

LEGAL DESCRIPTIONS

1823 "I" Street (APN 031-074-009)

The Northeasterly 42 feet of Lot 16, Block 148, according to the map entitled, "Supplemental Map to Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 2, of Maps, Page 12, Merced County Records.

1815 "I" Street (APN 031-074-010)

The Northeasterly 48 feet of the Southwesterly 108 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

205 West 18th Street (APN 031-074-011)

The Southwesterly 60 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

211 W. 18th Street (APN 031-074-012)

Lot 15,, Block 148, according to the map entitled, "Supplemental Map to the Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 1 of Maps, Page 12, originally, and now appearing in Vol. 2 of Maps, Page 12, Merced County Records.

202 W. 19th Street (APN 031-074-008)

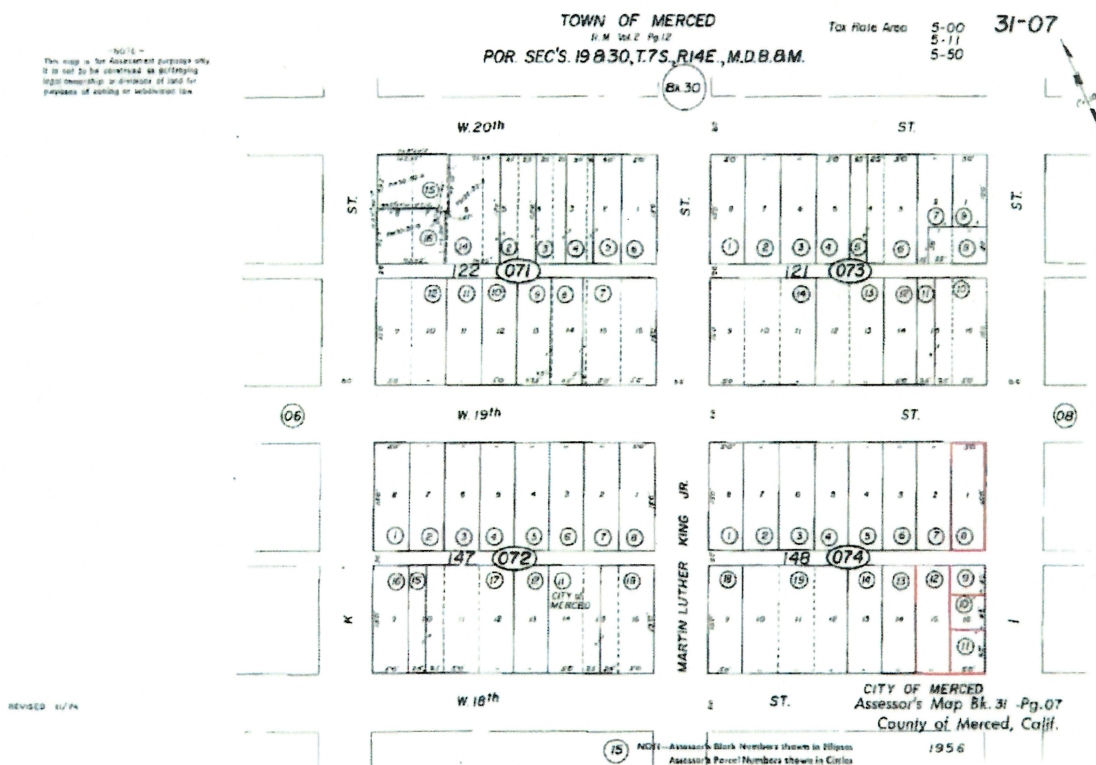
A parcel of land situated in a portion of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being more particularly described as follows:

Lot 1 in Block 148, as shown on map entitled, "Supplemental Map to Town of Merced", filed March 4, 1889 in the office of the County Recorder of Merced County in Book 2, of Official Plats, at Page 12.

Exhibit A

Description of Property

Assessor Parcel: 031-074-008
031-074-009
031-074-010
031-074-011
031-074-012



**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

WHEN RECORDED MAIL COPY TO:

Linc I Street Apts LP
c/o LINC HOUSING CORPORATION,
3590 Elm Avenue
Long Beach, CA 90807
Attn: Sr. Vice President of Housing Dev

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

(Above for Recorder's Use Only)

**FORM OF
GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

Documentary Transfer Tax is \$ _____;

PART ONE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE CITY OF MERCED, a charter city of the State of California, acting in its capacity as the Housing Successor Agency to the former Merced Redevelopment Agency ("**Grantor**"), hereby grants to Linc I Street Apts LP, a California limited partnership ("**Grantee**"), that certain real property located in the City of Merced, County of Merced, State of California, specifically described in Exhibit "A" attached to this Grant Deed ("**Property**") and made a part of this Grant Deed by this reference.

PART TWO

The conveyance of the Property by the Grantor to the Grantee in Part One is subject to the following community development terms, conditions, covenants and restrictions:

Section 1. Conveyance Subject to Terms of an Affordable Housing Disposition and Development Agreement. The Property is conveyed subject to that certain Disposition and Development Agreement (1823 "I" Street, 1815 "I" Street, 205 West 18th Street, 211 W. 18th Street, and 202 W. 19th Street), dated as of _____, 20____, between the Grantor and the Grantee's predecessor-in-interest (the "**Agreement**"). The provisions of the Agreement

are incorporated into this Grant Deed by this reference and are deemed to be a part of this Grant Deed, as though fully set forth in this Grant Deed.

Section 2. Condition of Property. The Grantee acknowledges and agrees that the Property is conveyed by the Grantor to the Grantee in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this Grant Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

Section 3. Obligation to Refrain from Discrimination. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

3.1. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, source of income, age (except to the extent permitted by and in conformance with applicable law), marital status, physical or mental handicap, medical condition, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

3.2. The covenant of this Section 3 shall run with the land of the Property in perpetuity and shall be enforceable against the Grantee and its successors and assigns in perpetuity.

PART THREE

Section 4. Grantee Covenant to Undertake Project. The Grantee covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Grantee shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Grantee covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 4 shall run with the land of the Property for the term set forth in the Agreement.

Section 5. Covenants Run with the Land of the Property. Each of the covenants and agreements contained in this Grant Deed touch and concern the Property and each of them is expressly declared to be a community development covenant that runs with the land for the benefit

of the Grantor and such covenants run with the land in favor of the Grantor for the entire period that such covenants are in full force and effect, regardless of whether the Grantor is or remains an owner of any land or interest in land to which such covenants relate. The Grantor, in the event of any breach of any such covenants, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. The covenants contained in this Grant Deed are for the benefit of and are enforceable only by the Grantor, and shall survive the execution and recordation of this Grant Deed for the time period set forth above for each covenant.

Section 6. Costs and Attorneys' Fees for Enforcement Proceeding. If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Section 7. Effect of Unlawful Provision; Severability. In the event that any provision of this Grant Deed is held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Grant Deed.

GRANTOR:

THE CITY OF MERCED

a California charter municipal corporation

By: _____
_____, City Manager

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A

LEGAL DESCRIPTIONS

1823 "I" Street (APN 031-074-009)

The Northeasterly 42 feet of Lot 16, Block 148, according to the map entitled, "Supplemental Map to Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 2, of Maps, Page 12, Merced County Records.

1815 "I" Street (APN 031-074-010)

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The Southwesterly 60 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

211 W. 18th Street (APN 031-074-012)

Lot 15,, Block 148, according to the map entitled, "Supplemental Map to the Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 1 of Maps, Page 12, originally, and now appearing in Vol. 2 of Maps, Page 12, Merced County Records.

202 W. 19th Street (APN 031-074-008)

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Lot 1 in Block 148, as shown on map entitled, "Supplemental Map to Town of Merced", filed March 4, 1889 in the office of the County Recorder of Merced County in Book 2, of Official Plats, at Page 12.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

CERTIFICATE OF ACCEPTANCE OF
GRANT DEED

The undersigned hereby acknowledges acceptance by Linc Housing Corporation, a California non-profit public benefit corporation, the Grantee in the within Grant Deed, of the delivery of the subject Property described in the within Grant Deed from the City of Merced.

GRANTEE:

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public benefit
corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President of
Housing Development

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

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Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

SCHEDULE OF PERFORMANCE

| DATE | ACTION |
|---|--|
| Three (3) business days after mutual execution of DDA | Opening of escrow on all parcels |
| No later than three hundred sixty-five (365) days after a tax credit award is secured | Close of escrow by Developer on parcels ("Closing Date") |
| No later than the Closing Date | Obtain building permits or approvals. |
| Ten (10) business days after the Closing Date | Start of construction |
| Thirty-Six (36) months after the Closing Date | Completion of construction |

SCOPE OF DEVELOPMENT

A. Description of Development

The Project consists of the new construction of 54 residential units on vacant land. 22 of the total 54 units shall be restricted to households with incomes at between 30%-60% of the area median income ("AMI") for Merced County as published annually by the California Tax Credit Allocation Committee ("TCAC") and will be restricted for a period of fifty-five (55) years.

