



**Sacramento  
Housing &  
Redevelopment  
Agency**

**REPORT TO HOUSING AUTHORITY AND  
REDEVELOPMENT AGENCY**

**City of Sacramento  
915 I Street, Sacramento, CA 95814-2671  
[www.CityofSacramento.org](http://www.CityofSacramento.org)**

**2**

**Consent  
August 6, 2009**

**Honorable Chair and Members of the Housing Authority  
Honorable Chair and Members of the Redevelopment Agency**

**Title: Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement,  
and Agency Loan Commitment for Taylor Terrace Apartments**

**Location/Council District: 4058 Taylor Street; Council District 2**

**Recommendation:** Adopt 1) a **Housing Authority Resolution** a) indicating the willingness of the Housing Authority of the City of Sacramento to issue up to \$10,000,000 in tax-exempt mortgage revenue bonds to provide acquisition, construction, and permanent financing for Taylor Terrace Apartments; b) authorizing an application to the California Debt Limit Allocation Committee (CDLAC) for authority to issue the bonds; and c) authorizing the Executive Director or her designee to execute all necessary documents associated with the application; and 2) a **Redevelopment Agency Resolution** a) approving a loan commitment from Aggregate Low/Moderate Tax Increment Housing Set-Aside funds for a loan of up to \$580,000 for the construction and permanent financing of the Taylor Terrace Apartments; b) authorizing the Executive Director or her designee to amend the Agency budget to allocate \$580,000 in Aggregate Low/Moderate Tax Increment Set-Aside Funds as a loan to the Developer; c) authorizing the Executive Director or her designee to execute the attached commitment letter; d) approving the attached Amended and Restated Owner Participation Agreement and related documents with LINC-Taylor Terrace Apartments LLC, or related entity; and e) consenting to an Assignment and Assumption Agreement.

**Contact:** Lisa Bates, Deputy Executive Director, 440-1330, Christine Weichert, Assistant Director, Housing and Community Development, 440-1353

**Presenters:** Jeree Glasser-Hedrick, Housing Finance Program Manager; Richard Marsh, Housing Finance Analyst

**Department:** Sacramento Housing and Redevelopment Agency



Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

**Description/Analysis**

**Issue:** Taylor Terrace Apartments is a 168-unit multifamily complex located on 7.14 acres at 4058 Taylor Street. The property was developed in 1994 and is located near transit, parks, shopping, and schools. The project consists of 64 one-bedroom, 36 two-bedroom, and 68 three-bedroom units in fifteen two-story buildings. The project includes 70 very low-income units affordable to families at or below 50 percent of Area Median Income (AMI), 97 low-income units affordable to families at or below 60 percent of AMI, and one manager's unit. Amenities include a gated entry, swimming pool, clubhouse, children's play area, and three laundry rooms.

The Developer plans a full rehabilitation of the Taylor Terrace Apartments including interior and exterior repairs to the buildings and site improvements. The project qualifies as a recapitalization project which has a high priority for Agency funding under the Agency's adopted guidelines. The proposed rehabilitation conforms to the Agency's guidelines and will bring the property up to current market standards. The improvements will create a complex that is visually more appealing and functionally improved, increasing its marketability and having a positive impact on the surrounding neighborhood.

Unfortunately, the current upheaval in the financial markets, which has greatly reduced the equity available through Low Income Housing Tax Credits (LIHTC's), makes the immediate full rehabilitation of the property impossible. Consequently, the project is proposed to be completed in two phases, with the developer acquiring the property and completing urgent repairs immediately, then refinancing with tax-exempt bonds and LIHTC's and completing the full rehabilitation as soon as the financial markets allow. Fortunately, the project is still in generally good condition, so the immediate scope of work will include only minor repairs and upgrades to the interior and exterior of the buildings, site work, improved site lighting, and the installation of security cameras. The acquisition is proposed to be financed with conventional senior debt and assumption of current debt which includes a Tax Increment (TI) loan from the Agency. The immediate rehabilitation and other associated transactional and administrative costs are proposed to be funded with a new \$580,000 loan from the Agency. As a condition of receiving the Agency funds, the Developer will be required to complete the full rehabilitation of the project within five years. Further information on the overall scope of work is presented in Attachment 1.

This report recommends approval of a \$580,000 loan commitment of Aggregate Low/Moderate Tax Increment Housing Set-Aside funds to fund the initial rehabilitation of the property and other associated costs. The use of these funds requires an executed Owner Participation Agreement (OPA) with the owner of the project. Staff recommends approval of the OPA (Exhibit B) which amends and restates the OPA associated with the existing Agency TI loan being assumed by the Developer. The second phase of the rehabilitation is proposed to be funded with tax-exempt mortgage revenue bonds issued by the Housing Authority at a later date in the amount of up to \$10,000,000 along with 4 percent LIHTC's. The

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use of tax-exempt bonds will lower the interest rate on the debt and facilitate the project receiving an allocation of 4 percent tax credits, both of which will provide additional funds for the second phase of the renovations. Staff recommends approval of the bond inducement resolution that indicates the intention of the Housing Authority to issue tax-exempt bonds for the Taylor Terrace project. Approval of the inducement resolution at this time will allow the developer to be reimbursed later from bond proceeds for costs incurred now.

Background information on the project developer and the property are included in Attachment 1. Vicinity and location maps and a site plan are included as Attachments 2 and 3 respectively. A project summary, including a proposed sources and uses of funds, is included as Attachment 4. A project cash flow proforma and a schedule of maximum rents and incomes for the project are included as Attachments 5 and 6.

**Policy Considerations:** The recommended actions are consistent with approved Agency tax-exempt bond and multifamily loan policies except staff recommends a temporary waiver of the requirement for ten percent Developer equity in the project until LIHTC investor equity is available. The project qualifies as a recapitalization project which has a high priority for Agency funding under the Agency's adopted guidelines. The proposed actions further the Agency goal of eliminating blight, promoting private sector investment and preserving affordable housing throughout the City. Regulatory restrictions on the property will be specified in bond and loan regulatory agreements with the Housing Authority and the Agency, respectively. Compliance with the regulatory agreements will be monitored by the Agency on a regular basis. As an affordable housing project, Taylor Terrace Apartments is exempt from the Art in Public Places requirement.

**Environmental Considerations:** The proposed action is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged.

**Sustainability Considerations:** The Project has been reviewed for consistency with the focus areas, goals, policies, and targets of the Sustainability Master Plan and the 2030 General Plan. If approved, the project will advance the following focus areas: the project supports Focus Area number one – Energy Independence, by replacing resource inefficient infrastructure, including dual-pane windows and sliding doors and energy efficient appliances. The project also supports Focus Area number six – Urban Design, Land Use, Green Building and Transportation, by reducing dependence on private automobiles due to the fact that the property is located in close proximity to Regional Transit bus stops.

**Committee/Commission Action:** *Sacramento Housing and Redevelopment Commission:* At its meeting on July 15, 2009, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

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AYES: Burruss, Chan, Dean, Fowler, Gore, Morgan, Morton, Otto, Rosa, Shah, Stivers

NOES: None

ABSENT: Absent

**Rationale for Recommendation:** The actions recommended in this report further the Agency goal of eliminating blight and promoting affordable housing in the City and enable the Agency to continue to fulfill its mission to provide a range of affordable housing opportunities in the City and County of Sacramento.

**Financial Considerations:** Staff recommends approval of an Agency Loan commitment of up to \$580,000 from Aggregate Low/Moderate Tax Increment Housing Set-Aside funds which will be repaid from residual receipts as required by the California Department of Housing and Community Development as senior lender on the project under the Rental Housing Construction Program.

**M/WBE Considerations:** The items discussed in this report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully Submitted by:

  
LA SHELLE DOZIER  
Executive Director

Recommendation Approved:

  
RAY KERRIDGE  
City Manager

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### **Taylor Terrace Apartments Project Background Information**

The Developer, LINC Housing Corporation, through LINC-Taylor Terrace Apartments LLC, proposes to acquire and rehabilitate Taylor Terrace Apartments, an existing affordable 168-unit apartment complex at 4058 Taylor Street. The Developer is requesting a \$580,000 Agency loan for the initial rehabilitation of the project and later issuance of up to \$10,000,000 in tax-exempt mortgage revenue bonds for a refinance and full rehabilitation of the project.

Description of Development: Taylor Terrace Apartments was developed in 1994 using 9 percent Low Income Housing Tax Credits (LIHTC's), Rental Housing Construction Program (RHCP) funds from the California Department of Housing and Community Development (HCD), and construction and permanent loans from the Agency. The project consists of 64 one-bedroom, 36 two-bedroom, and 68 three-bedroom units in fifteen two-story buildings. The project includes 70 very low-income units affordable to families at or below 50 percent of Area Median Income (AMI), 97 low-income units affordable to families at or below 60 percent of AMI, and one manager's unit. Amenities include a gated entry, swimming pool, clubhouse, children's play area, and three laundry rooms. The wood frame buildings are constructed on concrete foundations with stucco siding. The roofs are pitched with composition shingles. Units have individual wall air conditioning units and gas water heaters.

The proposed project will include a complete rehabilitation of the Taylor Terrace Apartments including interior and exterior repairs to the buildings and site improvements at a total cost of approximately \$3,000,000. Interior rehabilitation will include repair and replacement of appliances, kitchen cabinets, bathroom fixtures, water heaters, carpets and vinyl flooring, as needed. Exterior work will include replacement or repair of the stucco, windows, roof, gutters, and car-ports along with repainting, and site work will include landscaping, sprinkler repair, and tree trimming. The proposed rehabilitation conforms to the Agency's guidelines that require a 15 year useful life for all major building systems and will bring the property up to current market standards. The improvements will create a complex that is visually more appealing and functionally improved, increasing its marketability and having a positive impact on the surrounding neighborhood.

Vicinity and location maps, and a site plan are included as Attachments 2 and 3 respectively. A project summary, including a proposed sources and uses of funds, is included as Attachment 4. A project cash flow proforma and a schedule of maximum rents and incomes for the project are included as Attachments 5 and 6.

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Developer: LINC Housing Corporation was founded in 1984 by the Southern California Association of Governments to address the need for affordable housing in the region. LINC (an acronym for Limited Income Communities) is a non-profit developer of affordable housing that now builds and preserves service-enriched homes for families and seniors throughout California. The firm has participated in the development of more than six thousand affordable homes across the state and has been recognized as being one of the top owners and developers of affordable housing in the nation. The company is a partner in the 80-unit North Avenue Apartments project in Sacramento that was completed in 2007.

