

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Buchalter, a Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, California 90017  
Attention: Mercedes O. Martin, Esq.

---

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

**SUBORDINATION AGREEMENT  
(BOA/City of Merced)**

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into as of [\_\_\_\_], 2024 by and among (i) BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, the "Senior Lender"), (ii) CITY OF MERCED, a California charter municipal corporation (the "City" or "Subordinate Lender"), (iii) CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING, a California nonprofit public benefit corporation (the "Sponsor"), and (iv) DEVONWOOD APARTMENTS LP, a Delaware limited partnership (the "Borrower").

**Recitals**

A. Borrower has applied to the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California ("Governmental Lender") for a loan in the aggregate amount of \$[\_\_\_\_\_] (the "First Mortgage Loan"). The First Mortgage Loan is or will be secured by a [Construction Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing] (the "First Mortgage") dated as of even date herewith and recorded in the Official Records of Merced County, California (the "Official Records") substantially concurrently herewith, by Borrower for the benefit of Governmental Lender, on a multifamily housing project located in Merced, California (the "Property"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the First Mortgage Loan is evidenced by (i) that certain Promissory Note in the amount of \$[\_\_\_\_\_] dated [\_\_\_\_\_, 2024], and (ii) that certain Promissory Note (Taxable) in the amount of \$[\_\_\_\_\_] dated [\_\_\_\_\_, 2024] (collectively, and as amended from time to time, the "First Mortgage Note"), and that certain Borrower Loan Agreement dated [\_\_\_\_\_, 2024] (as the same may be from time to time amended, modified, restated and/or supplemented, the "Borrower Loan Agreement"), by and among Borrower, Governmental Lender, [\_\_\_\_\_] as fiscal agent (the "Fiscal Agent") and Senior Lender, in its capacity as funding lender (the "Funding Lender").

B. Borrower has requested that Funding Lender enter into that certain Funding Loan Agreement dated [\_\_\_\_\_, 2024] by and among Governmental Lender, Fiscal Agent and Funding Lender (the "Funding Loan Agreement"), pursuant to which Funding Lender will make a loan to Governmental Lender (the "Funding Loan"), the proceeds of which will be used to make the First Mortgage Loan to Borrower pursuant to the Borrower Loan Agreement.

C. To secure the Funding Loan, the First Mortgage note, the First Mortgage and Borrower Loan Agreement and certain other First Mortgage Loan Documents (defined below) have been assigned by Governmental Lender to Senior Lender pursuant to that certain [Assignment of Deed of Trust and Related Documents] dated as of [\_\_\_\_\_, 2024] and recorded concurrently herewith in the Official Records. The Borrower and Bank of America, N.A., a national banking association, as Servicer of the First Mortgage Loan, have entered into that certain Construction Disbursement Agreement dated as of [\_\_\_\_\_, 2024] (as the same may be from time to time amended, modified, restated and/or supplemented the "Construction Disbursement Agreement") regarding the manner in which the improvements at the Property will be completed and paid for.

D. The Borrower has requested the Senior Lender to permit the following loans (individually and collectively, the "Subordinate Loan"):

(1) the City to make Sponsor to make an American Rescue Plan Act grant to Sponsor in the amount of \$1,309,538 (the "ARPA Grant"), to be secured by a subordinate mortgage lien against the Property (the "Subordinate ARPA Mortgage"), and evidenced by, among other things, that certain (i) Deed Restriction Covenant and Grant Agreement dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("ARPA Grant Agreement"), (ii) Agreement Containing Covenants Affecting Real Property dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("ARPA Covenant"), and (iii) Regulatory Agreement and Declaration of Restrictive Covenants dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("ARPA Regulatory Agreement");

(2) the City to make a Community Development and Block Grant loan to Sponsor in the original principal amount of \$2,375,314 (the "CDBG Loan"), to be secured by a subordinate mortgage lien against the Property made by Borrower for the benefit of City as maker of the CDBG Loan (the "Subordinate CDBG Mortgage"), and evidenced by, among other things, that certain (i) Deed Restriction Covenant and Loan Agreement dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CDBG Loan Agreement"), (ii) Promissory Note by Sponsor in favor of City in the amount of \$2,375,314 ("CDBG Note"), (iii) Agreement Containing Covenants Affecting Real Property dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CDBG Covenant"), and (iv) Regulatory Agreement and Declaration of Restrictive Covenants dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CDBG Regulatory Agreement");

