(c) To maintain the improvements and landscaping on the Site and keep the Site free from any accumulation of debris and waste materials.

(d) Not to discriminate upon the basis of sex, marital status, disability, race, color, creed, religion, age, national origin, or ancestry in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon, or of any part thereof. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or groups of persons on account of race, color, creed, religion, sex, disability, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, disability, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, or enjoyment

of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

2. There shall be no discrimination against or segregation of any person or groups of persons, on account of sex, marital status, disability, race, color, creed, religion, age, national origin, or ancestry in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof, nor shall the Developer, its successors, assigns, or successors in interest to the Site or any part thereof, or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, or vendees of the Site or any part thereof.

3. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the City, and its successors and assigns. Except as set forth in the following sentence and as otherwise set forth in the Loan Documents with respect to the CDBG Loan, as such terms are defined in the Deed Restriction Covenant and Loan Agreement, dated as of as of the date hereof, by and between the City and the Sponsor, the covenants in paragraph 1 of this Agreement shall remain in effect until the date that is 55 years from the issuance of a certificate of occupancy. The covenants against discrimination contained in paragraphs 1 and 2 of this Agreement shall remain in perpetuity.

4. The covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Property or any person or entity having any interest in any such other real property.

5. Any notice, request, demands, approvals or other communications given hereunder or in connection herewith shall be sent by registered or certified mail, return receipt requested, postage and fees prepaid and addressed to the party hereto to receive such notice, at its address as set forth as follows:

TO CITY:

City of Merced
Attention: Housing Division & City Clerk

678 West 18th Street
Merced, CA 95340

WITH A COPY TO: City Attorney's Office
City of Merced
678 West 18th Street
Merced, CA 95340

TO SPONSOR: Central Valley Coalition for Affordable Housing
3351 "M" Street, Suite 100
Merced, CA 95348
Attention: Christina Alley

TO DEVELOPER: Devonwood Apartments, LP
777 West Putnam Avenue
Greenwich, CT 06830
Attention: President

With a Copy to: Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave, Suite 1400
Orlando, Florida 32801
Attention: Heather Toft

With a Copy to: The Richman Group of California Development Company LLC
420 31st Street, Suite B1
Newport Beach, CA 92663

With a Copy to: [Investor Limited Partner]
c/o JDF, LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attention Joanne D. Flanagan, Esq.

Either party may, by notice given as aforesaid, change its address for any subsequent notice. Any notice shall be deemed given on the second day following its deposit in the United States mail. No party hereto shall be deemed to be in default of any provision hereof unless and until twenty-one (21) days' notice thereof shall be given by one party to the other, and then the party in default shall have the absolute right to cure said default so long as such cure is commenced within a reasonable time, in no event longer than sixty (60) days, and such cure is diligently prosecuted to its conclusion. The foregoing is in addition to any of the provisions contained herein.

[Signatures on Next Page]

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

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

“SPONSOR”

CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING, a California non-profit public benefit corporation

By: _____
Christina Alley, Chief Executive Officer

“DEVELOPER”

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

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)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A: Legal Description of Property

Exhibit B: CDBG Loan Agreement