Social Services: Services will be provided to the residents by LINC Cares, an affiliate of the developer. The service provider will be required to provide at least 22 hours of services per week. Programs will be tailored to the needs of the residents. Examples of services include after-school programs, computer training, English as a Second Language classes and coordinating social activities for the residents.

Property Management: The project will be managed by ConAm Management Corporation, an experienced manager of conventional and affordable apartment communities nationwide. The company currently manages a portfolio of approximately 50,000 apartment units in 26 metropolitan areas, and has owned or managed more than 15,000 affordable housing units including many financed with tax-exempt bonds, LIHTC's, and tax increment funds. ConAm manages the North Avenue Apartments in Del Paso Heights. Agency staff has reviewed the management plan, including daily operations, leasing procedures, maintenance, and eviction procedures, and has found that the proposed management company meets the Agency's requirements for property management.

Project Financing: The acquisition is proposed to be financed with conventional senior debt and assumption of the current HCD and Agency debt. The initial rehabilitation and other associated transactional and administrative costs will be funded with a new \$580,000 loan from the Agency. This report recommends approval of a \$580,000 loan commitment of Aggregate Low/Moderate Tax Increment funds to complete the immediate rehabilitation phase of the project. The use of these funds requires an executed Owner Participation Agreement (OPA) with the owner of the project. The second phase of the project is proposed to be funded with tax-exempt mortgage revenue bonds issued by the Housing Authority in the amount of up to \$10,000,000 along with 4 percent LIHTC's. Staff recommends approval of the bond inducement resolution that indicates the intention of the Housing Authority to issue tax-exempt bonds for the Taylor Terrace project. Approval of the inducement resolution at this time will allow the developer to be reimbursed from bond proceeds for acquisition costs incurred now.

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**Bond Financing:** As a public entity, the Housing Authority can issue tax-exempt bonds, the proceeds of which can provide acquisition, construction, and permanent financing for multi-family housing projects. Interest paid on the bonds is exempt from federal and state income tax, so bondholders will accept a below-market yield from the bonds. These savings are, in turn, passed on to the project owner in the form of a below-market rate loan, with interest rates approximately one to two percent below prevailing market rates.

The bonds for the project may be privately-placed, or may be publicly-offered by a bond underwriter approved by the Agency. The Developer has not yet selected the optimal method of issuance for this project. The Agency will report back to the Housing Authority on the method of placement and the actual bond amounts with the request for final approval of the bond issuance. The law firm of Orrick, Herrington, & Sutcliffe LLP will serve as bond counsel to the Housing Authority.

**Low-Income Set-Aside Requirements:** As a condition of receiving tax credits and the benefits of tax-exempt bond financing, federal law requires the apartments be set-aside for targeted income groups. Further restrictions on incomes and rents are imposed as a result of the existing RHCP loan from HCD, and the loans from the Redevelopment Agency. Current rents will remain the same after the proposed transaction but the terms of the regulatory restrictions will be extended out to a new 55-year period. The following chart summarizes the combined proposed affordability restrictions:

<b>Funding</b>	<b>% of Units</b>	<b>Affordability Restrictions</b>	<b>No. Units</b>	<b>Regulatory Requirements</b>
Tax-Exempt Bonds Tax Credits (LIHTC)	42%	Very Low Income (50% AMI)	70	55 years
Agency Loans HCD Loan	58%	Low Income (60% AMI)	97	55 years
Manager's Unit		Unrestricted	1	
<b>Total</b>	<b>100%</b>		<b>168</b>	

Maximum rent and income limits for the mortgage revenue bond program can be found in Attachment 6. The project's affordability restrictions will be specified in regulatory agreements with the Developer.

**State and Local Approval Process:** The Housing Authority must apply for (and receive) authorization from the California Debt Limit Allocation Committee (CDLAC) prior to issuing tax-exempt mortgage revenue bonds. The "volume cap" is limited and is allocated by CDLAC through a competitive state-wide process.

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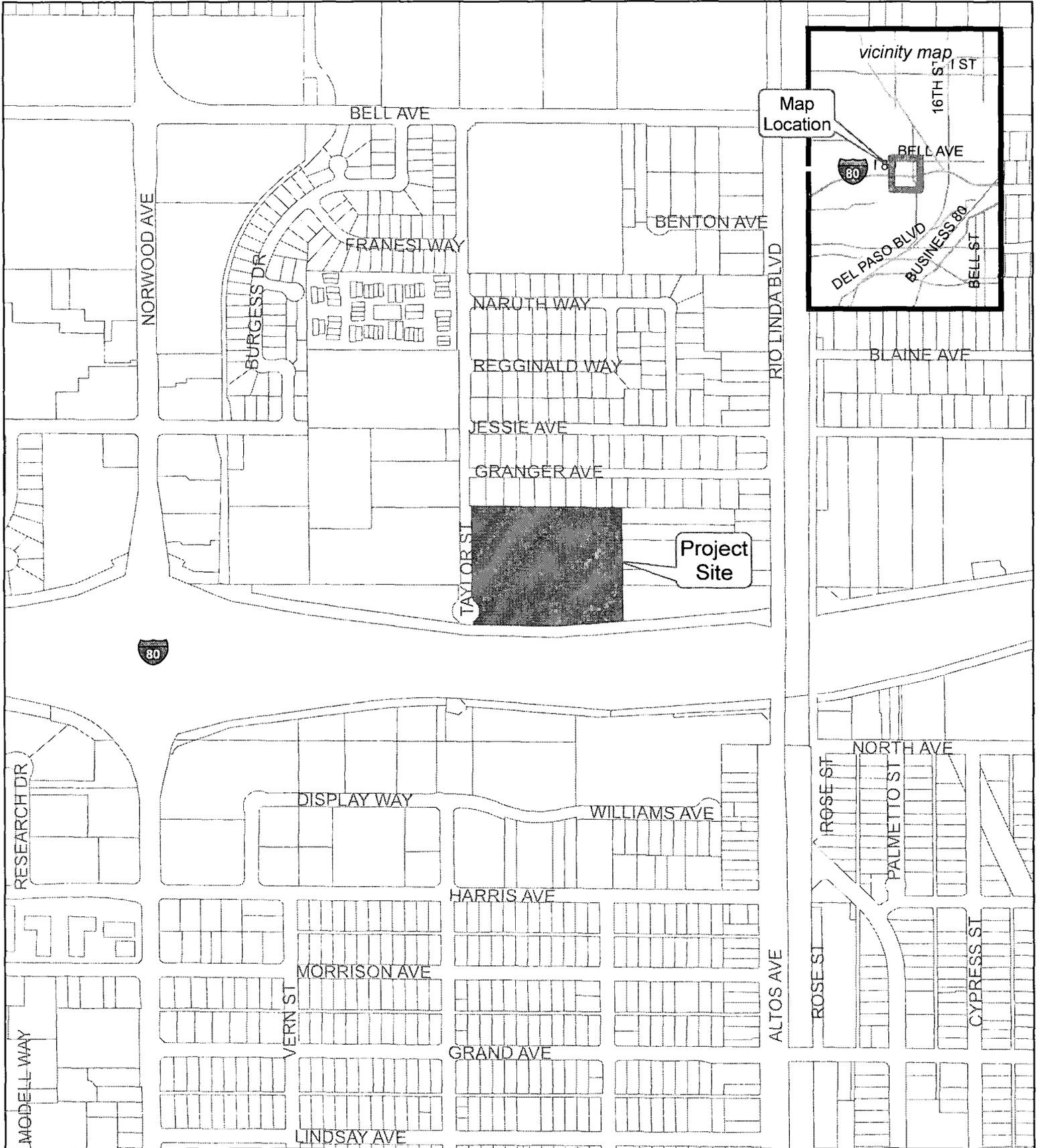
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Project Inducement: CDLAC requires that an "inducement" resolution be adopted by the entity proposing to issue the bonds. Inducement at this time will also allow the developer to be reimbursed from bond issue proceeds for acquisition expenses that it has incurred already and will incur in the future. Staff recommends that the Housing Authority adopt a resolution to indicate its intent to issue bonds to finance the purchase and construction of the project. Adoption of the resolution will not bind the Authority to issue bonds until and unless all other necessary actions are taken in accordance with all applicable laws.

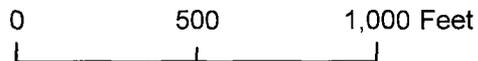
Relocation: State law requires the creation and adoption of a relocation plan, which outlines relocation procedures and tenant's rights whenever redevelopment projects result in the permanent displacement of residents. Adoption of a relocation plan is not required for the Taylor Terrace Apartments because no tenants are anticipated to be permanently displaced as a result of the current project.



