

RESOLUTION NO. 89-006

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

January 10, 1989

MATTERS REGARDING RIVERVIEW PLAZA PROJECT FINANCING AND SYNDICATION

WHEREAS the Redevelopment Agency of the City of Sacramento has previously approved its financial support of Riverview Plaza ("project"); and

WHEREAS the syndication of the project has required modification of the project's financing;

NOW THEREFORE BE IT RESOLVED BY THE Redevelopment Agency of the City of Sacramento that:

Section 1: The annual \$658,000 tax increment pledge from Fund balance, Fund #100, will continue to be pledged to the project until January 1, 2004. Said pledge shall be a guarantee, substantially in the form attached hereto as Exhibit A and to be used to cover residential operating shortfalls, costs for repairs to the building, replacement reserves, and payments on certain loans of the partnership. The Agency approves the form of guarantee and authorizes the Executive Director to execute said guarantee and take all actions to implement the guarantee over its term.

Section 2: In consideration of said guarantee, the Agency shall enter into an Agreement with the Partnership to purchase the project back from the Partnership at the greater of 90% of the fair market value or the amount to assume the outstanding debt, secured by deeds of trust on the property, including amounts owing under the Ground Lease.

Section 3: The \$7,040,000 construction loan was previously approved in Resolutions 87-057 (August 1987) and transferred to the Partnership in August 1988, by Resolution 88-062. Sections 2 and 3 of Resolution 88-062 are hereby amended to read: "Section 2: The loan shall be non-recourse debt and bear interest at a rate of 8% simple interest." "Section 3: The principal on the construction loan shall be due and payable to the Agency, Fund #100, upon funding of the permanent loan."

Section 4: The unsecured note entered into on October 14, 1988, between the Agency and the Partnership, shall be reduced to \$42,000 from \$136,968. The note is due in 30 years. No periodic payments are required, but prepayments are permitted.

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This amended note and any other reasonable amendments to the terms, rates or amounts of the Project notes, as required for completion of project financing, are hereby approved.

Section 5: All property taxes actually paid to the County by the Housing Authority on behalf of the Partnership, and returned to the Agency as tax increments, shall be refunded to the Housing Authority.

Section 6: The previous pledge of the following Redevelopment Agency funds to the Housing Authority for the construction of Riverview is affirmed or approved:

- a. \$711,000 of 1986 Downtown tax increment cash
Fund 100, Cost Centers A00410, C00411, H00412
- b. \$810,673 from North East Neighborhood, 1985 Tax
Allocation Bond Issue (TAB)
Fund 100, Cost Centers A00410, C00411, H00412
- c. \$645,000 tax increment revenue from 1987 Tax
Allocation Bond Issue
Fund 100, Cost Center A00410, C00411, H00412
- d. \$411,312 from 1988 tax increment funds, reduced to
\$250,000 pursuant to this resolution
Fund 100, Cost Center A00410, C00411, H00412
- e. \$83,134 from 1988 tax increment fund balance
approved pursuant to this resolution
Fund 100, Cost Center A00410
- f. \$658,000 from 1988 tax increment fund balance
Fund 100

Section 7: A demand note in an amount not to exceed 10% of the capital contributions of the limited partner shall be made in favor of Sacramento Housing Development Corporation, in order to provide the required net worth to the Partnership.

Section 8: The Executive Director, or his designee, is authorized to sign any and all requisitions, letters, notes, Deeds of Trust, demand notes, Agreements, orders and Guarantees to accomplish the syndication of Riverview Plaza, including establishment of loans and Agreements with the Partnership.

Section 9: Payments received on the above loans shall be used as necessary for Gateway Services program, meal subsidy and dining room operations.

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Section 10: This resolution shall supercede the relevant sections of Resolution #86-051, adopted August 19, 1986, #88-062, adopted August 23, 1988 and shall be effective upon its adoption.

Gene Rudin

CHAIRMAN

ATTEST:

William H. Edey
SECRETARY

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FUNDING GUARANTEE AGREEMENT

THIS AGREEMENT is made as of the 13th day of January, 1989, by the Redevelopment Agency of the City of Sacramento ("Agency"), in favor of Riverview Plaza Associates, A California Limited Partnership ("Partnership").

A. The Partnership has been formed for the purpose of owning, managing, maintaining and operating a rental housing project for low income households known as Riverview Plaza, located in Sacramento, California (the "Development").

B. The Partnership is interested in syndicating limited partnership interests to take advantage of the low income housing tax credits.