The project will consist of 1 four-story and 1 three-story buildings with outdoor courtyards, a community room, and a laundry facility for residents' use. The project will also include a leasing office. The project includes 53 one-bedroom units and 1 three-bedroom manager's unit. Each residential unit will have a kitchen that includes a refrigerator, and a stove, living room, and storage.

B. Obligations of Developer

1. Purchase the Site in accordance with the provisions of the Disposition and Development Agreement.
2. Obtain financing for the Project, pursuant to other provisions of the Disposition and Development Agreement.
3. Prepare the Site for development, including filling and grading, and other site preparation.
4. Design and construct the Project in accordance with the description above, other terms of the Disposition and Development Agreement, and applicable ordinances and laws.
5. Secure all permits and approvals needed for the construction of the project, including any Conditional Use Permits issued by the Merced Planning Commission, approvals of the Design Review Commission, and building permits issued by the City of Merced.

C. City Responsibilities

1. Give all appropriate assistance to Developer in securing necessary permits for the project, including coordinating with Developer in presentations to the Design Review Commission, Planning Commission, City Council, or other body involved in permits or approvals for the project.
2. Transfer the Site to the Developer in accordance with the provisions of the Disposition and Development Agreement.
3. Respond promptly, as provided in the Schedule of Performance, to submittals from the Developer.

Attachment No. 5

4. Provide all legally allowed assistance in completing any zoning changes that may be necessary for the Project to begin.
5. Complete environmental reviews as needed.

UNIT COUNT: 59 1BD UNITS (ALL 600 SF UNITS) PLUS 1 9BD MANAGERS UNIT

PARKING STALL COUNT: 9

SITE COVERAGE: 62%

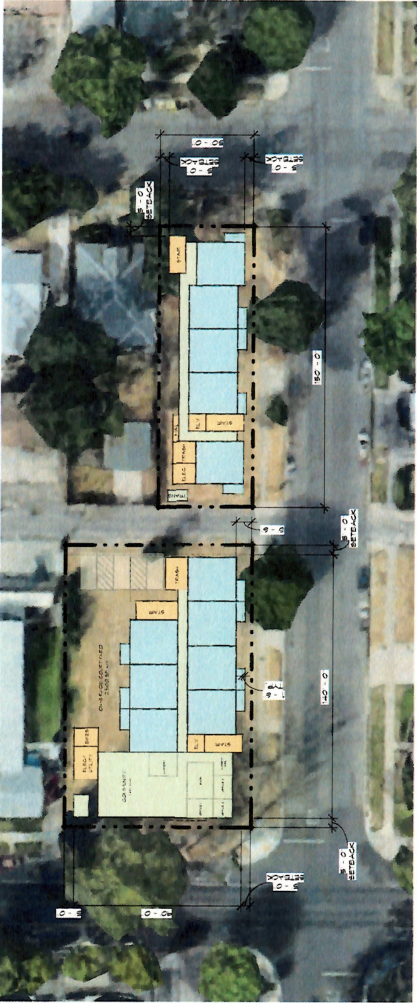
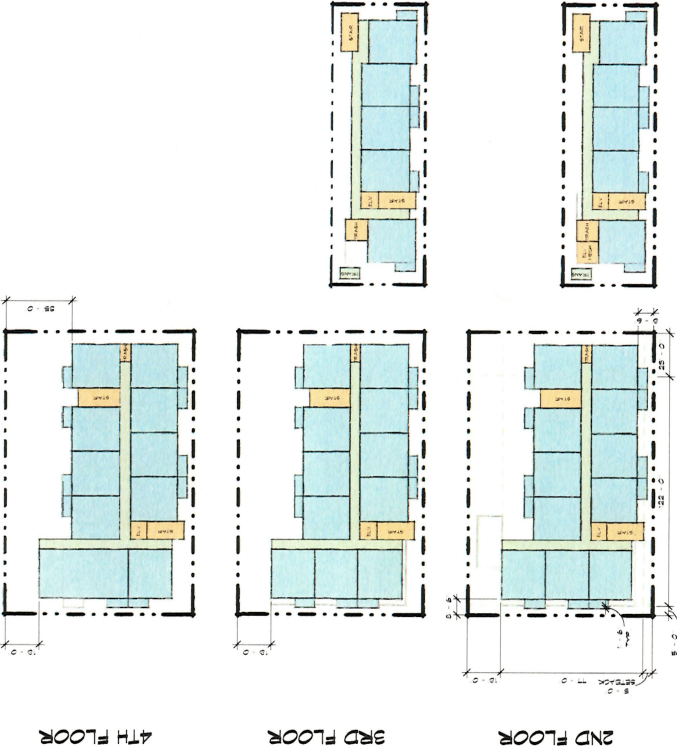
PRIVATE OPEN SPACE: 5X8 BALCONY AT EACH UNIT

COMMON OPEN SPACE: 2,500sf COURTYARD PLUS 1,400 sf COMMUNITY ROOM

SETBACKS: 5' ALL ALL SIDES (USING 2 INCENTIVES)

OTHER NOTES:

- PRIVATE BALCONIES EXTEND OVER SETBACK BY 1.5' WHICH APPEARS TO BE ALLOWED
- HEIGHT, NUMBER OF UNITS, AND NUMBER OF UNITS PER SITE AREA ARE ASSUMED TO BE ACHIEVED USING DENSITY BONUS/ TRANSIT BONUS AND ARE ASSUMED TO NOT REQUIRE THE USE OF AN INCENTIVE.
- BOTH BUILDINGS ARE WOOD FRAMING ON GRADE.



LINC MERCED YIELD STUDY



**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

WHEN RECORDED MAIL COPY TO:

LINC HOUSING CORPORATION,
a California non-profit public benefit corporation
3590 Elm Avenue
Long Beach, CA 90807
Attn: Chief Executive Officer

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

(Above for Recorder's Use Only)

**FORM OF
RELEASE OF CONSTRUCTION COVENANTS
/**
MERCED, CALIFORNIA

WHEREAS, by a Disposition and Development Agreement dated _____, 20__, (hereinafter referred to as "Agreement") by and between the City of Merced, a charter city of the State of California, (hereinafter referred to as the "City") and Linc I Street Apts LP, a California limited partnership (hereinafter referred to as the Developer"), the Developer has completed the improvements according to the terms and conditions of said Agreement; and,

WHEREAS, Pursuant to Section 2L. of the Agreement, promptly after construction and development of the Site, the City shall record a Release of Construction Covenants upon written request therefore by the Developer; and,

WHEREAS, The City has conclusively determined that the Developer has satisfactorily completed the construction required by the Agreement.

NOW, THEREFORE:

1. As provided in the Agreement, the City does hereby certify that the Project has been fully and satisfactorily performed and completed, the Developer Improvements have been satisfactorily completed, and that the Project is in full compliance with said Agreement as of the date of this Release of Construction Covenants.

2. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or

Attachment No. 7

any insurer of a mortgage, securing money loaned to finance the work of rehabilitation, construction, and development of the improvements, or any part thereof. This Release of Construction Covenants is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

3. Other provisions of the Agreement including, but not limited to, Section 3 of said Agreement, remain in full force and effect.

IN WITNESS WHEREOF, the City has executed this Certificate as of the date first above written.

APPROVED:

City Manager

ATTEST:

_____, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

Craig Cornwell 12/18/23
City Attorney Date

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

WHEN RECORDED MAIL COPY TO:

LINC HOUSING CORPORATION,
a California non-profit public benefit corporation
3590 Elm Avenue
Long Beach, CA 90807
Attn: Chief Executive Officer

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

(Above for Recorder's Use Only)

**FORM OF
REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

1823 "I" Street (APN 031-074-009)
1815 "I" Street (APN 031-074-010)
205 West 18th Street (APN 031-074-011)
211 W. 18th Street (APN 031-074-012)
202 W. 19th Street (APN 031-074-008)

MERCED, CALIFORNIA

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this dated _____, _____, by and between the City of Merced ("City"), a California Charter Municipal Corporation acting in its capacity as Housing Successor Agency to the former Merced Redevelopment Agency, and Linc I Street Apts LP, a California limited partnership (the "Developer") (collectively referred to as the "Parties").

RECITALS

A. The City, in its role as Housing Successor Agency to the former Merced Redevelopment Agency, intends to create affordable housing rental opportunities for extremely low to low income persons and families. Pursuant to that certain Disposition and Development Agreement between the City and Developer, dated as of _____, 20__ (the "DDA"), Developer has acquired certain real properties addresses of 1823 "I" Street (Assessor's Parcel No. or "APN"

031-074-009), 1815 "I" Street (APN 031-074-010), 205 West 18th Street (APN 031-074-011), 211 W. 18th Street (APN 031-074-012), and 202 W. 19th Street (APN 031-074-008) (the "Properties"), as described in Exhibit A attached hereto and incorporated herein.