# Taylor Terrace Apartments

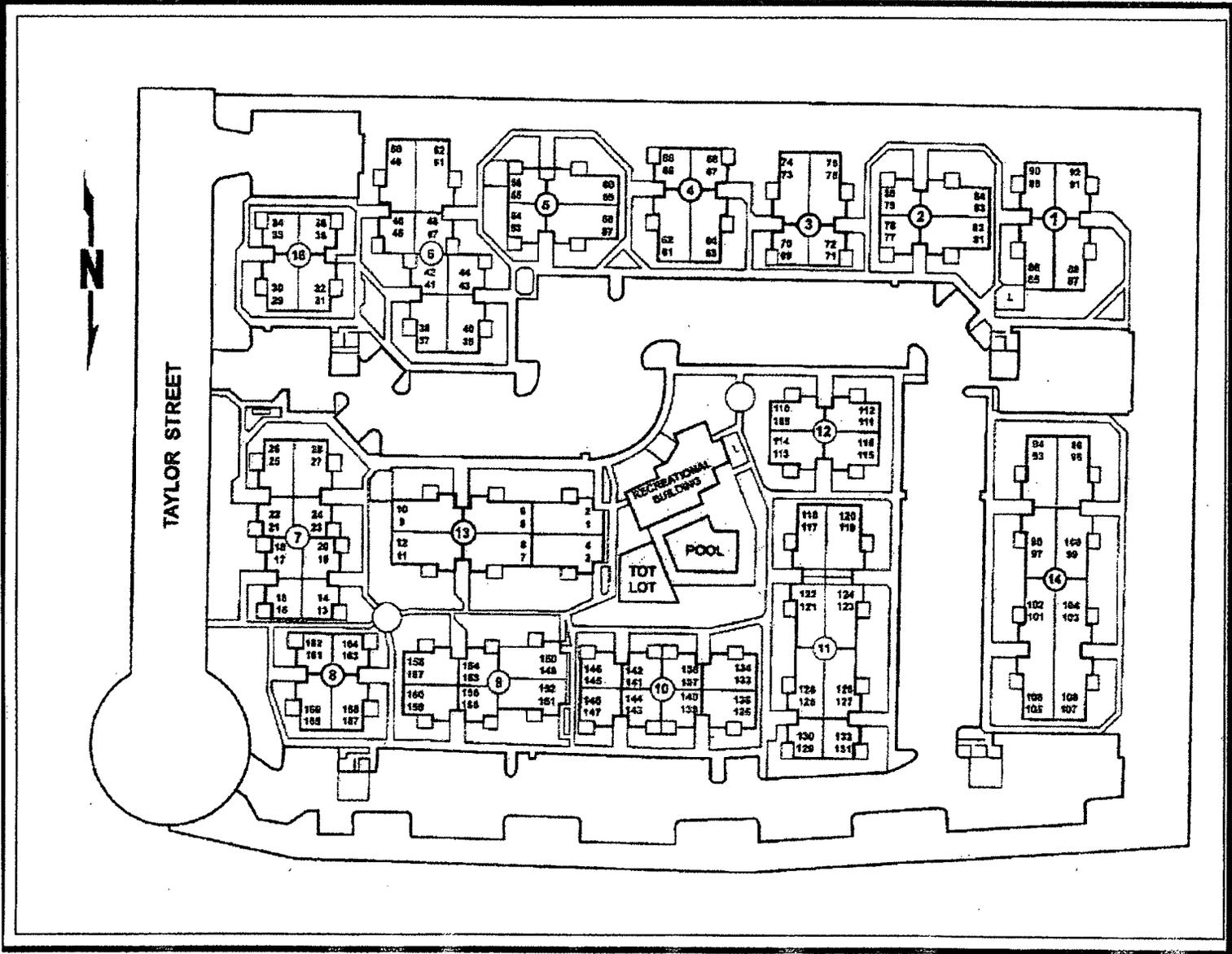


4058 Taylor Street



SHRA GIS  
July 1, 2009

Site Plan



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Attachment 4

Taylor Terrace Apartments  
Project Summary

<b>Address</b>	4058 Taylor Street		
<b>Number of Units</b>	168		
<b>Year Built</b>	1994		
<b>Acreage</b>	7.14 Acres		
<b>Affordability</b>	70 units (42%) at or below 50% of Area Median Income (AMI) 97 units (58%) at or below 60% of AMI 1 Manager's Unit		
<b>Unit Mix and Rents</b>	(50% AMI)*	(60% AMI)	Manager
1 Bedroom / 1 Bath	34	30	
2 Bedroom / 1 Bath		35	
3 Bedroom / 2 Bath	36	32	
Unrestricted			1
	* Rents on 50% AMI units regulated by HCD-RHCP		
<b>Square Footage</b>	<u>Per Unit</u>	<u>Total</u>	
1 Bedroom / 1 Bath	650	41,600 s.f.	
2 Bedroom / 1 Bath	892	32,112 s.f.	
3 Bedroom / 2 Bath	1,050	71,400 s.f.	
Leasing Office / Clubhouse		1,500 s.f.	
Laundry Rooms / Maintenance Shop		400 s.f.	
Total		147,012 s.f.	
<b>Resident Facilities</b>			
<b>Permanent Sources</b>	<u>Total</u>	<u>Per Unit</u>	<u>Per Square Foot</u>
Senior Loan (New)	\$ 3,428,000	\$ 20,405	\$ 23.32
Agency Loan (New)	\$ 580,000	\$ 3,452	\$ 3.95
Agency Loan (Existing)	\$ 230,000	\$ 1,369	\$ 1.56
RHCP Loan (Existing)	\$ 4,548,000	\$ 27,071	\$ 30.94
<b>TOTAL SOURCES</b>	\$ 8,786,000	\$ 52,298	\$ 59.76
<b>Permanent Uses</b>			
Acquisition Costs	\$ 7,650,000	\$ 45,536	\$ 52.04
Construction Costs	\$ 397,000	\$ 2,363	\$ 2.70
Contingency	\$ 58,000	\$ 345	\$ 0.39
Financing Costs & Issuance	\$ 87,000	\$ 518	\$ 0.59
Reserves	\$ 263,000	\$ 1,565	\$ 1.79
Legal Fees	\$ 35,000	\$ 208	\$ 0.24
Overhead and Third-Party Reports	\$ 136,000	\$ 810	\$ 0.93
Other	\$ 160,000	\$ 952	\$ 1.09
<b>TOTAL USES</b>	\$ 8,786,000	\$ 52,298	\$ 59.76
<b>Management / Operations</b>			
Proposed Developer:	LINC Housing Corporation		
Property Management Company:	ConAm Management Corporation		
Operations Budget:	\$735,160	\$4,376	
Replacement Reserves:	\$84,000	\$500	

**Taylor Terrace Apartments  
Project Cash Flow Proforma**

Unit Type	Number	Square Feet	Total Sq Feet	Maximum Gross Rent	Utility Allowance	Maximum Net Rent	Actual Rent	Rent per Sq Foot	Total Mo. Rent	Annual Rent
1 BD / 1 BA @ 50% AMI	34	650	22,100	\$ 448	\$ 55	\$ 393	\$ 393	\$ 0.60	\$ 13,362	\$ 160,344
1 BD / 1 BA @ 60% AMI	30	650	19,500	\$ 819	\$ 55	\$ 764	\$ 677	\$ 1.04	\$ 20,310	\$ 243,720
2 BD / 1 BA @ 60% AMI	35	892	31,220	\$ 982	\$ 67	\$ 915	\$ 805	\$ 0.90	\$ 28,175	\$ 338,100
3 BD / 2 BA @ 50% AMI	36	1,050	37,800	\$ 537	\$ 78	\$ 459	\$ 459	\$ 0.44	\$ 16,524	\$ 198,288
3 BD / 2 BA @ 60% AMI	32	1,050	33,600	\$ 1,135	\$ 78	\$ 1,057	\$ 923	\$ 0.88	\$ 29,536	\$ 354,432
Manager's Unit (2 BR / 2 BA)	1	892	892	\$ -	\$ -	\$ -	\$ 805	\$ 0.90	\$ 805	\$ 9,660
	168		145,112						\$ 108,712	\$ 1,304,544

Income	Rate	Annual Increase	Per unit	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 21	Year 24	Year 25	Year 26
Potential Gross Income		2.50%		1,304,544	1,337,158	1,370,587	1,404,851	1,439,972	1,629,197	1,843,287	2,085,510	2,137,647	2,302,012	2,359,563	2,418,552
Other Income		2.50%		20,160	20,664	21,181	21,710	22,253	25,177	28,486	32,229	33,035	35,575	36,464	37,376
Less Vacancy	5.00%			66,235	67,891	69,588	71,328	73,111	82,719	93,589	105,887	108,534	116,879	119,801	122,796
Effective Gross Income				\$1,258,469	\$1,289,931	\$1,322,179	\$1,355,233	\$1,389,114	\$1,571,655	\$1,778,183	\$2,011,851	\$2,062,148	\$2,220,707	\$2,276,225	\$2,333,131
<b>Operating Expenses</b>															
Operating Expenses		3.50%	4,016	674,680	698,294	722,734	748,030	774,211	919,520	1,092,101	1,297,073	1,342,471	1,488,421	1,540,516	1,594,434
Property Management Fee		2.50%	360	60,480	61,992	63,542	65,130	66,759	75,531	85,457	96,686	99,104	106,724	109,392	112,127
Social Services		2.00%	150	25,200	25,704	26,218	26,742	27,277	30,116	33,251	36,712	37,446	39,738	40,533	41,343
Assessments		2.00%	126	21,236	21,661	22,094	22,536	22,987	25,379	28,020	30,937	31,556	33,487	34,157	34,840
Replacement Reserves			500	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000
Total Expenses			5,152	\$865,596	\$891,651	\$918,588	\$946,438	\$975,233	\$1,134,546	\$1,322,829	\$1,545,408	\$1,594,576	\$1,752,370	\$1,808,597	\$1,866,744
<b>Net Operating Income</b>				<b>\$392,873</b>	<b>\$398,280</b>	<b>\$403,591</b>	<b>\$408,795</b>	<b>\$413,881</b>	<b>\$437,109</b>	<b>\$455,355</b>	<b>\$466,443</b>	<b>\$467,572</b>	<b>\$468,338</b>	<b>\$467,628</b>	<b>\$466,387</b>

Debt Service	Amount	Rate	Term	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 21	Year 24	Year 25	Year 26
Senior Loan	\$ 3,428,000	7.50%	20	331,389	331,389	331,389	331,389	331,389	331,389	331,389	331,389	331,389	0	0	0
SHRA Monitoring Fee (New Loan)	\$ 580,000	0.15%	55	870	870	870	870	870	870	870	870	870	870	870	870
SHRA Existing Loan	\$ 230,000	3.00%	25	10,740	10,740	10,740	10,740	10,740	10,740	10,740	10,740	10,740	10,740	10,740	0
RHCP Required Payment	\$ 3,208,305	0.42%	55	13,475	13,475	13,475	13,475	13,475	13,475	13,475	13,475	13,475	13,475	13,475	13,475
Debt Service Subtotal				\$356,474	\$356,474	\$356,474	\$356,474	\$356,474	\$356,474	\$356,474	\$356,474	\$356,474	\$25,085	\$25,085	\$25,085
DCR on Senior Loan				1.18	1.20	1.21	1.23	1.25	1.32	1.37	1.40	1.40	1.40	1.40	1.40
DCR on Senior Loan and RHCP Required Payment				1.10	1.12	1.13	1.15	1.16	1.23	1.28	1.31	1.31	18.64	18.67	18.64

Priority Distributions	Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 21	Year 24	Year 25	Year 26
Operating Reserves	3.00%	25,968	26,750	27,558	28,393	29,257	34,036	0	0	0	0	0	0
Net Cash After Operating Reserves		\$10,431	\$15,057	\$19,560	\$23,928	\$28,150	\$46,599	\$98,881	\$109,970	\$442,487	\$443,253	\$442,543	\$452,042
Asset Management Fee	3.00%	\$10,431	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$28,138	\$28,982	\$31,669	\$33,598
Net Cash after Priority Distributions		\$0	\$57	\$4,560	\$8,928	\$13,150	\$31,599	\$83,881	\$81,832	\$413,505	\$411,583	\$409,924	\$418,444

