RESOLUTION NO. 93

A RESOLUTION OF THE FINANCING AUTHORITY OF THE CITY OF SAN JOSE i) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CITY OF SAN JOSE FINANCING AUTHORITY, OR DESIGNEE, TO ACQUIRE PROPERTY LOCATED AT 80 MONTECITO VISTA DRIVE IN THE CITY OF SAN JOSE (SITE) 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 75 YEARS WITH AN ANNUAL RENT OF $1.00 FOR THE FIRST 55 YEARS, TO BE INCREASED AT THE TIME OF REPAYMENT OF THE CITY'S CONSTRUCTION/PERMANENT LOAN, AND ii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CITY OF SAN JOSE FINANCING AUTHORITY, OR DESIGNEE, 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 Jose 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 Jose and the Redevelopment Agency of the City of San Jose, 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 Site from the 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 55 years. Although terms of the lease would be finalized by the Executive Director, or designee, it is expected that the ground lease rent will be (a) $1 per year payable in advance at closing, plus (b) annual residual payments from Project cash flow commencing at repayment of the City's permanent loan; 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.

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

1. The Executive Director, or designee, of the Financing Authority of the City of San Jose is authorized to acquire the property located at 80 Montecito Vista Drive 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 75 years with

an annual rent of $1.00 for the first 55 years, to be increased at the time of repayment of the City's construction/permanent loan, as more specifically set forth in the Joint Report of the Director of Finance and Director of Housing dated October 26, 2009.

2. The Executive Director, or designee, of the City of San Jose Financing Authority, is authorized 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, as more specifically set forth in the Joint Report of the Director of Finance and Director of Housing dated October 26, 2009.

ADOPTED this 17th day of November, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, PYLE, REED.

NOES: NONE.

ABSENT: OLIVERIO.

DISQUALIFIED: NONE.

Chuck Reed

Chair, City of San Jose
Financing Authority

ATTEST:

Secretary, City of San Jose
Financing Authority