B. Developer has agreed to construct fifty-three (53) multifamily residential rental units and one (1) manager unit for a total of fifty-four (54) units on the Properties. Of the fifty-four (54) units, twenty-two (22) units shall be restricted for extremely low to low income households earning 30% to 60% of the Area Median Income for Merced County, adjusted for family size ("AMI").

C. Pursuant to the DDA, the City sold the Properties to Developer at below fair market value and provided a \$1,608,830 loan from Permanent Local Housing Allocation ("PLHA") funds in order to assist with the cost of constructing the 30%-60% AMI units ("City Assistance").

D. The City Assistance is evidenced by the DDA and is secured by a Deed of Trust on the Properties.

E. The City and Developer desire by the execution of this Agreement to assure that the Properties and the Affordable Units constructed or to be constructed thereon, will be sold to Qualified Households at an Affordable Housing Cost in accordance with the terms and conditions of the DDA and this Agreement.

F. The Parties intend that the covenants set forth in this Agreement shall run with the land and be binding upon Developer and Developer's successors and assigns as further provided herein.

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

"30% AMI Household" shall mean a household whose gross income does not exceed thirty percent (30%) of the Area Median Income, adjusted for Actual Household Size.

"30% AMI Units" shall mean one of the six (6) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 30% AMI Households.

"50% AMI Household" shall mean a household whose gross income does not exceed fifty percent (50%) of the Area Median Income, adjusted for Actual Household Size.

"50% AMI Units" shall mean one of the five (5) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 50% AMI Households.

"60% AMI Household" shall mean a household whose gross income does not exceed sixty percent (60%) of the Area Median Income, adjusted for Actual Household Size.

"60% AMI Units" shall mean one of the eleven (11) Restricted Units rented to and occupied by or, if vacant, available for occupancy by 60% AMI Households.

"Actual Household Size" means the actual number of persons in the applicable household.

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with applicable federal and state rules and regulations. If the applicable federal rules and regulations conflict with state regulations, then the applicable federal rules and regulations shall control the Restricted Units.

"Affordable Rent" means thirty percent (30%) of applicable percentage of Area Median Income, Adjusted for Family Size Appropriate for the Unit, for each Restricted Unit.

"Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

"Area Median Income" or "AMI" for the Restricted Units means the median income for Merced County, adjusted for Actual Household Size, as determined from time to time by the California Department of Housing and Community Development ("HCD"); provided, however, that to the extent that any Restricted Unit is restricted by TCAC at the same AMI level, then Developer may use the TCAC standards instead of HCD standards. Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the definition of median income that results in more restrictive (lower) income limits. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculations to those previously published by the State.

"City" shall mean the City of Merced.

"City Loan" shall mean all funds loaned to the Developer by the City pursuant to the Loan Agreement.

"Eligible Household" means a household for which household income upon initial occupancy does not exceed the maximum income level for Restricted Unit.

"Loan Agreement" shall mean the Deed Restriction Covenant and Loan Agreement dated _____, _____, _____ by and between the City and the Developer and pertaining to the Property and Project.

"HCD" shall mean the California Department of Housing and Community Development.

"HUD" shall mean the United States Department of Housing and Urban Development.

“Rent” means all charges, other than deposits, paid by a tenant for the use and occupancy of a Restricted Unit and any mandatory charge for direct or supportive tenant services in a rental housing development, including a utility allowance in an amount determined by the local housing authority with jurisdiction over the Project.

“Restricted Unit” means one of the 30% AMI Units, 50% AMI Units, or 60% AMI Units described in Section 2.1(a).

“TCAC” means the California Tax Credit Allocation Committee.

“Term of this Agreement” means the period through the fifty-fifth (55th) anniversary of the issuance of the final certificate of occupancy for the Project.

ARTICLE 2

AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirement.

(a) Upon issuance of a final certificate of occupancy and for the entire Period of Affordability (as defined in Section 2.8 below), the Project shall be rented to, at a Rent no greater than Affordable Rent, and occupied by (or if vacant, available for occupancy by) the following schedule:

30% AMI Units. Six (6) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 30% AMI Households.

50% AMI Units. Five (5) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 50% AMI Households.

60% AMI Units. Eleven (11) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by 60% AMI Households.

Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the more restrictive (lower) income limits. Should the annual income limit differ between HCD and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) income limits.

(b) The Project shall be operated at all times in compliance with the provisions of: (a) the Unruh Act; (b) the United States Fair Housing Act, as amended; (c) the California Fair Employment and Housing Act; and other applicable law or regulation (including the Americans With Disabilities Act, to the extent applicable to the Project). The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactorily to the City) the City and their respective board members, council members, officers and employees from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's failure

to comply with any of the above laws or regulations. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

2.2 Allowable Rent.

(a) Subject to the provisions of Section 2.4(b), the Allowable Rent charged to tenants of the Restricted Units means thirty percent (30%) of applicable percentage of Area Median Income, Adjusted for Family Size Appropriate for the Unit, for each Restricted Unit.

(b) Initial rents for all Restricted Units shall be approved by the City prior to occupancy. Should the annual rent limit differ between HCD and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) rent limits.

2.3 Tenant Selection Standards.

During the Period of Affordability the Developer shall select tenants in conformance with the requirements of the California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

(a) Developer shall rent vacant Restricted Units only to Eligible Households in accordance with a Management Plan approved by City. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by City prior to use. The Management Plan shall include:

(1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

(2) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

(A) Selection of tenants based on order of application, lottery or other reasonable method approved by City;

(B) Prompt written notification to tenant applicants of eligibility for residency and, based on turnover history for Restricted Units, the approximate date when a Restricted Unit may be available;

(C) Prompt written notification of tenant applicants who are found ineligible to occupy a Restricted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

(D) Maintenance of a waiting list of applicant households eligible to occupy Restricted Units designated for various tenant income levels, which shall be made available at no charge to prospective tenants upon request; and

(E) Targeting specific special needs populations in accordance with this Agreement and applicable laws.

2.4 Certification of Tenant Income.

(a) The income and household size of all households occupying Restricted Units shall be certified by Developer prior to occupancy and recertified annually thereafter in a manner approved by City and specified in the Project's Management Plan and Section 3.1 hereof.

(b) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the tenant must pay as rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the households adjusted monthly income for rent and utilities; except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

(c) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the Developer shall restrict the next available vacant unit at the appropriate income level to come into compliance with the Occupancy Requirement and Allowable Rent provisions of this Regulatory Agreement, as well as any applicable state and federal requirements.

(d) During the Period of Affordability, the Developer may request an increase in the rent for Restricted Units to 80% AMI Rents ("Float Request") if there is a reduction, termination or nonrenewal of project-based vouchers or if the Project generates insufficient income to pay: (a) Project operating costs, (b) deposits to replace lender required reserves, and (c) debt service on approved financing. The Float Request must be supported by a pro forma and narrative explanation, including an accounting, that the increased rents are necessary to achieve financial feasibility and close a financial operating gap. City shall have the sole and absolute discretion to approve or deny any Float Request and impose any conditions thereon, including future adjustments if vouchers are re-instated or otherwise available for the Project.

2.5 Marketing Plan.

(a) Not later than thirty (30) days prior to the anticipated date of issuance of a certificate of occupancy for the Project, Developer shall prepare a Marketing Plan for City's review and approval and shall implement such plan as approved by the City. The Marketing Plan shall specify how Developer intends to market the Project to prospective tenants in the Project's market area in accordance with fair housing laws and this Agreement. The Marketing Plan shall specifically address how Developer intends to market the Project to underserved populations in the Project's market area and the frequency of marketing efforts. City agrees that Developer may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.

(b) Developer agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved

populations that are not being reached. Any revised Marketing Plan shall be submitted to City for approval prior to implementation.

2.6 Unit Standards.

For the full Agreement term, the size, type and amenity level of Restricted Units shall not be substantially different from the size, type and amenity level for non-Restricted Units, if any.

2.7 Rental Agreement and Grievance Procedures.

The rental agreement and grievance procedures shall be in accordance with California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8307.

(a) All rental or occupancy agreements are subject to City approval; and shall include the following:

(1) Provisions requiring good cause for termination of tenancy;

(2) A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

(3) A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

(4) A requirement that the tenant annually recertify household income and size.

(b) Developer shall not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause.

(c) To terminate or refuse to renew tenancy, Developer must serve written notice upon the tenant in compliance with State law, specifying the grounds for the action, and served at least thirty (30) days prior to the termination of the tenancy.

(d) One or more of the following, without limitation, may constitute "good cause":

(1) Failure by the tenant to maintain applicable eligibility requirements under this Agreement or other eligibility requirements as imposed by City or other state or federal funding sources or tax credits;

(2) Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:

A. Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;

B. Substantially interfere with the management, maintenance, or operation of the Project; or

C. Result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the three (3) day notice period;

(3) Material Failure by the tenant to carry out obligations under federal, State, or local law;

(4) Subletting by the tenant of all or any portion of any Restricted Unit;

(5) Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided Developer has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size.