HCD-RHCP Distributions	Year 21	Year 24	Year 25	Year 26
SHRA Distribution	75.0%	75.0%	75.0%	75.0%
HCD-RHCP Distribution	25.0%	25.0%	25.0%	25.0%

SHRA Loan	Principal Balance	Interest for Period	Accumulated Interest	Estimated Residual Receipts Payment	Balance	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 21	Year 24	Year 25	Year 26
Principal Balance	\$580,000	4.00%				580,000	580,000	580,000	580,000	580,000	580,000	580,000	580,000	580,000	415,393	199,120	2,123
Interest for Period			23,200	23,200	23,200	23,200	23,200	23,200	23,200	23,200	23,200	23,200	23,200	23,200	16,616	7,965	85
Accumulated Interest			23,200	46,400	69,600	92,800	116,000	139,200	162,400	185,600	208,800	232,000	255,200	278,400	16,616	7,965	85
Estimated Residual Receipts Payment			0	0	0	0	0	0	0	0	0	0	0	0	232,315	232,889	2,207
Balance			\$603,200	\$626,400	\$649,600	\$672,800	\$696,000	\$719,200	\$742,400	\$765,600	\$812,000	\$828,000	\$844,000	\$860,000	\$199,120	\$2,123	\$0
Residual RHCP Repayment			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$77,438	\$77,630	\$104,847	\$317,101
Combined Debt Coverage Ratio			1.10	1.12	1.13	1.15	1.16	1.23	1.28	1.31	1.40	1.40	1.40	1.40	1.40	1.40	1.40
Net Cash after Loan Payments			\$0	\$57	\$4,560	\$8,928	\$13,150	\$31,599	\$83,881	\$81,832	\$103,752	\$101,065	\$100,115	\$99,136			
Total Distribution to GP			\$10,431	\$15,057	\$19,560	\$23,928	\$28,150	\$46,599	\$98,881	\$109,970	\$132,734	\$132,734	\$132,734	\$132,734			

Taylor Terrace Apartments Cash Flow Proforma

Attachment 5

**MAXIMUM RENT AND INCOME LEVELS 2009**

<b>Maximum Income Limits</b>		
Family Size	Max Income <i>50% AMI</i>	Max Income <i>60% AMI</i>
2 person	\$29,100	\$34,920
3 person	\$32,750	\$39,300
4 person	\$36,400	\$43,680

<b>Maximum Rent Limits</b>		
<b>Tax Increment Funds</b>		
Unit Size	Gross Rent <i>50% AMI</i>	Gross Rent <i>60% AMI</i>
1 Bedroom	\$727.50	\$873.00
2 Bedroom	\$818.75	\$982.50
3 Bedroom	\$910.00	\$1,092.00
<b>Mortgage Revenue Bond Program</b>		
Unit Size	Gross Rent <i>@ 50% AMI</i>	Gross Rent <i>@ 60% AMI</i>
1 Bedroom	\$727.50	\$873.00
2 Bedroom	\$818.75	\$982.50
3 Bedroom	\$910.00	\$1,092.00
<b>Low-Income Housing Tax Credit Program</b>		
Unit Size	Gross Rent <i>50% AMI</i>	Gross Rent <i>60% AMI</i>
1 Bedroom	\$682.00	\$819.00
2 Bedroom	\$818.00	\$982.00
3 Bedroom	\$946.00	\$1,135.00

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

## **RESOLUTION NO. 2009 –**

**Adopted by the Redevelopment Agency of the City of Sacramento**

on date of

### **TAYLOR TERRACE APARTMENTS: APPROVAL OF \$580,000 LOAN COMMITMENT (REDEVELOPMENT PROJECT AREA FUNDS); EXECUTION OF LOAN COMMITMENT AND RELATED DOCUMENTS; EXECUTION OF AN AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT AND RELATED DOCUMENTS WITH LINC-TAYLOR TERRACE APARTMENTS LLC, OR RELATED ENTITY; CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT; RELATED BUDGET AMENDMENT**

#### **BACKGROUND**

- A. LINC-Taylor Terrace Apartments LLC has applied for an Agency Loan in the amount of Five Hundred Eighty Thousand Dollars (\$580,000) which is comprised of City Aggregate Low/Mod Tax Increment Funds to assist in funding the acquisition and rehabilitation of the 168-unit Taylor Terrace Apartments ("Project"), which is comprised of City Aggregate Low/Mod Tax Increment Funds,
- B. The Agency desires to utilize City Aggregate Redevelopment Project Area funds for the development of the Project,
- C. The Agency finds that the Project which is located outside of a Project Area but within the City's jurisdiction will eliminate blight, promote affordable housing, and preserve the community's supply of low income housing available at an affordable housing cost to persons that are very low and low income households which will be of benefit to Project Areas,
- D. The Agency finds that the Tax Increment set-aside funds used to fund the Project are needed to make the housing units affordable. Therefore, the project is not required to provide Art in Public Places,
- E. The Sacramento Housing and Redevelopment Agency has determined that the project is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged.

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY RESOLVES AS FOLLOWS:**

- Section 1. The proposed action is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged.
- Section 2. It is found and determined that the use of Project Area funds to develop the Project will improve and preserve affordable housing for very low and low income individuals in the Project Area.
- Section 3. It is found and determined that the Tax Increment housing set-aside funds that will be used for the project are needed to make the units affordable and therefore the Project is exempt from providing Art in Public Places.
- Section 4. The Executive Director is authorized to amend the Agency budget to transfer Five Hundred Eighty Thousand Dollars (\$580,000) from City Aggregated Low/Mod Tax Increment Funds to the Taylor Terrace Apartments project. The Project will provide affordable housing which will serve and benefit the Project Area.
- Section 5. The Loan Commitment, attached to and incorporated in this resolution by this reference (Exhibit A), for financing the Taylor Terrace Apartments project with Low/Mod TI Funds not to exceed \$580,000 is approved and the Executive Director, or her designee, is authorized to execute and transmit the Loan Commitment to LINC-Taylor Terrace Apartments, LLC, or related entity. The Loan may be subordinated if such subordination is required to obtain primary financing.
- Section 6. The Third Amended and Restated Owner Participation Agreement ("OPA") attached to and incorporated in this resolution by this reference (Exhibit B) is approved. The Executive Director, or her designee, is authorized to execute the OPA substantially in the form attached to this resolution and execute other documents and perform other actions necessary in relation to and consistent with the OPA..
- Section 7. The Executive Director, or her designee, is authorized to execute standard agency loan documents in a form approved by Agency Counsel and in accordance with the OPA, the Loan Commitment, and in accordance with all applicable laws, regulations, and policies regarding the making of the Loan and the use of the allocated funds the Project.

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

Section 8. The Executive Director, or her designee, may consent to an Assignment and Assumption Agreement whereby LINC-Taylor Terrace Apartments LLC assumes the benefits and obligations of the original OPA as amended from time to time, the Construction Note Secured by Deed of Trust, the Deed of Trust and Assignment of Rents, the Regulatory Agreement with Rental and Resale Restrictions as amended from time to time, and the Agreement Containing Covenants Affecting Real Property.

**Table of Contents:**

Exhibit A: Loan Commitment

Exhibit B: Third Amended and Restated Owner Participation Agreement

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

Date: August 6, 2009

**Exhibit A**

LINC-Taylor Terrace Apartments LLC  
C/O Hunter L. Johnson, President  
LINC Housing Corporation  
110 Pine Avenue, Suite 500  
Long Beach, CA 90802-4422

RE: Conditional funding commitment, Taylor Terrace Apartments

Dear Mr. Johnson:

On behalf of the Redevelopment Agency of the City of Sacramento ("Agency"), we are pleased to advise you of its commitment of Aggregated Project Area Tax Increment funds for the purpose of financing the acquisition and rehabilitation of that certain real property known as Taylor Terrace Apartments located at 4058 Taylor Street, Sacramento, California ("Property"). Agency's decision is based on your application, and all representations and information supplied by you to it. If these representations and information change in a material manner without written approval of Agency, this commitment is void. Agency's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the Agency.

The Loan shall be made on standard Agency loan documents. No loan terms not in this funding commitment and the attached loan document forms shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the attached loan documents, the terms stated in the loan commitment letter shall be deemed to be terms of this commitment.

Unless otherwise agreed in writing by the Agency in exercise of its absolute discretion, the following shall be considered conditions to Agency approval of a financing commitment. The Agency may, in exercise of its absolute discretion, modify its requirements upon written notice to Borrower given at least sixty days prior to close of escrow for the Property.

This commitment will expire December 31, 2009.

1. PROJECT DESCRIPTION: The project is the acquisition and rehabilitation of a 168-unit affordable apartment project known as Taylor Terrace Apartments located at 4058 Taylor Street, Sacramento, California.
2. BORROWER: The name of the Borrower for the Loan is LINC-Taylor Terrace Apartments LLC, or related entity.

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of rehabilitation and for such other purposes as Agency expressly agrees to in the loan agreement for the Loan, and such other agreements as may be generally required by the Agency for the use of the funding source for the Loan.
4. PRINCIPAL AMOUNT: The combined principal amount of the Loan will be the lesser of (a) Five Hundred Eighty Thousand Dollars (\$580,000.00), or (b) an amount to be determined prior to close of the Loan based on a project budget approved by Agency. However, the combined indebtedness of the Property must not exceed ninety percent (90%) of the appraised value as determined by the Agency.
5. TERM OF LOAN: The Loan shall mature June 15, 2049 to coincide with the maturity of the senior HCD-RHCP loan, with all outstanding principal and accrued interest, if any, due and payable on that date.
6. INTEREST RATE: The Loan will bear interest at four percent (4.0%) per annum. Interest shall be calculated on the basis of a 365-day year and actual days elapsed.
7. AMORTIZATION: Not applicable.
8. MONTHLY PAYMENT: Payments of principal and interest on the Loan shall be paid from residual receipts according to the requirements of the California Department of Housing and Community Development (HCD) under the Rental Housing Construction Program. Agency shall receive 75.0% of available net cash flow after Borrower (Sponsor) distribution, as approved by HCD. All outstanding principal and accrued interest, if any, will be due and payable at maturity.
9. SOURCE OF LOAN FUNDS: Agency is making the Loan from the following sources of funds, and the Loan is subject to all requirements related to the use of such, whether Agency requirements or otherwise: City Aggregate Low/Mod Tax Increment Funds. This Loan is conditioned upon Borrower's acceptance of Agency's requirements and conditions related to such lending programs and funding sources, including among others, the required forms of agreements for the Loan; the requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements.

