

RESOLUTION NO.

A RESOLUTION OF THE FINANCING AUTHORITY OF THE CITY OF SAN JOSE i) REPEALING RESOLUTION NO. 93, ii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CITY OF SAN JOSE FINANCING AUTHORITY, OR DESIGNEE, TO ACQUIRE PROPERTY LOCATED AT 80 MONTECITO VISTA DRIVE (SITE) IN THE CITY OF SAN JOSE FROM ORVIETO FAMILY APARTMENTS, L.P., AND TO NEGOTIATE AND EXECUTE A GROUND LEASE OF THE SITE BACK TO THE PARTNERSHIP FOR A TERM OF UP TO 99 YEARS WITH SUCH OTHER TERMS TO BE NEGOTIATED BY THE EXECUTIVE DIRECTOR OF THE CITY OF SAN JOSE FINANCING AUTHORITY AND THE DIRECTOR OF HOUSING, AND iii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CITY OF SAN JOSE FINANCING AUTHORITY AND THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE CITY OF SAN JOSE RELATED TO THE GROUND LEASE REVENUES AND THE ULTIMATE DISPOSITION OF THE AFFORDABLE HOUSING PROJECT IMPROVEMENTS AND THE PROPERTY

WHEREAS, the City of San José Financing Authority (“Authority”) is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City of San José and the Redevelopment Agency of the City of San José, and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California; and

WHEREAS, the City proposes that the Authority take ownership of the property located at 80 Montecito Vista Drive in the City of San José (“Site”) from Orvieto Family Apartments, L.P. (“Partnership”) and lease it to the Affordable Housing Project at the time of closing of the City Bonds; and

WHEREAS, this structure is proposed because of the potential long-term benefits of a ground lease, and because the City cannot allow encumbrances on its fee interest if it takes ownership of the Site and subsequently leases the ground back to the Partnership; and

WHEREAS, the Senior lender has indicated that it will require a security interest in both the fee and leasehold and the Authority is permitted to allow encumbrances on land to which it takes title; and

WHEREAS, it is proposed that the Authority will enter into a long-term ground lease of at least 99 years, with the terms of the lease to be finalized by the Executive Director, or designee; and

WHEREAS, it is to the City's benefit for the Authority to own the land and lease it to the Project, with such benefits including the potential for long-term control of the Site, including ownership of both the land and the improvements at the end of the lease term, provided there is no foreclosure by the senior lender, and the potential for future ground lease payments as revenues to the Housing Department. These potential benefits will be agreed to between the City and Authority in the agreement to be entered into by both parties. Further, it is easier to enforce long-term affordability restrictions that are senior to other encumbrances with a ground lease structure than were the land owned by the Borrower, so the lease enhances the City's ability to enforce long-term affordability on the Site; and

WHEREAS, the Authority now desires to repeal Resolution No. 93 adopted by the Authority on November 17, 2009;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE CITY OF SAN JOSE FINANCING AUTHORITY THAT:

1. Resolution No. 93 is hereby repealed.
2. The Executive Director of the City of San José Financing Authority, or designee, is hereby authorized to acquire the property at 80 Montecito Vista Drive from Orvieto Family Apartments, L.P. and, with the Director of Housing, negotiate and execute a ground lease of the Site back to the Partnership for a term of up to 99 years with such other terms to be negotiated by the Executive Director of the Authority and the Director of Housing of the City of San José.
3. The Executive Director of the Authority and the Director of Housing of the City of San José are hereby authorized to negotiate and execute an agreement with the City of San José related to the ground lease revenues from the Project and the ultimate disposition of the Project improvements and the Site.

ADOPTED this ____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Chair, City of San José
Financing Authority

ATTEST:

Secretary, City of San José
Financing Authority