(6) Notwithstanding the foregoing, if any part of this Section 2.7(e) is determined to not be "good cause" pursuant to Section 42 of the Internal Revenue Code of 1986, Section 42 of the Internal Revenue Code of 1986 shall control.

(e) The lease may not contain any of the following provisions:

(1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of Developer or Developer's agent in a lawsuit brought in connection with the lease;

(2) Agreement by the tenant that Developer may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, shall not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Developer may dispose of this personal property in accordance with State law;

(3) Agreement by the tenant not to hold Developer or Developer's agent(s) legally responsible for any action or failure to act, whether intentional or negligent;

(4) Agreement of the tenant that Developer or Developer's agent may institute a lawsuit without notice to the tenant;

(5) Agreement by the tenant that Developer or Developer's agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

- (6) Agreement by the tenant to waive any right to a trial by jury;
 - (7) Agreement by the tenant to waive tenants right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 - (8) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- (f) Developer shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state and federal law. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than thirty (30) days after giving written notice thereof to each tenant household.
- (g) Developer shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Developer with respect to tenants occupancy in the Project, and prospective tenants applications for occupancy. Developer's appeal and grievance procedures shall be subject to City's approval and, at a minimum, shall include the following:
- (1) A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;
 - (2) Procedures for informal dispute resolution;
 - (3) A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and
 - (4) Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

2.9 Period of Affordability.

Developer acknowledges that the City Loan is being made to Developer under the terms and conditions of California Health and Safety Code Section 34176.1, California Government Code Section 54221(f)(1)(A), and the PLHA Program to ensure affordable housing for Project tenants. To preserve affordability of the Restricted Units, Developer covenants that the Restricted Units shall remain affordable for a period of fifty-five (55) years (hereinafter referred to as the "Period of Affordability") from the date a final certificate of occupancy is issued for the Project. It is intended by the parties to this Agreement, that this covenant shall run with the land, with the benefit of this covenant running to the City, in order to preserve the public interest in maintaining the affordability of the Restricted Units. The Period of Affordability will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

ARTICLE 3

INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each tenant renting any of the Units.

The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicants current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant received assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return or income verification, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request.

3.2 Recordkeeping and Reports.

Developer or the management agent designated by Developer, as approved by City, will be responsible for recordkeeping and reports to comply with the terms of the Agreement. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of Developer in order to assist City in meeting Federal and State recordkeeping and reporting requirements. All records, books and accounts will be subject to examination at reasonable hours by any authorized representative of City. All such records and books shall be kept for a period of at least seven (7) years in a manner designed to protect them from destruction or tampering, and shall be subject to inspection and audit by the City or their respective authorized agents.

3.3 Additional Information.

The Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Project.

3.4 On-Site Inspection.

Developer shall allow City access to the Project to conduct inspections on an annual basis, or more frequently, with fourteen (14) days written notice to Developer. Developer shall provide tenants with a minimum of twenty-four (24) hours written notice prior to seeking access to a tenant unit for inspection purposes. In said notice, Developer shall clearly inform tenant of the purposes of the inspection.

ARTICLE 4

MISCELLANEOUS

4.1 Restrictions on Sale, Transfer or Conversion.

(a) Upon any sale or transfer, including transfer by gift, devise, descent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, or voluntary or involuntary bankruptcy, of the Property without the prior written approval of City, all principal, interest and costs then owing upon the City Loan will become immediately due and payable to City.

(b) City may approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (i) the existing Developer is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement; (ii) the successor-in-interest to Developer agrees to assume all obligations of the existing Developer pursuant to this Agreement; (iii) the successor-in-interest demonstrates to City's satisfaction that it can own and operate the Project in full compliance with all requirements of the DDA and Agreement; and (iv) City determines, in the sole exercise of its reasonable discretion, that no terms of the sale transfer or conveyance threaten City's security or the successors ability to comply with all requirements of the DDA and Agreement.

(c) Developer shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project or any part thereof during the Period of Affordability.

(d) Notwithstanding anything to the contrary herein, any transfer permitted under the Agreement or any other document executed in connection with the Agreement or any document or instrument entered into with or for the benefit of the City referred to therein shall be permitted hereunder.

4.2 Restrictions on Encumbrances.

Developer covenants that Developer has not, and shall not enter into or execute any other agreement with provisions contrary to the provisions of this Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 2.8, above.

4.5 Non-Discrimination; Compliance with Fair Housing Laws.

(a) Developer shall comply with State and Federal fair housing laws in the marketing and rental of the units in the Project.

(b) Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this

Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of 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, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith. All such deeds, leases, subleases, agreements, or contracts pertaining to the sale, lease, sublease, transfer assignment, use, occupancy, tenure, or enjoyment of the Property, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

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

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

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, or sub-lessees, subtenants, or vendees in the land herein leased."

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

location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land.”

(c) The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective Tenants.

4.6 Default and Remedies.

(a) The occurrence of any one or more of the following events shall constitute an event of default (“Event of Default”) hereunder:

(1) The occurrence of a transfer, sale or conversion in violation of Section 4.1 hereof or an encumbrance in violation of Section 4.2 hereof;

(2) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“Bankruptcy Law”), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(3) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtors relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(4) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the property or the improvements thereon, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution.

(5) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated; or

(6) Any material breach by Developer or any of its successors of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City, or, if a cure is not possible within thirty (30) days, where cure is not commenced within thirty (30) days and thereafter diligently prosecuted to completion.

(b) If an Event of Default occurs under this Agreement or the Loan Agreement, City may give written notice to the Developer by certified mail or any express delivery service with a delivery receipt requested. If the breach or violation is not cured to the reasonable satisfaction of City within the time period specified in the notice, which shall not be fewer than thirty (30) days, City may declare a default and may seek legal remedies including the following:

(1) Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(2) Apply to the applicable state or federal court for an order of specific performance of this Agreement, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Developer that the injury to the City arising from a default under any of the terms of this Agreement would be irreparable, and that the amount of compensation which would provide adequate relief to the City would be impossible to ascertain.

(3) Accelerate all amounts, including outstanding principal and interest, due under the City Loan, and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

(4) The City may seek such other remedies as may be available under law or equity.

(5) In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City may demand, and seek as an additional remedy, the return of such excess rents or other charges to the affected households.

(c) The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

4.7 Maintenance & Management.

(a) Developer is solely and specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and recertification of household income and size, evictions, collection rents, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security.

Developer shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building and housing codes. The City shall not have any responsibility for management or maintenance of the Property or the Project, but shall have the remedies provided for in Section 4.5 hereof, which they may exercise at their option as applicable.

(b) Developer may contract with a management agent for the performance of the services or duties required in Section 4.6(a) above. However, doing so shall not relieve Developer of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing Developer to terminate the contract for cause and without penalty with no more than thirty (30) days notice. Upon determination by City and notice to Developer that the contracted management agent has failed to operate the Project in accordance with this Agreement, Developer shall exercise such right of termination forthwith and shall immediately make arrangements, subject to City approval, for continuing performance of the requirements of this Agreement.

(c) If Developer operates the Project directly without contracting with a management agent and City determines that the Project is not being operated in accordance with this Agreement, City may provide notice to Developer thereof, and may require Developer to contract with a management agent to operate the Project, or to make such other arrangement as City deems necessary to ensure performance of the requirements of this Agreement.

4.8 Governing Law.

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

4.9 Successors and Assigns.

This Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the Parties and their respective legal and personal representatives, devisees, heirs, successors, and assigns.

4.10 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of City, the invalidity, or unenforceability of the provision negates the purpose of 31 CFR Part 35 and/or threatens the security for the City Loan.

4.11 Costs of Enforcement.

Developer agrees to pay any and all of City's costs with respect to enforcement of this Agreement, including City's reasonable attorney's fees, costs and expenses.

4.12 Counterparts/Originals.

This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one (1) entire Agreement.

4.13 Amendment.

This Agreement shall not be altered or amended except in a writing executed by the Parties.

4.14 No Waiver.

No waiver by the City of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

4.15 Captions.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of intent of this Agreement.

4.16 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or shall establish the Parties as partners, coventurers, or principal and agent with one another.

4.17 Hold Harmless.

Except to the extent arising from the City's willful misconduct, Developer agrees to indemnify, defend with legal counsel selected by the City and hold harmless the City and their respective agents, employees and officers (collectively, "Indemnitees") from and against any and all claims, losses, liabilities, causes of action or costs (including reasonable attorney's fees) arising from or in connection with Developer's development, management, maintenance or operation of the Project, except to the extent caused by the negligence or willful misconduct of any of the Indemnitees.