**Borrower acknowledges that, as a condition of the Agency's making of the Loan, the Property will be subject to restrictions on future sales and rentals which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.**

\_\_\_\_\_ (Borrower Initial)

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

**Borrower acknowledges that every contract for new construction or rehabilitation construction of housing that includes 12 or more units assisted with HOME funds will contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); (24 C.F.R. 92.354). Borrower also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.**

\_\_\_\_\_ (Borrower Initial)

10. ACCELERATION: Agency shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property except as specifically provided for in the Loan documents.
11. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the fee and/or leasehold interest in the Property and Improvements, which shall be a lien upon the Property and Improvements subject only to liens senior to the Agency's lien securing loans from Clearinghouse CDFI and California Department of Housing and Community Development (Rental Housing Construction Program) and such other items as the Agency may approve in writing. The Loan shall also be secured by security agreements. The Agency may subordinate said deeds of trust in order to accommodate completion of rehabilitation of the Property.
12. LEASE AND RENTAL SCHEDULE: All leases of the Property and Improvements shall be subject to Agency's approval prior to execution. Rental schedules shall at all times be in conformance with the requirements of the regulatory agreements on the Property.
13. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements if requested by the Agency.
14. OTHER FINANCING: Borrower, as a requirement of the Loan, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior or subordinate to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:
  - (1) Commitment for new senior permanent financing in the amount of no less than \$3,328,000 for a term of not less than 20 years and fully amortized;

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

- (2) Approval from California Department of Housing and Community Development for assumption of the existing Rental Housing Construction Program loan in the principal amount of approximately \$3,208,000.

Such commitments for financing shall not require modification of Agency loan documents, or any term of this commitment letter.

Such commitments shall not be based upon sources and uses of Project funds that are different from those approved by Agency for the project or be subject to conditions which require amendment of the DDA, OPA or other agreements.

15. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project in accordance with the Agency's requirements. Borrower's evidence of available funds must include only one or more of the following: a) Borrower equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its absolute discretion; and c) Agency's contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
16. SOILS AND TOXIC REPORTS: Borrower must submit to Agency a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the Agency that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
17. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance". The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders are sufficient, in the sole judgement of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the Loan is not "in balance", the Agency may declare the Loan to be in default.
18. PLANS AND SPECIFICATIONS: Final plans and specifications, if any, for the project must be in accord with the proposal approved as part of the Loan application. Final plans and specifications will be subject to Agency's final approval prior to the disbursal of Agency Loan funds. Borrower must obtain Agency's prior written consent to any change

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

in the approved plans and specifications or any material deviation in construction of the project.

19. ARCHITECTURAL AGREEMENT: The architectural agreement ("Agreement"), if any, for the preparation of the plans and specifications and other services shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Agreement as security for the Loan.
20. CONSTRUCTION CONTRACT: The construction contract ("Contract"), if any, and any change orders issued thereunder, and the contractor ("Contractor") to be retained by Borrower to construct the Improvements shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Contract as security for the Loan. Agency shall require Contractor to provide a performance and payment bond in a form acceptable to Agency for the amount of the Contract.
21. RETENTION AMOUNT: The Agency shall retain ten percent (10.0%) as retention from each disbursement, not to exceed a total of ten percent (10.0%) of the total amount of the Loan.
22. COST BREAKDOWN: Borrower shall deliver to Agency for Agency's approval prior to commencement of work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the project plans and specifications and the budget approved with this commitment. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements. If required by the Agency, Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed contracts and subcontracts with acceptable bidders.

If required by the Agency, Borrower shall submit copies of all contracts, subcontracts; contractors, and subcontractors for approval prior to close of the Loan. Agency also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable to Agency.

Agency shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories. Agency shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds, including proof of work done and actual expenditure. Agency shall conduct inspections of the Property to assure that the work was done before making a disbursement.

23. COST SAVINGS: At completion of construction, Borrower shall submit to Agency a cost certification which shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

from the cost breakdown items in the original budget approved by the Agency, the Agency shall withhold for itself as loan repayment, one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld. The Agency, in its sole discretion, shall determine any reduction and/or repayment of the Agency loan based upon this cost certification and the original approved budget for the project.

24. START OF CONSTRUCTION: Borrower shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than September 30, 2009.
25. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of Phase 1 of the Improvements no later than August 31, 2010.
26. SECURITY CAMERAS AND OUTSIDE LIGHTING: Project shall include installation of a security camera system at vehicular driveways and additional exterior lighting, all as approved by the Agency.
27. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance and during Phase 2 of construction Builder's Risk completed value insurance, if required by Agency, in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).
28. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower must procure and maintain public liability and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: (1) Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better with limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project; (2) Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; (3) Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$1,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and (4) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

- deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
29. TITLE INSURANCE: Borrower must procure and deliver to Agency an ALTA Lender's Policy of Title Insurance, together with such endorsements as Agency may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of the Loan, that Agency's Deed of Trust constitutes a lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.
  30. ORGANIZATIONAL AGREEMENTS: Borrower must submit to Agency certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as Agency may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
  31. PURCHASE OF PROPERTY: Borrower shall provide Agency with copies of all documents relating to Borrower's purchase of the Property.
  32. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to Agency within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to Agency upon request a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements.
  33. MANAGEMENT AGREEMENT: Prior to execution, Borrower must submit to Agency any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to Agency Approval.

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartment

34. LOW INCOME HOUSING TAX CREDITS ("LIHTC"): Not applicable.
35. FEDERAL HOME LOAN BANK AFFORDABLE HOUSING GRANT: Not applicable.
36. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower must promptly deliver to Agency any further documentation that may be required by Agency.
37. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply, in all respects, with this commitment letter.
38. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
39. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's acceptance.

Yours truly,

LaShelle Dozier  
Executive Director

The undersigned acknowledges and accepts the foregoing Commitment and its terms and conditions.

Dated:

BORROWER:

LINC-Taylor Terrace Apartments LLC

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner participation Agreement, and  
Agency Loan Commitment for Taylor Terrace Apartment

By: LINC Housing Corporation,  
A California Nonprofit Public Benefit Corporation  
Its Managing Member

By: \_\_\_\_\_  
Hunter L. Johnson, President

form ldcl 083199

August 6, 2009

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and  
Agency Loan Commitment for Taylor Terrace Apartments

**EXHIBIT B**

**THIRD AMENDED AND RESTATED  
OWNER PARTICIPATION AGREEMENT**  
Using Funds from Aggregate Tax Increment Housing Set- Aside Fund  
Taylor Terrace Apartments  
4058 Taylor Street, Sacramento, California

**Redevelopment Agency of the City of Sacramento  
and  
LINC-Taylor Terrace Apartments LLC**

**THIRD AMENDED AND RESTATED  
OWNER PARTICIPATION AGREEMENT**  
Using Funds from Aggregate Tax Increment Housing Set- Aside Fund  
Taylor Terrace Apartments  
4058 Taylor Street, Sacramento, California

For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 16.

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and LINC-TAYLOR TERRACE APARTMENTS LLC also defined as Agency and Developer, respectively, enter into this Third Amended and Restated Owner Participation Agreement (“this OPA”), as of

\_\_\_\_\_.

**RECITALS**

- A. Developer is the owner of real property located at 4058 Taylor Street, Sacramento, California, in the City of Sacramento, California, more particularly described in attached Exhibit 1: Legal Description, (Property) which is incorporated into this OPA by this reference.
- B. Prior to Developer’s acquisition of the Property an Owner Participation Agreement dated December 19, 1991 was executed and subsequently amended twice, on September 9, 1992, and August 19, 1993, respectively.
- C. This is the Third Amended and Restated OPA (“this OPA”). This OPA replaces and supersedes the original OPA and its first two amendments (“Original OPA”) in all respects provided that, with respect to any loan advanced under the Original OPA that Developer assumes with Agency’s consent, Developer agrees that by such assumption Developer shall also assume the obligations under the Original OPA relating to such loan.
- D. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by property owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 33339).
- E. The Agency is participating in this OPA because this OPA is consistent and benefits the project area(s) providing the Agency Funding in that workers in the Project Area live in the area which includes the Project. Specifically and without limitation, the Agency has determined that the Project will increase and improve supply of low- or moderate-income housing in the community.
- F. In order to accomplish such Agency goals and purpose, this OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: acquisition and rehabilitation of a 168 unit apartment project to bring the project up to code and to complete deferred maintenance activities. The Project is to be accomplished according to the following schedule:

Phase 1: Acquisition of the Property by Developer or related entity and minor rehabilitation all according to the attached Exhibit 2: Schedule of Performances and Exhibit 3: Scope of Development;

Phase 2: Major rehabilitation of the Property by Developer or related entity according to the attached Exhibit:2 Schedule of Performances and Exhibit 3: Scope of Development.

2. **AGENCY FUNDING.** Agency is providing funding to the Project under the Agency Funding Agreement for development of the Project as described in Section 1. If Developer fails to develop the Project as and when required by this OPA, Developer must repay the Agency Funding as provided in the Agency Funding Agreement. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as described in Section 1, as well as other obligations and restrictions, including without limitation, use restrictions and restrictions on amounts that can be charged on sale or rental of the Property, as evidenced by the Regulatory Agreement.

3. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** This OPA is a financing document of the Agency and not a land use or planning document. Approval of the Project under this OPA by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project, or the aesthetic design of the Project except as an approval by the Agency of the Project design concept as presented in this OPA. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. The Agency shall have the right, but not the obligation, to review Plans, but only Plans that are required by the City for approval of the Project, if any, to assure their conformity with the provisions of this OPA and approvals given under this OPA. Based upon such review, the Agency shall have the right to approve or reject the Plans for reasonable cause. Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications, if any. Agency's approval of Plans is not an assurance of their adequacy or correctness. Agency has reserved approval rights solely: (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the

Final Plans conform to the Preliminary Plans, if any; and (c) to assure that any Agency funds which may be obligated under this OPA are used as intended by the Agency.