C. To attract investor limited partners, the Partnership has requested that the Agency guarantee to fund obligations of the Partnership to the extent Partnership revenue is inadequate.

D. As consideration for the Agency's guarantee the Partnership will grant the Agency an option to purchase the Development after fifteen (15) years.

NOW, THEREFORE, in consideration of the option herein provided and other value received, the Agency unconditionally agrees as follows:

1. Guarantee.

The Agency unconditionally agrees to fund obligations of the Partnership to the extent Partnership revenues from all sources are inadequate to do so. The Agency's obligation under this Agreement shall not exceed Six Hundred Fifty Eight Thousand Dollars (\$658,000) per year. For purposes of this Agreement, Partnership obligations shall include any and all Partnership expenditures (existing now and in the future), including but not limited to operating and necessary expenses of the Development, debt service on all Partnership loans, repairs and capital expenditures, and funding of a replacement reserve as required under the First Amended and Restated Partnership Agreement of the Partnership dated as of January 13, 1989. Partnership revenues shall include rents, any rent subsidies collected by the Partnership and any other revenues derived from the Development (excluding security deposits) and capital contributions by partners to the Partnership. The parties acknowledge that in determining the annual amount required to be paid under this Agreement, Partnership obligations shall include the prepayment of the loan and interest thereon from First Interstate Bank in the principal amount of \$7,040,000 by December 31, 1995, to the extent possible.

2. Method of Satisfying Guarantee.

(a) During the term of this Agreement, the Partnership shall provide the Agency on or before December 1 of each year with a projected budget for the Development for the following calendar year, which budget shall indicate the amount, if any, of the projected Partnership obligations required to be funded under this Agreement. On or before January 15 of each succeeding year during the term of this Agreement, the Agency shall pay the Partnership the amount requested pursuant to this paragraph (a). To the extent the amount required under this paragraph (a) is less than \$658,000 in any year, the Partnership may request the Agency, any time during the year, to fund unanticipated costs that were not included in the projected budget, provided the Agency's total obligation under this Agreement does not exceed \$658,000 in any calendar year.

(b) Not later than April 15 of each year the Partnership shall prepare and submit to the Agency a final annual accounting for the Development prepared in accordance with generally accepted accounting principles. In the event the amount paid by the Agency was greater than the actual amount required, the Partnership shall remit the difference to the Agency with the final accounting. In the event the amount paid by the Agency was less than the actual amount required, the Agency shall remit the difference to the Partnership within fifteen (15) days of receipt of the final accounting; provided, however, that the Agency's total obligation under this Agreement for any calendar year shall not exceed \$658,000.

(c) For calendar year 1989, the Partnership shall submit the projected budget for the Development on or before March 15, 1989, and the Agency shall pay the Partnership the amount required within fifteen (15) days of receipt of the budget.

3. Books and Records.

The Partnership shall keep and maintain or cause to be kept and maintained, complete and appropriate books, records and accounts relating to the Development, including all books, records and accounts necessary or prudent to evidence and substantiate in full detail the Partnership's calculation of the Partnership's obligations and revenue. Such books, records and accounts shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. All such books, records and accounts shall at all times during normal business hours be open and available to inspection by the Agency, its auditors or other authorized representatives. The Partnership shall preserve records on which any statement of the Partnership's obligations and revenue is based for a period of not less than five (5) years after a statement is rendered, and for any

period during which there is an audit undertaken pursuant to Section 4 then pending.

4. Agency Audits.

The receipt by Agency of any statement pursuant to Section 3 for any period shall not bind Agency as to the correctness of the statement or the payment. Within five (5) years after the receipt of any statement, Agency or any designated agent or employee of Agency at any time shall be entitled to audit the Partnership's books, records and accounts pertaining to Partnership obligations and revenue. The audit shall be limited to determining Partnership obligations and revenue and shall be conducted during normal business hours at the Partnership's principal place of business and other places where records are kept. Provided that the Partnership has fully cooperated, any audit undertaken under this Section 4 shall be completed within one hundred twenty (120) days of commencement of the audit. Immediately after the completion of an audit, Agency shall deliver a copy of the results of the audit to the Partnership. Agency shall not be entitled to more than one audit of the Partnership obligations and revenue for any calendar year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to Partnership obligations and revenue of a previous year. If it shall be determined as a result of an audit that there has been an overstatement of Partnership obligations, then such excess shall become immediately due and payable with interest from the date payment was due at an interest rate equal to the lower of the reference rate of interest announced from time to time by Wells Fargo Bank or the maximum rate allowed by law. If the Partnership's statement for any calendar year shall be found to have overstated the amount required to be paid by the Agency by more than ten percent (10%), the Partnership shall pay, in addition to the interest charges, all of Agency's reasonable costs and expenses connected with any audit or review of the Partnership's accounts and records.