4.18 Venue.

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

4.19 Interpretation of Affordability.

It is the intention of the parties to this Agreement that affordability be interpreted in view of the express goals of California Health & Safety Code Section 34176.1, Government Code Section 54221(f)(1)(A), the PLHA program administered by the City and HCD, and any amendments thereto. It is the purpose of this Agreement to limit and restrict use and resale of the Property in order to maintain the Project's affordability for the entire Period of Affordability.

4.20 Affordability Protocols.

To the extent that State, Federal and local laws and regulations may conflict with respect to household income levels, rent levels, or similar provisions relating to affordability of the Project, the Parties acknowledge and agree that the intent of this Agreement is to provide the maximum affordability restrictions.

4.21 Covenants to Run with the Land.

The City and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided however, the on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

The City is deemed the beneficiary of the terms and provisions of this Agreement and the covenants running with the land, for and in its own rights and for the purpose of protecting the interests of the community and other parties, public and private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and covenants running in favor of the City without regard to whether the City has been, remains, or is an owner of any land or interest therein in the Property, any parcel or sub-parcel. The City shall have the right, but not the obligation, if the Agreement and covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at-law or in-equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of the Agreement and covenants may be entitled

4.22 Attorneys Fees and Costs.

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

4.23 Notices.

Attachment No. 8

Any notice requirement set forth herein shall be deemed to be satisfied upon the earliest of receipt or three business days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

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

With a Copy to: City Attorney's Office
City of Merced
678 West 18th Street
Merced, CA 95340

TO DEVELOPER: Linc I Street Apts LP
c/o Linc Housing Corporation
3590 Elm Avenue
Long Beach, CA 90807
Attn: Sr. Vice President of Housing Dev.

With copies to:

Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

Such addresses may be changed by notice to the other party given in the same manner as provided above.

4.24 Subordination.

The City agrees that this Agreement shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements securing low-income housing tax credits financing (collectively, the "Senior Loans") subject to the following conditions: (1) the City shall receive copies of any notices of default issued by the Senior Lenders to the Developer; and (2) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default, except as provided in a separate subordination agreement between the City and any Senior Lender.

[Signatures on next page.]

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

CITY OF MERCED

BY: _____
City Manager

ATTEST:

_____, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Craig Cornwell 12/18/23
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

“DEVELOPER”

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public benefit
corporation,
its sole member and manager

Date: _____

By: _____
Anders Plett
Senior Vice President of
Housing Development

Taxpayer I.D. No. _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____

Date

before me,

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Place Notary Seal Above

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

}

On

before me,

Date

Here Insert Name and Title of the Officer

personally appeared

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Place Notary Seal Above

Signature of Notary Public

**EXHIBIT A
LEGAL DESCRIPTIONS**

1823 "I" Street (APN 031-074-009)

The Northeasterly 42 feet of Lot 16, Block 148, according to the map entitled, "Supplemental Map to Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 2, of Maps, Page 12, Merced County Records.

1815 "I" Street (APN 031-074-010)

The Northeasterly 48 feet of the Southwesterly 108 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

205 West 18th Street (APN 031-074-011)

The Southwesterly 60 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

211 W. 18th Street (APN 031-074-012)

Lot 15,, Block 148, according to the map entitled, "Supplemental Map to the Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 1 of Maps, Page 12, originally, and now appearing in Vol. 2 of Maps, Page 12, Merced County Records.

202 W. 19th Street (APN 031-074-008)

A parcel of land situated in a portion of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being more particularly described as follows:

Lot 1 in Block 148, as shown on map entitled, "Supplemental Map to Town of Merced", filed March 4, 1889 in the office of the County Recorder of Merced County in Book 2, of Official Plats, at Page 12.

**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

WHEN RECORDED MAIL COPY TO:

Linc I Street Apts LP
c/o Linc Housing Corporation
3590 Elm Avenue
Long Beach, CA 90807
Attn: Sr. Vice President of Housing Dev.

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

CITY OF MERCED

**FORM OF
DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

This Deed of Trust is made as of _____, 20__, among Linc I Street Apts LP, a California limited partnership ("**TRUSTOR**"), whose address is 3590 Elm Avenue, Long Beach, California 90807, and Commonwealth Land title Company located at 601 S. Figueroa Street, Suite 4000, Los Angeles, California 90017, Attn: Cheryl Greer ("**TRUSTEE**"); and the CITY OF MERCED acting in its capacity as the Housing Successor Agency to the former Merced Redevelopment Agency ("**BENEFICIARY**"), whose address is 678 West 18th Street, Merced, California 95340.

Trustor irrevocably grants, conveys, transfers, and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title, and interest in, to and under the following property (collectively, the "**Property**"): (a) the real property in Merced County, California, described on **Exhibit A** attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the "**Land**"), (b) together with all buildings, structures, and improvements now existing or hereafter constructed thereon (the "**Improvements**"), (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise

adjudged to be a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"), (d) together with all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. **Secured Obligations.** Trustor makes the grant, conveyance, transfer, and assignment herein for the purpose of securing the following obligations (the "**Secured Obligations**"): (a) performance of each agreement and obligation of Trustor under that certain Disposition and Development Agreement executed by Trustor and Beneficiary dated _____, 20____ (the "**Agreement**"), providing for the construction of improvements on the Property and operation of the Property and improvements thereon as affordable housing (the "**Project**"); (b) performance of each agreement and obligation of Trustor under that certain Promissory Note dated _____, ____ (the "**Promissory Note**"); (c) obligations under the Regulatory Agreement and Declaration of Restrictive Covenants dated of even date herewith (the "**Affordable Housing Covenant**") recorded against the Property on even date with this Deed of Trust; and (d) obligations under the Deed Restriction Covenant and Loan Agreement also recorded against the Property on even date with this Deed of Trust. This Deed of Trust shall secure the Beneficiary against any default under the Affordable Housing Covenant for the term of the Affordable Housing Covenant.

2. **Maintenance and Repair.** Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which from the character or use of the Property may be reasonably necessary.

3. **Insurance.** Trustor shall maintain insurance for which Beneficiary requires as set forth in the Agreement. The insurance carrier and the insurance policies and amounts of coverage shall comply with the terms of the Agreement or shall otherwise be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable.

4. **Defense of Security.** Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. **Payment of Taxes and Liens.** Trustor shall pay (a) at least 10 days before delinquency, all non-abated taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges, and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all reasonable and documented costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust after written notice of such failure by Beneficiary and a reasonably opportunity to cure, then Beneficiary or Trustee may,

without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. **Reimbursement of Costs.** Trustor shall pay upon demand all reasonable and documented sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

7. **No Waiver.** By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. **Reconveyance.** That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "**the person or persons legally entitled thereto.**"

9. **Assignment of Rents.** Subject to the rights of senior lenders, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income, and other benefits (collectively, the "Rents") derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power, and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title, and interest in the Rents. So long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use, and enjoy the same. Upon the occurrence of such a default beyond any applicable notice and cure periods, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default, beyond any applicable notice and cure periods, and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such

tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend, and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. **Default and Foreclosure.** Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable notice and cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes, and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

11. **Distribution of Foreclosure Proceeds.** The proceeds generated by any Foreclosure ("Proceeds") shall be distributed as follows: (i) First, senior liens and encumbrances (if any) on the Project shall be fully paid from the Proceeds; (ii) Second, City shall be fully paid any amounts owing under the Secured Obligations; (iii) Third, junior liens and encumbrances (if any) on the Project shall be fully paid from the Proceeds; (iv) Fourth, any remaining Proceeds shall be distributed in accordance with California Civil Code Section 2924(k). The Differential shall be deposited in City's low and moderate income housing fund. Developer expressly acknowledges and agrees that the Agreement and this Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code Sections 2872, 2924 to 2924h, inclusive ("Differential Lien"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(a)(3). Developer hereby irrevocably instructs any holder of the Differential or similar proceeds generated by Foreclosure to immediately disburse the Differential to City, and agrees to defend, indemnify and hold City and such holder harmless from any and all claims related to such distribution. As used herein, "Foreclosure" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

12. **Substitution of Trustee.** Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee

predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

13. **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "**Beneficiary**" shall mean the owner and holder, including pledgees, of the secured note or notes, whether or not named as Beneficiary herein.

14. **Trustee Acceptance.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

15. **Further Assurances.** Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time reasonably require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

16. **Condemnation and Insurance Proceeds.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with

any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if Beneficiary determines that restoration of the Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Note, with the excess, if any, paid to Trustor, subject to the rights of the senior lender.

17. **Severability.** If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

18. **Estoppel Certificate.** Trustor shall, within thirty (30) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

19. **California Uniform Commercial Code Security Agreement; Fixture Filing.** Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions, and proceeds (including insurance proceeds) of all of the foregoing (collectively, the "**Personal Property**"). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index,

as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary's option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

20. **Due-On-Sale or Encumbrance.** Except to the extent permitted under the Loan Documents, if all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily, or by operational law, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

21. This Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Trustor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event of default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by Beneficiary as a result of an event of default by Trustor, and any amounts paid by Beneficiary to cure any default under the Extended Use Agreement shall be an obligation of Trustor and become a part of the debt evidenced by the Promissory Note and secured by this Deed of Trust.