**3.1. CONCURRENT REVIEW.** Agency agrees that its review of the Final Plans, if any, shall occur prior to or concurrently with City's review of such plans, so as not to delay the commencement and progress of Project development. Agency agrees that its review of the Final Plans is strictly limited to making a determination that the Final Plans conform to the architectural designs (but not the detailed schematics, if any) presented in the Plans, the Scope of Development, the uses permitted on the Property and the Redevelopment Plan.

**3.2. PRELIMINARY PLANS.** Developer has provided Agency with a Scope of Development , and the Agency has approved the Scope of Development concurrently with this OPA. The Agency has been induced to undertake its obligations under this OPA by Developer's promise to develop the Project in accordance with the Plans, the Scope of Development and the provisions of this OPA.

**3.3. PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other documents, if any, necessary to obtain all required building permits for the construction of the Project. Developer shall submit the Final Plans, if any, to the Agency for Agency's review. The Final Plans shall conform in all material respects to the Preliminary Plans, if any, and the Scope of Development. To the extent that the Preliminary Plans, if any, and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this OPA. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan, if any adopted under CEQA as a condition of approval of the Project. Developer agrees that it will comply with the requirements, if any, of the Design Review Board to the extent of its jurisdiction.

**3.4. DELIVERY.** Developer shall deliver the Final Plans, if any, or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Redevelopment Agency at 630 I Street, Sacramento, California and shall have clearly marked on its exterior "URGENT: Taylor Terrace Apartments PROJECT PLAN REVIEW" or the equivalent.

**3.4.1. DEEMED APPROVAL.** The Final Plans, if any, or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within fifteen (15) days after their proper delivery to Agency.

**3.4.2. AGENCY DISAPPROVAL.** If Agency disapproves, in whole or in part, the Final Plans, if any, or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the Preliminary Plans, the Approved Final Plans, the Scope of Development and

with any items previously approved under this Section 3. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this OPA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

**3.5. GOVERNMENTAL CHANGES.** If any revisions or corrections of the Final Plans, if any, shall be required by any government official, agency, department or bureau in exercise of its proper jurisdiction, the Developer shall inform the Agency. If Agency and Developer concur in writing with the required change, Developer shall incorporate the change and it shall be deemed approved by Agency. If Agency or Developer reasonably disagree with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

**3.6. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLAN.** If the Developer desires to make any substantial changes in the Final Plans, if any, as approved by the Agency, the Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final Plans. The Agency shall approve or disapprove the proposed change as soon as practicable. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

**3.6.1. SUBSTANTIAL CHANGE.** A substantial change in the Final Plans, if any, shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements. For purposes of this Section 3.6.1, a "material change" is a change that is material to the Agency in accomplishing its purposes under this OPA.

- a) Material changes in the layout, elevation design, square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Material changes in site development items for the Property that are specified in the Final Plans.
- d) Any changes requiring approval of any city, county or state board, body, commission or officer, or any change required by any city, county or state board, body, commission or officer.
- e) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

**3.6.2. MISREPRESENTATION.** If the Agency's approval of the Final Plans is reasonably based upon a material misrepresentation to Agency by Developer or by anyone on Developer's behalf, the Agency may, within a reasonable time after discovery of the misrepresentation, take any action permitted by law with regard to any such misrepresentation, notwithstanding

Agency's prior approval, including without limitation, rescission of the approval or such other equitable remedies as may then be appropriate to such rescission.

**4. DEVELOPMENT PROVISIONS.** As stated in detail in this Section 4, Developer shall construct and manage the Project according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans, if any. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this OPA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the Community Redevelopment Law shall control.

**4.1. CONSTRUCTION CONTRACTS.** Developer shall submit to Agency the construction contract for the Project. Agency's review of the construction contract shall be only for determining its compliance with this OPA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer's cost, the construction of the Project in accordance with this OPA.

**4.2. GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this OPA, make an initial deposit toward "plan check fees" with the City's Planning Department, but only if said fees are required by the City for approval of the Project. In addition, Developer shall, as applicable, take designs before the Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable, but only if said review is required by the City for approval of the Project. Conditions to the project imposed by the City shall be considered obligations of the Developer under this OPA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

**4.3. PAYMENT AND PERFORMANCE BONDS.** As a condition precedent to beginning construction of the Project, if requested by the Agency, the Developer shall provide the Agency a performance bond and a labor and material payment bond obtained by Developer or its Contractor in favor of the Developer and Agency as named dual obligees, in form and amount as approved by the Agency and securing, respectively, completion of the work and payment of all labor and material suppliers and subcontractors for the work as stated in the construction contract for the Project. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties. Developer shall assure compliance with all requirements of the surety. Developer shall permit no changes in the work to be performed by the Contractor and shall make no advance payments to the Contractor without prior written notice to the surety and the Agency, if such change or payment could release the surety of its obligations under the bonds.

**4.4. SUBSTANTIAL CHANGES.** Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, if any, as described in Section 3.6, without Agency approval of such changes as provided in Section 3.6.

**4.5. LOCAL, STATE AND FEDERAL LAWS.** The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Developer acknowledges and agrees that all wage and hour laws and other labor laws as applicable, including without limitation prevailing wage requirements, are the sole responsibility of Developer and Developer's contractors and subcontractors. Developer and its contractors and subcontractors have undertaken to ascertain the applicability of such laws prior to preparation of the final Project budget and have included the costs arising from such laws in the final Project budget. Developer shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

**4.6. PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Developer represents to the Agency that Developer has obtained no public subsidy for the Project that does not meet such criteria. If Developer obtains another non-qualifying public subsidy, Developer shall pay prevailing wages for the Project. Therefore, Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them. The State of California Department of Industrial Relations has undertaken the aggressive and expansive enforcement of prevailing wage laws for redevelopment projects. The Agency has advised, and the Developer acknowledges, that the Project is subject to the payment of prevailing wages under the laws of the State of California. Developer has had the opportunity to meet with Developer's legal counsel and to request a determination from the State of California Department of Industrial Relations regarding the applicability of prevailing wage requirements to this Project. Developer has made its independent determination of the applicability of prevailing wage laws and has independently implemented such determination. Developer, therefore, indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from Developer's determinations and actions related to prevailing wage obligations for the work of this OPA.

**4.7. PUBLIC SAFETY PROTECTIONS.** Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the Property or Developer's activities in connection with the Property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

**4.8. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer for itself, any project manager, the Contractor, and the property manager engaged in connection with the Project or Property, and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the construction of the Project.

**4.8.1. EMPLOYMENT.** Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

**4.8.2. ADVERTISING.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability.

**4.9. PUBLIC IMPROVEMENTS.** Developer shall, at Developer's expense as a Project cost, undertake and complete any modification, construction, relocation or improvement of public facilities, improvements and utilities for the development of the Property.

**4.10. AGENCY ACCESS TO THE PROPERTY.** Developer shall permit Agency representatives access, without charge, to the entire Property at any time and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under the OPA so long as the Agency gives no less than 24 hours advance notice of the visit to the Developer or property manager. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

**4.11. PROJECT SIGN.** If Developer places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and Redevelopment Agency" as a participant in the Project. The Agency name on the sign shall be in letters not less than size of letters used to name any of the other participants.

4.12. **CERTIFICATE OF COMPLETION.** After the Agency has determined that Developer has completed the construction of the Project in accordance with the Final Plans, if any, the Scope of Development, and Developer's obligations under this OPA, the Agency will furnish the Developer with a "Certificate of Completion" certifying such completion. Such certification shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the OPA with respect to the obligations of the Developer to construct the Project as of the Completion Date, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute each Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

4.12.1. Such certification and such determination shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any provision of this OPA that is not related to construction of the Project.

4.12.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional fifteen (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the OPA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification. If the Agency fails to provide said written statement within fifteen (15) days after a second written request by Developer, the Project shall be deemed complete.

4.12.3. **CONSTRUCTION PERIOD EXTENSION FEE.** If Developer does not complete the construction of Phase 1 or Phase 2 of the Project on or before the respective Completion Dates stated in the Schedule of Performances, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning the calendar month following the Completion Date, a construction period extension fee of Twenty-Five Dollars and No Cents Dollars (\$25.00) for each day by which the completion of construction is delayed beyond said completion date. Construction Extension Fees due for days of delay occurring prior to the first payment date shall be paid in arrears at the time of the first payment under this Section. The number of days used in computation of the Construction Extension Fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay Construction Extension Fees when due is a material default of this OPA. Any unearned portion of an advance payment of any such extension fee shall be refunded by the Agency within thirty (30) days of completion of construction, or of termination of the OPA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to unpaid Construction Extension Fees and to declare Developer in material default of this OPA. In any event, Construction Extension Fees shall not be accepted for a time period greater than six months, at which time Developer shall be deemed in material default of this OPA.

4.13. **REPORTS.** During the period of construction, the Developer shall submit to the Agency a written report of the progress of the work as and when reasonably requested by the Agency, but not more often than once each month.

4.14. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure that the respective parties through the Project Documents have the responsibility of notifying the Project contractors, architects and engineers for the Project of the requirements of this OPA. Developer shall include, where applicable, the provisions of this OPA in construction contracts and subcontracts for the Project, and Developer shall undertake the enforcement of such provisions.

4.15. **PROPERTY CONDITION.** Except as provided in this OPA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency.

4.16. **ZONING OF THE PROPERTY.** Agency exercises no authority with regard to zoning of the Property. Developer shall assure that zoning of the Property at the time of development shall be such as to permit the development and construction, use, operation and maintenance of the Project in accordance with the provisions of this OPA.

4.17. **NO WORK PRIOR TO CLOSE OF ESCROW.** Prior to Close of Escrow, Developer shall not commence any work or take any action that might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

5. **DEVELOPMENT FINANCING.** Developer shall be responsible for and shall pay all costs of developing the Project except as otherwise provided in this OPA. As a condition precedent to Agency's obligation to provide the Agency Funding, Developer shall provide the Agency with a complete and firm Project budget including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, as possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements. To the extent that funds specified in this OPA for the Project are insufficient to fully fund the Project, the Developer shall provide evidence, satisfactory to the Agency, of the additional required construction and permanent financing. Except as expressly provided in this OPA, no party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this OPA or otherwise to make any contribution beyond its obligations stated in this OPA.