5. Agency's Unconditional Obligation.

The Agency acknowledges that there are no conditions precedent to the effectiveness of this Agreement, and that this Agreement is in full force and effect and is binding on the Agency as of the date written above.

6. Term.

This Agreement shall be effective as of the date first written above and shall terminate at 12:01 a.m. on January 1, 2005.

7. Consideration.

The Agency, as consideration for this Agreement shall receive from the Partnership an option to purchase the Development beginning January 1, 2004 in the form attached as Exhibit B to this Agreement and incorporated herein by this reference.

8. Default.

The Agency shall be in default under this Agreement ("Default") if the Agency fails to fund the Operating Deficit as required under Section 2 of this Agreement and any such failure is not cured within thirty (30) days after receipt of written notice of the failure.

9. Remedies.

(a) In the event of a Default, the Partnership shall be entitled to take all actions available to the Partnership including, without limitation, instituting a suit at law or in equity.

(b) A Default by the Agency shall be grounds for the Limited Partner of the Partnership to remove the General Partner.

10. Waiver of Defenses.

The Agency hereby waives to the extent permitted by law any defense of guarantor or suretyship. The Agency agrees that its obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

11. Agency's Pledge of Tax Increment.

The Agency shall take all actions necessary to insure that payments due under this Agreement and payments of all other Agency obligations to be funded from tax increment revenue shall not exceed the limit established in the Redevelopment Plan for the total amount of tax increment that may be claimed by the Agency as such limit is established pursuant to Section 33333.2(1) of the California Health & Safety Code.

12. Miscellaneous.

(a) Interest; Expenses. Any sum required to be paid by the Agency to the Partnership pursuant to the terms hereof shall bear interest from the date payment is due until said sum shall be paid, at the lower of (i) three percent above the reference rate established from time to time by Wells Fargo Bank, N.A. and (ii) the maximum amount allowed by law. If any attorney is engaged by or on behalf of the Partnership to enforce or defend any provision of this Agreement and the

Partnership prevails, the Agency shall pay to the Partnership immediately upon demand, the amount of all cost and expenses (including without limitation reasonable attorneys' fees and costs) incurred by the Partnership in connection therewith, together with interest thereon from the date of such demand at the rate set forth above.

(b) Successors and Assigns. Except as otherwise provided herein, the provisions of this Agreement shall bind and benefit the successors and assigns of the Agency and the Partnership.

(c) Severability. If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. In any event, all of the other provisions shall be deemed valid and enforceable to the greatest possible extent.

(d) Headings. All headings appearing in this Agreement are for convenience only and shall be disregarded in construing this Agreement.

(e) Governing Law; Choice of Forum. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. The Agency and all entities in any manner obligated under this Agreement consent to the jurisdiction and venue of any Federal or state court within the State of California and also consent to service of process by any means authorized by California or Federal law. The Agency waives the application of Section 1654 of the California Civil Code as it may be applied to this Agreement.

(f) No Waiver. No failure on the part of the Partnership to pursue any remedy hereunder, shall constitute a waiver on the part of the Partnership of its right to pursue such remedy on the basis of the same or a subsequent breach.

(g) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or deposited in the U.S. mail, first class and postage prepaid, return receipt requested, addressed to the parties at their respective addresses:

Agency: Redevelopment Agency of the City of Sacramento
 630 I Street
 Sacramento, CA 95814
 Attention: Executive Director

Partnership: Riverview Plaza Associates
 630 I Street
 Sacramento, CA 95814
 Attn: General Partner

Notice shall be deemed duly given upon personal delivery or, if mailed, five days after mailing. The foregoing addresses may be changed by notice given as provided in this Agreement.

(h) Terms. All capitalized terms not otherwise defined in this Agreement shall have the same definitions as in the Partnership Agreement.

(i) Time of Essence. Time is of the essence of each and all of the agreements, covenants and conditions of this Agreement.

(j) Amendments. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the Partnership and the Agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date appearing on the first page of this Agreement.

The Redevelopment Agency of
the City of Sacramento

By: _____
William H. Edgar
Executive Director

RIVERVIEW PLAZA ASSOCIATES, A
California Limited Partnership

By: Sacramento Housing
Development Corporation,
a California nonprofit
public benefit
corporation, General
Partner

By: _____
William H. Edgar
Executive Director

01/09/89 #B022/B47502