[CONTINUED ON NEXT PAGE]

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President of Housing
Development

Taxpayer I.D. No. _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

**FORM OF
PROMISSORY NOTE
CITY OF MERCED**

(Linc I Street Apts LP – Permanent Local Housing Allocation)

\$1,608,830

Merced, California

_____, 20__

FOR VALUE RECEIVED, Linc I Street Apts LP, a California limited partnership (“Borrower”), promises to pay to the City of Merced, a California Charter Municipal Corporation (the “City”), or order, the principal sum of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830), or so much thereof as may be advanced by the City to or on behalf of the Borrower pursuant to a Deed Restriction Covenant and Loan Agreement dated _____, ____ (the “Loan Agreement”), by and between the Borrower and the City, together with interest thereon as specified herein (the “Loan”) for the construction of an affordable multi-family residential rental project (the “Project”) on that certain real properties consisting of approximately .52 acres combined located at 1823 “I” Street (Assessor’s Parcel No. or “APN” 031-074-009), 1815 “I” Street (APN 031-074-010), 205 West 18th Street (APN 031-074-011), 211 W. 18th Street (APN 031-074-012), and 202 W. 19th Street (APN 031-074-008) (“Properties”). The obligation of the Borrower in respect of all such advances is subject to the terms of (a) Disposition and Development Agreement dated _____, ____ (“DDA”) (b) Regulatory Agreement and Declaration of Restrictive Covenants between the Borrower and the City dated _____, ____ (the “Regulatory Agreement”), (c) this Promissory Note (“Note”), (d) the Deed of Trust, Security Agreement and Fixture Filing of even date hereof, securing this Note, recorded in the Official Records of the County Recorder of Merced County, California (the “Deed of Trust”), and (e) the Loan Agreement, which together with all other loan related documents and instruments required by the City are collectively referred to as the “Loan Documents.”

1. Borrower’s Obligation. This Note evidences the Borrower’s obligation to pay the City the principal amount of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830) for the funds to the Borrower by City to finance the construction of the Properties where the Project will be constructed for the purposes and pursuant to the terms set forth in the Regulatory Agreement and Declaration of Restrictive Covenants. Disbursement requests of funds shall be made by the Developer to the City upon the close of construction financing. The City shall provide funds for expenses up to a cumulative total of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830). All capitalized terms not

otherwise defined in this Note shall have the meanings set forth in the Regulatory Agreement and Declaration of Restrictive Covenants.

2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) from the date of initial Disbursement Request by the Developer until repaid; provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this Note (the "Term"), shall commence with the date of this Note and shall expire on the date that is fifty-seven (57) years from the conversion of the Project from its construction phase to its permanent phase (the "Conversion Date"). This Note shall be due and payable as set forth in **Section 1.03** of the Loan Agreement. Payments shall be paid annually in arrears, no later than the 1st of the sixth month following the conclusion of each fiscal year of the Project, with payments deferred until the Net Cash Flow (as defined in Section 4) of the Project. The payment shall be accompanied by a copy of the Project's annual audited financial statement and an explanation of how the payment amount was calculated based on Net Cash Flow.

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

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

4. Net Cash Flow. For the purposes described in Section 3, Net Cash Flow shall be defined as follows:

Gross Income Less Total Operating Expenses & Reserves and Asset Management Fee and Deferred Development Fee.

Gross Income shall mean and include all revenue, income, receipts, and other consideration actually received by Developer from operation of leasing of the Project shall include all rental

receipts, laundry income, tenant charges and interest, but shall specifically exclude tenants' security deposits, interest on security deposits, loan proceeds, capital contributions or similar advances, amounts released from reserves or interest on reserves, condemnation proceeds, or insurance proceeds (other than the proceeds from any business interruption insurance).

Total Operating Expenses & Reserves shall include all taxes and assessments, insurance, license, utilities, building maintenance and repairs, landscaping, management fees, on site manager, payroll, cleaning supplies, all benefits and legal and accounting and all deposits to replacement, operating and transition reserves required by the Project lenders and equity investors, social services fees, Asset Management Fee (as defined below), Deferred Development Fee (as defined below), mandatory payments (including debt service) to Project lenders and equity investors as reflected in the applicable loan documents and Borrower's partnership agreement, organizational costs and expenses, taxes, utility services, and other general administrative expenses.

"Asset Management Fee" is the annual fee(s) to pay the limited partner and/or the general partners for all management and oversight of the project, including any and all regulatory filings and surveys required of the Developer by the City in accordance to the project's funding sources. Said fee shall be no higher than \$25,000 for calendar year 2023 increasing at 3% per year thereafter.

"Deferred Development Fee" shall be defined as the portion of the development fee that had not been paid upon Conversion. The total development fee shall be capped at the maximum amount permitted by the California Tax Credit Allocation Committee.

The uses of each annual Net Cash Flow shall be as follows:

- (i) 50% to the Developer
- (ii) 50% (allocated on a pro rata basis and used to pay residual receipts loans for the Project).

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

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

7. Security. This Note is secured by the Deed of Trust, wherein the Borrower is the Trustor and the City is the Beneficiary, covering the Properties.

8. Terms of Payment.

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

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

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

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

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

9. Default.

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

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

(ii) Any failure in the performance by the Borrower of any terms, condition, provision or covenant set forth in this Note subject to Section 4.5 Default and Remedies, set in the Regulatory Agreement;

(iii) The occurrence of any Event of Default under the Loan Agreement, the Deed of Trust, or the Regulatory Agreement, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by

the Borrower to the City pursuant to the Loan Agreement or the Deed of Trust, subject to notice and cure period, if any, set forth therein.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to [Investor TBD], _____.

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

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

10. Waivers.

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

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

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

11. Miscellaneous Provisions.

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

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

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

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

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

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

[Signatures on Next Page]

“DEVELOPER”

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability
company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public
benefit corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President
of Housing
Development

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

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

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

(Above for Recorder's Use Only)

**FORM OF
DEED RESTRICTION COVENANT AND LOAN AGREEMENT**

**In Respect of the
CITY OF MERCED
PERMANENT LOCAL HOUSING ALLOCATION**

(Linc Housing Corporation)

THIS DEED RESTRICTION COVENANT AND LOAN AGREEMENT ("Loan Agreement"), dated _____, entered into by and between the City of Merced, a California Charter Municipal Corporation, ("City") and Linc I Street Apts LP, a California limited partnership (the "Developer"):

A. On November 21, 2022, the City Council of the City of Merced authorized the commitment of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830) in Permanent Local Housing Allocation ("PLHA") funds (the "Loan") to Developer for the construction of a multi-family affordable residential rental project (the "Project") on that certain real properties consisting of approximately .52 acres combined located at 1823 "I" Street (Assessor's Parcel No. or "APN" 031-074-009), 1815 "I" Street (APN 031-074-010), 205 West 18th Street (APN 031-074-011), 211 W. 18th Street (APN 031-074-012), and 202 W. 19th Street (APN 031-074-008), and more particularly described in Exhibit A attached hereto and made a part hereof (the "Properties" or "Site").

B. The Project consists of fifty-four (54) dwelling units. Of the 54 units, one (1) unit will be reserved as Manager Unit. Twenty-two (22) units will be assisted by the Loan and rented to households with incomes at or below thirty percent (30%) to sixty percent (60%) of the Area Median Income ("AMI") for Merced County in accordance with the Regulatory Agreement (as

defined below). Should the Developer have multiple restrictions on unit affordability required by multiple funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

C. The Loan is being made pursuant to the PLHA funds allocated to the City by the California Department of Housing and Community Development ("HCD").

ARTICLE I. LOAN OF FUNDS

SECTION 1.01 Loan. Subject to the satisfaction of the conditions set forth herein, the City loans to Developer the amount of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830) in PLHA funds for the primary purpose of assisting with the construction of twenty-two (22) of the fifty-four (54) dwelling units in the Project and for related expenses identified in the budget attached hereto as Exhibit "B". Of the 22 units, six (6) units will be rented to households earning up to 30% AMI, five (5) units will be rented to households earning up to 50% AMI, and eleven (11) will be rented to households earning up to 60% AMI. Should the Developer have multiple restrictions on unit affordability required by multiple funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

As a condition of the receipt of said Loan, Developer agrees to carry out the projects as generally described in the DDA (as defined in the Regulatory Agreement).

Developer may periodically submit claims for disbursement of the Loan when the funds are needed for reimbursement or payment of eligible costs identified in the budget. The amount of each such request shall be limited to the amount expended or incurred. The request shall be accompanied by documentation of expenditures in such form as may be required by the City, including but not limited to submission of copies of documents such as paid invoices, payroll, time sheets, and other supporting source documents.