5.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 5.3); (b) firm and binding loan commitments (as provided in Section 5.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this OPA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual

availability of funds included in such evidence, including without limitation, requests for clarification, further evidence or audited financial reports.

**5.2. COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this OPA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this OPA. The Agency may reject a loan commitment unless such commitment: (a) is subject only to Lender's reasonable conditions of title and Developer's execution of standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contains only usual, customary, and commercially reasonable loan terms; (c) continues in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provides for an Agency Funding term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this OPA, that requires amendment of this OPA or that requires the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

**5.3. EVIDENCE OF DEVELOPER EQUITY.** Unless otherwise agreed in writing by the Agency, Developer may provide evidence of required equity, if any, by any one or more of the following actions: (a) a deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely and proper completion; (c) Developer's provision of financial statements prepared by a certified public accountant that show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) of the amount of the required equity; or (d) Low Income Housing Tax Credit equity. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

**6. USE COVENANTS.** Developer shall own and manage the Property in accordance with the provisions of this OPA.

**7. NONDISCRIMINATION.** Developer covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,

and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property or this Project or any part thereof. Developer 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 with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property and the Project. The foregoing covenants shall run with the land.

7.1. **REGULATORY AGREEMENT.** Developer covenants by and for itself, its heirs, executors, administrators, and all persons claiming under or through it, that the Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

8. **INDEMNIFICATION.** Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency.

Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Developer.

This indemnification provision shall survive the termination of this agreement.

9. **INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to: (a) the removal, discharge or release of Hazardous Substances on the Property after Developer has taken possession of the Property; or (b) the existence of Hazardous Substances on the Property, which were not on the Property prior to Developer's taking possession of the Property.

10. **LIABILITY INSURANCE.** With regard to this OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by

the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

**10.1. LIABILITY INSURANCE POLICY LIMITS.** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

**10.2. WORKER'S COMPENSATION.** Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000 or statutory limits, whichever are greater.

**10.3. COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency Counsel). Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence, for bodily injury coverage; \$5,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

**10.4. COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, non-owned, hired, leased) having limits of liability which are not less than \$1,000,000.

**10.5. FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE.** For the duration of OPA, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project. In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

**10.6. INSURANCE PROVISIONS.** Each policy of insurance required under this OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

**10.6.1. ADDITIONAL INSURED.** During the term of construction, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the worker's compensation policy, unless otherwise approved by Agency's legal counsel in writing.

10.6.2. **SINGLE PROJECT INSURANCE.** It is the intent of the parties that the Project have available all the specified insurance coverages. Developer shall not provide insurance coverages that are considered in aggregate with other Projects which Developer or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Developer shall immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

10.6.3. **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

10.6.4. **FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this OPA, the Agency shall have the right to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

10.6.5. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 10 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 10 with respect to such insurance shall otherwise be satisfied by such blanket policy.

11. **DEFAULTS AND REMEDIES.** Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party, provided that the defaulting party shall promptly begin and diligently pursue such cure to completion. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by this OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA except failure by Developer to complete an event or events according to Exhibit 2: Schedule of Performances shall not constitute a default under this section so long as the Developer makes the construction period extension fee payments in accordance with Section 4.12.3 and the liquidated damages payment in accordance with Section 11.1. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party, other than funds properly retained as liquidated damages. After such return of property and funds and termination of the OPA, neither Agency

nor Developer shall have any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary.

**11.1. LIQUIDATED DAMAGES.** IF DEVELOPER FAILS TO COMPLETE THE PROJECT AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF DEVELOPER, AGENCY MAY PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 11. DEVELOPER AND AGENCY AGREE THAT IN EVENT OF DEFAULT BY DEVELOPER: (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; AN AMOUNT EQUAL TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO AGENCY; (B) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF AGENCY FOR DEVELOPER'S FAILURE TO COMPLETE THE PROJECT; AND (C) PAYMENT OF THOSE SUMS TO AGENCY AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. OTHER PROVISIONS OF THIS OPA NOTWITHSTANDING, FAILURE BY DEVELOPER TO COMPLETE AN EVENT OR EVENTS ACCORDING TO EXHIBIT 2: SCHEDULE OF PERFORMANCES SHALL CONSTITUTE AN EVENT OF DEFAULT SUBJECT TO THE PAYMENT OF LIQUIDATED DAMAGES UNDER THIS SECTION 11.1.

\_\_\_\_\_ Developer's Initials  
\_\_\_\_\_ Agency's Initials

**11.2. OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default by Developer subject to the liquidated damages provision, Agency's sole remedy therefore shall be as liquidated damages. Upon the occurrence of any default by any party other than subject to liquidated damages, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this OPA as allowed under this OPA, at law or in equity.

**11.3. NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this OPA.

**11.4. NONLIABILITY OF DEVELOPER OFFICERS AND EMPLOYEES.** No officer or employee of Developer shall be personally liable to Agency, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to Agency or its successors, or on any obligations under the terms of this OPA.

**11.5. ATTORNEY'S FEES AND RELATED COSTS.** If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. The term "prevailing party" shall include without limitation, the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who

receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law. In any event, the prevailing party shall mean the party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such party. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

**12. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, the Developer may, upon written Agency approval, obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this OPA in making the Loan and that Agency's obligations under this OPA are inducements to Lender's making of the Loan.

**12.1. NOTICES.** If the Agency gives any notice of default to Developer under this OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated \_\_\_\_\_ between the Redevelopment Agency of the City of Sacramento and LINC-Taylor Terrace Apartments LLC ("OPA"). Lender requests, in accordance with Section 12.1 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

**12.2. ASSIGNMENTS AND TRANSFERS OF THE LOAN.** Agency shall not be bound to recognize any assignment of the Loan or related encumbrance of the Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

**12.3. LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the OPA, Lender shall not be obligated by the provisions of the OPA to construct or complete the Project. Nothing in this Section or any other provision of the OPA shall be construed to permit

or authorize Lender to devote the Property to any uses, or to construct any improvements on the Property, other than those uses or improvements provided or permitted in the OPA.

**12.4. LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the OPA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the OPA. Any Lender who properly completes the Project as provided in the OPA shall be entitled, upon written request made to the Agency, to Certificate of Completion from the Agency in a manner provided in the OPA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Developer's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the OPA by the Developer shall not apply to the part of the Property to which such Certification relates. Nothing in this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

**12.5. DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 12.5 and Lender has failed to cure such default as provided in Section 12.5 provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

12.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this OPA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer.

12.5.2. Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property, and if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

12.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

12.5.4. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

12.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this OPA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's right, title and interest under this OPA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the right to assign or transfer Developer's right, title and interest under this OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this OPA.

12.7. **MODIFICATIONS.** No modification or amendment to the OPA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

12.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this OPA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this OPA and provided such modifications, instruments, and agreements serve a material economic purpose.

12.9. **ESTOPPEL CERTIFICATE.** Any party may, at any time, request in writing of any other party to certify in writing that, to the knowledge of the certifying party, (i) this OPA is in full force and effect and a binding obligation of the parties; (ii) this OPA has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this OPA, or, if in default, describing the nature and extent of any such defaults. A party receiving such a request shall execute and return such certificate to the requesting party, or give a detailed written response explaining why it will not do so, within ten (10) days following its receipt. The City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

**12.10. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this OPA or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer without the prior written consent of Agency. The transfer or assignment, pursuant to this Section, requires the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer. Such a transfer as permitted in this Section 12.10 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Developer and the parties signing the OPA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision.

**13. LIMITED PARTNER INTERESTS.** Although the limited partner of Developer, if Developer is a limited partnership, is not a party to this OPA, Agency shall assure the following to such limited partner.

**13.1. CURE RIGHTS.** In the event of Developer default under this OPA, any such limited partner shall have the right, but not the obligation, to cure such default in the same manner and upon the same terms as the Developer. A tender of cure of default by such limited partner shall be treated as a cure by Developer and shall be accepted or rejected on the same basis as if tendered by Developer.

**13.2. REPLACEMENT OF GENERAL PARTNER OF DEVELOPER.** If Developer has provided Agency with a true and correct copy of Developer's limited partnership agreement and if such limited partnership agreement has been approved by Agency, Agency shall accept a replacement of the general partner made in accordance with the terms of such limited partnership agreement, notwithstanding any other limitation under this OPA of transfers of interests in Developer.

**13.3. NOTICES.** If the Agency gives any notice of default to Developer under this OPA, the Agency shall contemporaneously give a copy of such notice to each limited partner of Developer listed in Section 16.11, if any, or who has made a request for notice in the same manner as a Lender request for notice under Section 12.1 at the address provided for notice. Any such default notice that is not so delivered to such limited partner shall not be effective with regard to time for cure by such limited partner but shall not affect its validity with respect to Developer.

**14. DOCUMENT INTERPRETATION.** This OPA shall be interpreted in accordance with the following rules.

**14.1. INTEGRATED DOCUMENTS; SEVERABILITY.** This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA, including the incorporated documents, integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this OPA shall, to any extent, be held invalid or

unenforceable, the remainder of this OPA shall remain in full force and effect and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

**14.2. CONFLICTING PROVISIONS.** If conflicts are discovered in provisions of this OPA and such incorporated documents, this OPA shall control with regard to plan review and construction terms, the Agency Funding Agreement shall control with regard to funding terms and the Regulatory Agreement shall control with regard to affordability restrictions. In any event, the conflicts shall be construed so as to meet the intent of this OPA.

**14.3. WAIVERS AND AMENDMENTS.** All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

**14.4. CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this OPA are for the convenience of the parties to this OPA. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

**14.5. DRAFTER.** This OPA shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this OPA. All exhibits referred to in this OPA are attached to it and incorporated in it by this reference.

**14.6. NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** No Joint Venture, Partnership, or Other Relationship. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between Agency and Developer. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Agency and Developer other than that of a governmental entity regulating the development of private property, and the owner of such private property.

**14.7. NO THIRD PARTIES BENEFITED.** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other Person will have any right of action or any rights to funds at any time on deposit in the Construction Account or the Impound Account, if established.

**14.8. MERGER.** All of the terms, provisions, representations, warranties, and covenants of the parties under this OPA shall survive the Close of Escrow and shall not be merged in the Grant Deed or other documents.

**14.9. TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this OPA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

**14.10. GOVERNING LAW.** This OPA shall be governed and construed in accordance with California law.

**14.11. INSPECTION OF BOOKS AND RECORDS.** Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Property as reasonably necessary to carry out its purposes under this OPA.