(3) the City to make a Home Investment Partnership Program loan to Sponsor in the amount of \$3,845,734 (the "CHDO HOME Loan"), to be secured by a subordinate mortgage lien against the Property made by Borrower for the benefit of City as maker of the CHDO HOME Loan (the "Subordinate CHDO HOME Mortgage"), and evidenced by, among other things, that certain (i) Deed Restriction Covenant and Loan Agreement dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CHDO HOME Loan Agreement"), (ii) Promissory Note by Sponsor in favor of City in the amount of \$3,845,734 ("CHDO HOME Note"), (iii) Agreement Containing Covenants Affecting Real Property dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CHDO HOME Covenant"), and (iv) Regulatory Agreement and Declaration of Restrictive Covenants dated [\_\_\_\_\_, 2024] by and between City, Borrower and Sponsor ("CHDO HOME Regulatory Agreement"); and

(4) the City to make a subordinate loan to Borrower in the amount of \$1,213,894.01 (the "Subordinate Water and Sewer Connection Fees Loan"), which Subordinate Water and Sewer Connection Fees Loan is evidenced by that certain Agreement and Lien Affecting Real Property dated on or about the date hereof in the original principal amount of \$1,309,538 (the "Subordinate Water and Sewer Connection Fees Note"), which includes a subordinate mortgage lien against the Property (the "Subordinate Water and Sewer Mortgage").

F. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place subordinate mortgage liens against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place subordinate mortgage liens against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

**1. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“Affiliate” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

“Borrower” means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

“Business Day” means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

“Default Notice” means: (a) a copy of the written notice from the Senior Lender or Majority Owner to the Borrower stating that a First Mortgage Loan Default has occurred under the First Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

“First Mortgage Loan Default” means the occurrence of an “Event of Default” as that term is defined in the First Mortgage Loan Documents.

“First Mortgage Loan Documents” means the First Mortgage Note, the First Mortgage, the Construction Disbursement Agreement, the Borrower Loan Agreement, the Tax Regulatory Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the First Mortgage Loan.

“Person” means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

“Senior Lender” means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the First Mortgage Note, such other Person shall automatically become the Senior Lender.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Default” means a default by the Borrower or Sponsor in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by either of them, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, the Subordinate Restrictions, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

“Subordinate Mortgage” means, collectively, the deeds of trust and/or mortgages encumbering the Property as security for the Subordinate Loan, each of which the Subordinate Lender will cause to be recorded in the Official Records substantially concurrently herewith.

“Subordinate Note” means, individually and collectively, the CDBG Note, the CHDO HOME Note and Subordinate Water and Sewer Connection Fees Note.

“Subordinate Restrictions” means, collectively, the regulatory agreements, declarations of restrictive covenants, and deed restrictions in favor of Subordinate Lender in connection with the Subordinate Loan, each of which the Subordinate Lender will cause to be recorded in the Official Records substantially concurrently herewith.

“Tax Regulatory Agreement” means that certain [Regulatory Agreement and Declaration of Restrictive Covenants] by and among Governmental Lender and Borrower, dated as of [ ] and recorded in the Official Records substantially concurrently herewith.

## **2. Permission to Place Mortgage Lien Against Property.**

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage, the Subordinate Restrictions and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage and the First Mortgage Loan) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the First Mortgage Loan Documents applicable to unpermitted liens on the Property shall apply.

## **3. Borrower's and Subordinate Lender's Representations and Warranties.**

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

**(a) Relationship of Borrower to Subordinate Lender and Senior Lender.** The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

**(b) Term.** The term of the Subordinate Note does not end before the term of the First Mortgage Note.

**(c) Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower

shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**(d) Senior Loan Documents.** The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

#### **4. Terms of Subordination.**

**(a) Agreement to Subordinate.** The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the First Mortgage Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the other First Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage and the other First Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage Loan Documents or for any other purpose expressly permitted by the First Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

**(b) Subordination of Subrogation Rights.** The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the First Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the First Mortgage.