Developer shall be liable for repayment of any PLHA proceeds disbursed to Developer that are subsequently determined to constitute disallowed costs if Developer is not able to reallocate the PLHA proceeds to an eligible cost, provided that the amount so repaid shall subsequently be available for eligible costs. Disallowed costs may be identified through audits, monitoring, or other sources. City shall make the final determination of disallowed costs subject to provisions of applicable PLHA regulations.

The Loan is to be evidenced by a Note executed by Developer in favor of City and delivered to City concurrently herewith (the "Note"). Repayment of the Note is to be secured by the Deed of Trust, Security Agreement, and Fixture Filing of even date hereof (the "Deed of Trust"), covering the Properties and the Project. Developer shall execute the Deed of Trust in favor of Commonwealth Land Title Company located at 601 S. Figueroa Street, Suite 4000, Los Angeles, California 90017 as Trustor in trust for the benefit of City and deliver it to escrow for recordation.

That certain Regulatory Agreement and Declaration of Restriction Covenants of even date hereof (the "Regulatory Agreement") imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Loan. Developer shall execute the

Regulatory Agreement and deliver it to escrow for recordation. This Loan Agreement, the Note, Deed of Trust, Regulatory Agreement and documents related thereto, are referred to herein as the "Loan Documents."

SECTION 1.02 Conditions of Funding. The obligation of the City to disburse Loan proceeds pursuant to this Loan Agreement is subject to the following conditions:

1. Developer shall provide the City with a corporate resolution or similar document approving and authorizing execution of this Loan Agreement and all documents contemplated hereby and with such other documents required by the City regarding Developer's corporate status and ability to enter into this transaction.
2. Developer shall provide the City with Certificates of Insurance in form and with insurers admitted in California acceptable to the City, evidencing compliance with the insurance requirements of this Loan Agreement on or prior to close of escrow on the property and upon demand by City at any time subsequent. If requested by the City, Developer shall also provide copies of the required insurance policies.
3. As a material inducement to City to enter into this Loan Agreement and to make the Loan to Developer, Developer unconditionally represents and warrants to City, as of the date hereof, as follows:
 - (a) Developer is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.
 - (b) Developer has full authority to execute this Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.
 - (c) This Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement and each of the other Loan Documents constitutes a legal and binding obligation of, and is valid and enforceable against, each party other than City, in accordance with the terms of each.
 - (d) There are no actions, suits, or proceedings pending or, to the actual knowledge of Developer, threatened against or affecting Developer, the Properties, or any part of thereof, or involving the validity or enforceability of the Deed of Trust, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any local, state or federal governmental agency. Developer is not in default with respect to any order, writ, injunction, decree, or demand of any court or other local, state or federal governmental agency.

(e) The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Developer or any of its general partners is a party or by which it or they or the Properties may be bound or affected.

(f) There is no event of default or potential default on the part of Developer under the Loan Documents or any other document relating to the financing of the Project.

(g) Developer has not received financing for the construction or the permanent financing of the Project except as has been specifically disclosed to and approved by City in writing.

(h) All proceeds of the Loan will be disbursed as provided in this Loan Agreement and used only for reimbursement of the construction costs of the Project in accordance with other purposes specified in this Loan Agreement.

(i) All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to City concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

SECTION 1.03 Terms and Repayment of Loan. The parties agree that assistance in the Project is being provided by the City in the form of the Loan. The City shall provide a loan from PLHA funds for the construction of the Project as restricted by the Regulatory Agreement. The Loan shall be repaid in accordance with the Note. The City shall provide funds for expenses up to a cumulative total of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830).

Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this Loan, Developer, and Developer's principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

SECTION 1.04. Loan Documents. To the extent of any conflict or inconsistency between this Loan Agreement and the Note or Regulatory Agreement, the terms of the Note and Regulatory Agreement, as applicable, shall control.

SECTION 1.05. Subordination of Loan. The City agrees that each of the deeds of trust securing the Loan and regulatory agreements entered into in connection with the Loan shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements securing low-income housing tax credits financing (collectively,

the "Senior Loans") subject to the following conditions: (1) the City shall receive copies of any notices of default issued by the Senior Lenders to the Developer; and (2) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default, except as provided in a separate subordination agreement between the City and any Senior Lender.

ARTICLE II. OPERATION OF THE PROJECT

SECTION 2.01. Acceptance of Obligations. In consideration of the Loan to be provided hereunder, Developer agrees to and accepts the restrictions, obligations, and conditions contained in this Loan Agreement, including without limitation, the occupancy and rent requirements set forth in Section 2.04 below.

SECTION 2.02. Development and Operation of Project. Developer shall maintain the Properties for rental housing in accordance with this Loan Agreement, and all other applicable legal requirements. Developer shall at all times maintain in full force and effect all applicable licenses required by the City of Merced, the County of Merced, and/or the State of California to operate and manage the property.

SECTION 2.03 PLHA Requirements. Developer shall comply with all applicable laws and regulations governing the use of the PLHA funds including, but not limited to, the PLHA Final Guidelines published by HCD in October 2019 provided as Exhibit "D".

In the event HCD formally amends, waives or repeals any administrative regulation previously applicable to Developer's performance under this Loan Agreement, the City expressly reserves the right upon giving notice to HCD and Developer, to require performance of Developer as though the regulation was not amended, waived, or repealed subject only to the written and binding direction or instruction from HCD.

SECTION 2.04. Occupancy and Rent Requirements.

A. Occupancy Requirement. During the term of this Loan Agreement, Developer agrees to rent the property in accordance with the Regulatory Agreement. This provision shall operate as a deed restriction during the term of this Loan Agreement.

B. Rent Requirement. Initial rent shall be established in accordance with the Regulatory Agreement. Should the annual rent limit differ between the CFR and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) rent limits.

C. Records Relating to Occupancy and Rental Requirements. Developer shall maintain all documents used in determining the qualifications of occupants, complete records of rent and other charges billed to and received from all occupants, and such other documents and reports as are necessary to enable the City to monitor compliance with the Regulatory Agreement. The records and documents described in the preceding sentence shall be maintained for the periods and in the manner set forth in Section 2.06 below. The City shall have the right to review and audit such documents and records for compliance with requirements of this Section.

SECTION 2.05. Corporate Status. At all times during the term of this Loan Agreement, Developer shall maintain its existence and shall comply with all provisions of the California Law (Corporations Code Section 5000 *et. seq.*).

SECTION 2.06. Records and Audits.

A. Maintenance of Records. Developer shall maintain records including, but not limited to, books, financial records, supporting documents, statistical records, and all other pertinent records sufficient to accurately reflect all expenditures under this Loan Agreement, and all other matters covered by this Loan Agreement.

Developer shall preserve and make available its records relating to receipt and use of Loan proceeds until the expiration of seven (7) years from the date of final disbursement of loan proceeds to the City, or for such longer period, if any, as required by law.

B. Annual Audit. Each year in which Loan proceeds are received or expended, Developer shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted auditing principles, which audit shall identify the Loan proceeds received and expended.

Upon completion, Developer shall provide the City with a copy of each annual independent fiscal audit.

C. Examination of Records and Facilities. Any time during normal business hours, and as often as may be deemed necessary, the Developer agrees that HCD or the City or any duly authorized employee or representative, shall have access to and the right to examine Developer's offices or facilities engaged in performance of this Loan Agreement, and all the Developer's records with respect to all matters covered by this Loan Agreement.

SECTION 2.07. Insurance. Developer shall maintain, throughout the term of this Loan Agreement, insurance from companies admitted in California, and approved by the City, in amounts as follows:

A. Workers' Compensation Insurance, including Employers' Liability coverage, with limits not less than required by California law.

B. Comprehensive General Liability Insurance with limits of not less than \$1,000,000 for each occurrence combined single limit bodily injury and property damage, including coverage for contractual liability.

C. Property Insurance covering the Properties in a form appropriate for the nature of the Properties covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with a deductible, if any, acceptable to the City, naming City as loss payee as its interest may appear.

D. The General Liability Insurance provided hereunder shall name the City as an additional insured and all insurance shall provide the City with thirty (30) days written notice of any cancellation.

ARTICLE III. DEFAULT, ENFORCEMENT, AND REMEDIES

SECTION 3.01. Default. Failure by either party to timely perform any material term or provision of this Loan Agreement (including, without limitation, failure by Developer to comply with the occupancy and rent requirements of Section 2.04 above), shall be considered a Default by that party under this Loan Agreement. The non-defaulting party shall serve written notice of a Default upon the defaulting party. If such Default is not cured by the defaulting party within thirty (30) calendar days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such Default; provided, however, that if the cure cannot be effectuated within such thirty (30) day period, the defaulting party shall have a reasonable additional time period to effectuate such cure so long as it commences such cure within the initial 30 day period, but no event shall such cure period exceed ninety (90) calendar days after service of the notice of default; and provided, however, the non-defaulting party may, at its sole and complete discretion, waive any damage from the defaulting party by written notice to the defaulting party.