**14.12. OWNERSHIP OF DATA.** If this OPA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency any and all data acquired for development of the Property. Agency shall have full ownership and rights to use such data.

**14.13. SUCCESSORS.** This OPA shall inure to the benefit of and shall be binding upon the parties to this OPA and their respective heirs, successors, and assigns.

**15. NOTICES.** All notices to be given under this OPA shall be in writing and sent to the following addresses by one or more of the following methods:

15.1. Addresses for notices are as follows:

15.1.1. Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Richard Marsh.

15.1.2. Developer: LINC-Taylor Terrace Apartments LLC, 110 Pine Avenue, Suite 500, Long Beach, CA 90802; Attention: Allison Riley.

15.2. Notices may be delivered by one of the following methods:

15.2.1. Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

15.2.2. A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;

15.2.3. Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or

15.2.4. Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax

Number” given in the Escrow Attachment or to such other address as Developer or Agency may respectively designate by written notice to the other.

**16. DEFINITIONS.**

16.1. “Agency” is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

16.2. “Agency Funding” is the funding provided by the Agency under this OPA to Developer for the Project.

16.3. “Agency Funding Agreement” is the Construction and Permanent Loan Agreement.

16.4. “Certificate of Completion” is the certificate issued by the Agency certifying Developer's completion of the construction of the Project.

16.5. “CEQA” is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.

16.6. “City” is the City of Sacramento, a political subdivision of the State of California.

16.7. “Community Redevelopment Law” is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

16.8. “Completion Dates” are the dates on or before which Developer must complete the construction of Phase 1 and Phase 2 of the Project. The Completion Date for Phase 1 of the Project is August 31, 2010 and the Completion Date for Phase 2 is August 31, 2014.

16.9. “Construction Extension Fee” is the fee payable by Developer for each day by which the completion of construction of Phase 1 or Phase 2 is delayed beyond the date for completion of construction for each phase respectively.

16.10. “Contractor” is the general contractor or contractors with whom Developer has contracted for the construction of the Project.

16.11. “Developer” is LINC-Taylor Terrace Apartments LLC, limited liability company Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided (i) that the

entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at 110 Pine Avenue, Suite 500, Long Beach, CA 90802.

16.12. "Escrow" is the escrow for the transactions contemplated by this OPA.

16.13. "Escrow Instructions" means the escrow instructions for the close of the Escrow.

16.14. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 3, which shall include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this OPA. The Final Plans shall incorporate any related mitigation measures that may be required for compliance with CEQA. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this OPA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this OPA, including without limitation, the Preliminary Plans and the Scope of Development.

16.15. "Hazardous Substances" as used in this OPA shall include, without limitation to, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C.1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory) and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.

16.16. "Legal Description" is the legal description of the various parcels of real property affected by this OPA. The Legal Description is attached as **Exhibit 1: Legal Description**.

16.17. "Lender" shall include all holders of any lien or encumbrance as security for a loan on all or any part of the Property. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this OPA.

16.18. "Loan" is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Project.

16.19. "OPA" is this Owner Participation Agreement between Agency and Developer, including all documents incorporated in this OPA by reference.

16.20. "Preliminary Plans" are the Project designs prepared by the Project architect, if any.

16.21. "Plans" shall mean either or both Preliminary Plans and Final Plans as the context may indicate.

16.22. "Project" is all of the work to be accomplished under this OPA.

16.23. "Project Area" is the City Aggregate Housing Set-Aside Fund Area, as defined in the Redevelopment Plan.

16.24. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) for the City Aggregate Housing Set-Aside Fund Area as duly adopted by the City Council and currently active in the City.

16.25. "Regulatory Agreement" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Property as a condition of Agency Funding.

16.26. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as **Exhibit 2: Schedule of Performances**.

16.27. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as **Exhibit 3: Scope of Development**.

16.28. "Property" is that real property to be developed under this OPA, as more particularly described in the Legal Description. The Property includes all improvements contained within the Property.

16.29. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the enforced delay, as determined by Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Developer has or

should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

**THE PARTIES HAVE EXECUTED THIS OPA** in Sacramento, California as of the date first written above.

**DEVELOPER :**  
**LINC-TAYLOR TERRACE APARTMENTS LLC**  
By: LINC Housing Corporation  
A California nonprofit Public Benefit  
Corporation

Its Managing Member

By: \_\_\_\_\_  
Hunter L. Johnson, President

Approved as to form:

\_\_\_\_\_  
Developer Counsel

**AGENCY: THE REDEVELOPMENT AGENCY  
OF THE CITY OF SACRAMENTO**

By: \_\_\_\_\_  
LaShelle Dozier, Executive Director

Approved as to form:

\_\_\_\_\_  
Agency Counsel

**Exhibit 1: Legal Description**

## Exhibit 2: Schedule of Performances

### Taylor Terrace Apartments

<u>Event</u>	<u>Deadline for completion</u>
Acquisition	August 31, 2009
Begin construction	September 30, 2009
Complete Phase 1 (Minor rehabilitation)	August 31, 2010
Complete Phase 2 (Major rehabilitation)	August 31, 2014

**Exhibit 3: Scope of Development**

**Taylor Terrace Apartments**

Phase 1 - Minor Rehabilitation

Acct.	Category	Quantity	Units	Description
2020	Labor, demolition, hauling	167	ea.	Labor, demolition, hauling as necessary
2500	Roadways and parking	100	s.f.	Repair low spot in asphalt paving to allow drainage
3300	Pedestrian paving	2,500	s.f.	Repair trip hazards in walks and curbs
5200	Stairways	60	ea.	Repair and replace concrete stair treads as needed
5570	Entry gates	2	ea.	Repair and replace auto gate entry operators
6800	Exterior walls-stucco	168	ea.	Repair stucco trim at patio doors; remove foam trim Replace with 2x4 composite recycled material
7405	Roof drainage	110	ea.	Clean and repair gutters; add 110 splash blocks
7412	Balconies	84	ea.	Counter-flash balcony decks
7430	Exterior walls-wood	168	ea.	Replace cross-beams at patios and entries as needed
10200	Playground	1	ea.	Add fiber fall protection to tot-lot
11300	Water heaters	168	ea.	Install approved restraint strapping at all water heaters
16200	Exterior lighting			Repair and add building mounted site lighting, new CFL bulbs and lenses as necessary. Install solar timetable switch.
16400	GFI outlets (15%)	25	ea.	Replace non-working GFCI's
16600	Smoke detection systems	340	ea.	Install battery-operated smoke detectors in all bedrooms
	Security cameras			Install new security cameras

Phase 2 - Major Rehabilitation

Major rehabilitation to include upgrade of all systems as necessary to conform with the minimum rehabilitation standards of Sacramento Housing and Redevelopment Agency as required by the Multifamily Lending and Mortgage Revenue Bond Policies in effect at the time of the rehabilitation, and as approved by Sacramento Housing and Redevelopment Agency.

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

**RESOLUTION NO. 2009 - \_\_\_\_**

**Adopted by the Housing Authority of the City of Sacramento**

on date of

**RESOLUTION DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS AND DIRECTING CERTAIN ACTIONS**

**BACKGROUND**

- A. The Housing Authority of the City of Sacramento (the "Issuer") intends to issue tax-exempt obligations in a principal amount not to exceed \$10,000,000 (the "Obligations") for the purpose, among other things, of making a loan to LINC Housing Corporation, a California nonprofit public benefit corporation, or a California limited liability company or limited partnership to be formed by LINC Housing Corporation (the "Developer"), the proceeds of which shall be used by the Developer to finance the acquisition and rehabilitation of a 168-unit multifamily housing facility located at 4058 Taylor Street, Sacramento, California and commonly known as the Taylor Terrace Apartments (the Project),
- B. United States Income Tax Regulation Section 1.103-18 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, among which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer must declare an intention to reimburse such expenditure, and
- C. It is in the public interest and for the public benefit that the Authority declare its official intent to reimburse the expenditures referenced herein.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:**

- Section 1. The Authority intends to issue the Obligations for the purpose of paying the costs of financing the acquisition and rehabilitation of the Project.
- Section 2. The Authority hereby declares that it reasonably expects that a portion of the proceeds of the Obligations will be used for reimbursement of expenditures for the acquisition and rehabilitation of the Project that are paid before the date of initial execution and delivery of the Obligations.
- Section 3. The maximum amount of proceeds of the Obligations to be used for reimbursement of expenditures for the acquisition and rehabilitation of the

Approval of Issuance of Tax-Exempt Bonds, Owner Participation Agreement, and Agency Loan Commitment for Taylor Terrace Apartments

Project that are paid before the date of initial execution and delivery of the Obligations is not to exceed \$10,000,000.

- Section 4. The foregoing declaration is consistent with the budgetary and financial circumstances of the Authority in that there are no funds (other than proceeds of the Obligations) that are reasonably expected to be (i) reserved, (ii) allocated or (iii) otherwise set aside, on a long-term basis, by or on behalf of the Authority, or any public entity controlled by the Authority, for the expenditures for the acquisition and rehabilitation of the Project that are expected to be reimbursed from the proceeds of the Obligations.
- Section 5. The Developer shall be responsible for the payment of all present and future costs in connection with the issuance of the Obligations, including, but not limited to, any fees and expenses incurred by the Authority in anticipation of the issuance of the Obligations, the cost of printing any official statement, rating agency costs, bond counsel fees and expenses, underwriting discount and costs, trustee fees and expense, and the costs of printing the Obligations. The payment of the principal, redemption premium, if any, and purchase price of and interest on the Obligations shall be solely the responsibility of the Developer. The Obligations shall not constitute a debt or obligation of the Authority.
- Section 6. The appropriate officers or staffs of the Authority are hereby authorized, for and in the name of and on behalf of the Authority, to make an application to the California Debt Limit Allocation Committee for an allocation of private activity bonds for the financing of the Project.
- Section 7. The adoption of this Resolution shall not obligate (i) the Authority to provide financing to the Developer for the acquisition and rehabilitation of the Project or to issue the Obligations for purposes of such financing; or (ii) the Authority, or any department of the Authority or the City of Sacramento to approve any application or request for, or take any other action in connection with, any environmental, General Plan, zoning or any other permit or other action necessary for the acquisition, rehabilitation or operation of the Project.
- Section 8. This resolution shall take effect immediately upon its adoption.