**(c) Payments Before First Mortgage Loan Default.** Until the Subordinate Lender receives a Default Notice of a First Mortgage Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

**(d) Payments After First Mortgage Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a First Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the First Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection

(d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the First Mortgage Loan Documents in accordance with the provisions of the First Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

## **5. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage.

**(b) Subordinate Lender's Agreement to Standstill.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action. Notwithstanding the foregoing, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents, including without limitation, rights at law or in equity (including without limitation specific performance) to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions contained in the Subordinate Restrictions.

**(c) Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default under the First Mortgage Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the

benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

## **6. Default Under First Mortgage Loan Documents.**

**(a) Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the First Mortgage Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the First Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a First Mortgage Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the First Mortgage Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the First Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the First Mortgage. At any time after a First Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any First Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such First Mortgage Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such First Mortgage Loan Default had never occurred.

## **7. Conflict.**

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the First Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any First Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any First Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided,

respectively under the First Mortgage Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

**8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure First Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) **No Modification of Subordinate Loan Documents.** The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the First Mortgage Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under



the First Mortgage Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

**9. Conversion, Modification or Refinancing of First Mortgage Loan.**

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the First Mortgage Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement. Following Conversion (as defined in the Construction Disbursement Agreement), all the terms and covenants of this Agreement shall inure to the benefit of any holder of the Permanent Loan (as defined in the Construction Disbursement Agreement); and all references to the First Mortgage Loan, the First Mortgage Note, the First Mortgage and the First Mortgage Loan Documents shall mean, respectively, the Permanent Loan, the promissory note evidencing the Permanent Loan, the deed of trust securing in the Permanent Loan and the other loan documents evidencing or securing the Permanent Loan.

**10. Default by the Subordinate Lender or Senior Lender.**

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

**11. Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Bank of America, N.A.  
Mail Code: TX2-160-05-33  
1950 N Stemmons Fwy, Suite 5049  
Dallas, TX 75207  
Attention: Construction Servicing (Real Estate) Loan  
Administration Manager

With copy to:

Buchalter, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500

Los Angeles, California 90017  
Attention: Michael A. Williamson, Esq.  
Re: Devonwood (B0965-0772)

SUBORDINATE LENDER: City of Merced  
678 West 18th Street  
Merced, CA 95340  
Attention: Housing Division & City Clerk

With a copy to:

City Attorney's Office  
City of Merced  
678 West 18th Street  
Merced, A 95340

SPONSOR: Central Valley Coalition for Affordable Housing  
3351 "M" Street, Ste. 200  
Merced, CA 95348  
Attention: Christine Alley

BORROWER: Devonwood Apartments, L.P.  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attention: President

with copy to:

c/o The Richman Group of California Development Company  
LLC  
420 31st Street Suite B1  
Newport Beach, CA 92663  
Attention: Rick Westberg

With a copy to:

Central Valley Coalition for Affordable Housing  
3351 "M" Street, Ste. 200  
Merced, CA 95348  
Attention: Christine Alley

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

## **12. General.**

**(a) Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

**(b) No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances.** The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement.

**(e) Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.** This Agreement shall be governed by the laws of the State in which the Property is located.

**(g) Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

**(i) Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**SENIOR LENDER:**

**BANK OF AMERICA, N.A.,**  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 LOS ANGELES

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here 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)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**SUBORDINATE LENDER:**

**CITY OF MERCED,**  
a California charter municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney/General Counsel

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 \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here 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)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**SPONSOR:**

**CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Christina Alley  
Title: Chief Executive Officer

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 \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here insert name and title of the officer), personally appeared Christina Alley 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)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**BORROWER:**

**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 nonprofit public benefit corporation,  
its managing member

By: \_\_\_\_\_  
Name: Christina Alley  
Title: Chief Executive Officer

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

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

By: \_\_\_\_\_  
Name: Rick Westberg  
Title: Executive Vice President

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

By: \_\_\_\_\_  
Name: Rick Westberg  
Title: Executive Vice President

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 \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here 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)



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 \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here 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)

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 \_\_\_\_\_, 2024 before me, \_\_\_\_\_, Notary Public (here 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**

[\_\_\_\_\_]