ARTICLE IV. GENERAL PROVISIONS

SECTION 4.01 Notices. Any notice, tender, or delivery to be given hereunder by either party to the other may be affected in writing either by personal delivery or sent by first class mail through the United States Postal Service, addressed as set forth below. Either party may change its address by written notice in accordance with this section.

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

With a Copy to: City Attorney's Office
 City of Merced
 678 West 18th Street
 Merced, CA 95340

TO DEVELOPER: Linc Housing Corporation
 3590 Elm Avenue
 Long Beach, CA 90807
 Attn: Chief Executive Officer

With copies to:

Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

SECTION 4.02 Assignment. Developer acknowledges and agrees that the Loan is being provided in consideration of its special expertise, skill, and ability of Developer to operate and maintain the Properties in a manner that will achieve the City's objective to provide quality affordable housing for lower income households. Consequently, Developer shall not permit any voluntary transfer, assignment, or encumbrance of this Loan Agreement without first obtaining the City's written consent, which shall not be unreasonably withheld. Any transfer, assignment, encumbrance, or lease without the City's consent shall be voidable and, at the City's sole discretion, shall constitute a material breach of this Loan Agreement.

SECTION 4.03 Non-Discrimination. The Developer covenants by and for itself and any successors-in-interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of the Site. The foregoing covenants shall run with the land.

SECTION 4.04 No Third Party Beneficiaries. Nothing contained in this Loan Agreement shall be construed as creating a relationship of employer and employee or principal and agent between the City and Developer or Developer's agents or employees. Nothing contained in this Loan Agreement shall create or justify any claim against City by any third person with whom Developer may have employed or contracted.

SECTION 4.05 Indemnification. As a separate and independent covenant and irrespective of any insurance coverage, Developer shall take all responsibility for its performance, and shall bear all losses and damage directly resulting to it, and for performance of any of its contractors, subcontractors or agents.

Developer agrees to defend with counsel selected by the City, protect, indemnify, and hold harmless the City, its officers, employees, representative, and agents, on account of any breach of this Agreement or negligent act, error, or omission of Developer in the performance of this Loan Agreement.

Developer agrees to indemnify, protect, to assume the defense of with counsel selected by the City, and to hold harmless the City, its officers, employees, and agents from every claim, loss, damage, injury, expense, including attorney's fees, judgment, and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance of this Loan

Agreement, except to the extent caused by the negligence or willful misconduct of the City, its officers, employees, and/or agents.

SECTION 4.06 Covenant Running With Land. The provisions of this Loan Agreement shall constitute covenants which shall run with the land and be binding upon Developer and Developer's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including, but not limited to, leasehold interests, in and to any part of the Properties except that, subject to the Regulatory Agreement and if specifically referenced herein, the same shall terminate as provided in Section 4.07 below. Any attempt to transfer title or any interest therein in violation of these covenants, except as provided herein, the Loan Documents or the DDA, shall be void.

SECTION 4.07 Term. The term of this Loan Agreement shall commence upon the date of this Loan Agreement and shall continue until the full repayment of the Loan. Upon such full repayment of the Loan, City and Developer shall cause to be executed and recorded a termination of this Loan Agreement.

SECTION 4.08 Entire Agreement. This Loan Agreement constitutes the entire Agreement between the City and Developer with respect to the subject matter hereof.

SECTION 4.09 Amendments. The City and Developer reserve the right to amend this Loan Agreement by mutual consent. It is understood and agreed that no alteration or variation of the terms of this Loan Agreement shall be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Loan Agreement shall be binding on either of the parties, unless made in writing and signed by both of the parties.

SECTION 4.10 Severability. The invalidity of any clause, part, or provision of this Loan Agreement shall not affect the validity of the remaining portions thereof.

SECTION 4.11 Exhibits. The following referenced exhibits are attached to this Loan Agreement and are incorporated in this Loan Agreement as though fully set forth herein.

Exhibit A: Legal Description of Properties

Exhibit B: Project Budget

Exhibit C: Commitment Letter

SECTION 4.12 Venue. This Loan Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Loan Agreement shall be held exclusively in a state court in the County of Merced.

[Signatures on Next Page]

IN WITNESS WHEREOF the parties hereto have executed this Loan Agreement as of the date first above written.

CITY OF MERCED
A California Charter
Municipal Corporation

BY: _____
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: *Graig Cornwell* *12/18/23*
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

“DEVELOPER”

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability
company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public
benefit corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President
of Housing
Development

Taxpayer I.D. No. _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____

Date

before me, _____

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Place Notary Seal Above

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____

Date

before me, _____

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Place Notary Seal Above

Signature of Notary Public

Exhibit A: Legal Description of Properties

1823 "I" Street (APN 031-074-009)

The Northeasterly 42 feet of Lot 16, Block 148, according to the map entitled, "Supplemental Map to Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 2, of Maps, Page 12, Merced County Records.

1815 "I" Street (APN 031-074-010)

The Northeasterly 48 feet of the Southwesterly 108 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

205 West 18th Street (APN 031-074-011)

The Southwesterly 60 feet of Lot 16 in Block 148, according to map entitled SUPPLEMENTAL MAP TO THE TOWN OF MERCED recorded March 4, 1889 in Book 2 of Maps, Page 12, Merced County Records.

211 W. 18th Street (APN 031-074-012)

Lot 15,, Block 148, according to the map entitled, "Supplemental Map to the Town of Merced", recorded March 4, 1889 in the office of the County Recorder of Merced County, Book 1 of Maps, Page 12, originally, and now appearing in Vol. 2 of Maps, Page 12, Merced County Records.

202 W. 19th Street (APN 031-074-008)

A parcel of land situated in a portion of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being more particularly described as follows:

Lot 1 in Block 148, as shown on map entitled, "Supplemental Map to Town of Merced", filed March 4, 1889 in the office of the County Recorder of Merced County in Book 2, of Official Plats, at Page 12.

Exhibit B: Project Budget

| Sources | Amount | Per Unit |
|------------------------------------|---------------------|------------------|
| Permanent Loan | \$1,130,470 | \$20,935 |
| City of Merced - Land | \$405,000 | \$7,500 |
| City of Merced - Impact Fee Waiver | \$242,919 | \$4,499 |
| City of Merced - PHLA Loan | \$1,608,830 | \$29,793 |
| HCD MHP | \$12,000,000 | \$222,222 |
| Tax Credit Equity (Federal) | \$20,792,017 | \$385,037 |
| TOTAL | \$36,179,236 | \$669,986 |
| | | |
| Uses | Amount | Per Unit |
| Acquisition | \$405,000 | \$7,500 |
| Hard Costs | \$24,498,167 | \$453,670 |
| Hard Costs Contingency | \$1,224,909 | \$22,684 |
| Developer Fee | \$2,200,000 | \$40,741 |
| Reserves | \$251,625 | \$4,660 |
| Soft Costs | \$7,599,535 | \$140,732 |
| TOTAL | \$36,179,236 | \$669,986 |
| | | |

Exhibit C: Commitment Letter



November 22, 2022

Will Sager
Director of Housing Finance
Linc Housing Corporation

RE: I Street Affordable Housing Project
Commitment to Allocate City of Merced 2021-2023 Permanent Local Housing Allocation (PLHA) funds of approximately \$1,608,830.

Dear Mr. Sager,

On November 21, 2022, the City Council of the City of Merced approved and recommended that the City of Merced ("City") commit the City's 2021-2023 Permanent Local Housing Allocation (PLHA) funds of approximately \$1,608,830 to Linc Housing ("Linc") for the development of I Street Affordable Housing Project ("project"). The project is located at 1815 & 1823 I Street; 205 & 211 18th Street; and 202 W. 19th Street, with Assessor's Parcel Numbers of 031-074-008; 031-074-009; 031-074-010; 031-074-011; 031-074-012.

The PLHA funds will be available for construction and permanent financing under the following terms:

- Interest rate: 3% simple annual
- Term of Affordability: 55 years from occupancy
- Term of Loan: 57 years
- Repayment – Annual payments based on 50% of residual receipts, as defined in the loan agreement. When other public funding is involved, the City will share the distribution of residual receipts on a pro rata basis.
- Collateral – Deed of trust secured by the land or leasehold interest and improvements.

The City is in an Exclusive Negotiating Agreement ("ENA") with Linc for the five parcels, and is currently negotiating a Disposition and Development Agreement ("DDA"). Linc's project, utilizing Housing Successor Agency properties, is a 100% affordable housing development comprised of 54-units, for households earning at or below 30% and up to 80% of the area median income.

Linc Housing is known for successfully developing affordable and attractive properties throughout California. Thus, the City of Merced is excited to support Linc's affordable housing project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott McBride", is written over a faint blue line.

Scott McBride
Development Services Director
City of Merced