

RESOLUTION NO. 2003-181

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
TO APPROVE THE LOAN DOCUMENTS AND REGULATORY AGREEMENT TO
IMPLEMENT THE CITY'S FINANCIAL COMMITMENT TO PACIFIC WEST
COMMUNITIES FOR THE AGAVE AT ELK GROVE PROJECT**

WHEREAS, the City of Elk Grove approved a financial commitment of \$2,845,356 in Affordable Housing Trust Fund loan and fee exemption assistance to Pacific West Communities for the Agave at Elk Grove multifamily housing project on April 2, 2003; and

WHEREAS, the City of Elk Grove has recognized the need to provide housing affordable to all economic segments of the City; and

WHEREAS, the City of Elk Grove has established an Affordable Housing Trust Fund Fee, recognizing the need for market rate residential development to pay for its proportional share of the City's affordable housing needs; and

WHEREAS, the commitment of financial resources is not a "project" subject to the California Environmental Quality Act because it is a funding mechanism having no physical effect on the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELK GROVE:

1. The City of Elk Grove shall loan up to \$2,500,000 to the Agave at Elk Grove project (Funding Commitment).
2. The Administrative Services Director is authorized to transfer from the Affordable Housing Trust Fund up to \$2,500,000 to the Agave at Elk Grove project.
3. The City Manager is authorized to prepare and execute any and all documents required for the making of the Funding Commitment (including without limitation the documents necessary for the use of the allocated funds and the documents necessary to make, reasonably administer, and enforce the affordability requirements of the Funding Commitment, such as a Promissory Note, Affordable Housing Loan Agreement, Subordination Agreement, and Regulatory Agreement; provided however that:
 - a. The Funding Commitment and other agreements shall be made in accordance with all applicable law, regulations, and policies regarding the making of the loan and use of the allocated funds, and

- b. The Funding Commitment documents are revised as described below, or with revisions with similar intent:
 - i. Promissory Note
 - 1. Revision to Section 2(a) to remove “75% of” in the definition of Residual Cash Flow, or revise Section 2 to refine the definition of Residual Cash Flow to not include any distributions to shareholders, members, or partners, or revise Section 2 to include a note that states that the payment shall not exceed 75% of Excess Cash Flow as defined by Fannie Mae, or other revision with similar effect.
 - 2. Revision to Section 14 to strike the existing language and replace it with “The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or other jurisdiction. Borrower agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the Eastern District of California.” or similar text.
 - ii. Deed of Trust
 - 1. Section 29 revised to replace the existing language with “The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or other jurisdiction. Borrower agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the Eastern District of California.” or similar text.
 - iii. Affordable Housing Loan Agreement
 - 1. Section 55 revised to replace the existing language with “The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for

those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or other jurisdiction. Borrower agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the Eastern District of California.” or similar text.

iv. Subordination Agreement

1. Section 6(a) revised to include greater assurances of long-term affordability, stating that in the event of foreclosure, or similar action, the affordability of the project shall remain in effect until the bonds have been paid off.
2. Sections 8(b) and 12 revised to identify that the City of Elk Grove’s municipal functions and responsibilities, including but not limited to enforcement of codes and statutes, are not subordinated under the agreement, but that the City of Elk Grove’s rights as a lender are subordinated under the agreement.
3. Section 9 revised to identify that the holder of the refinanced debt shall first have agreed in writing to be bound by the terms of the agreement.
4. Section 12 revised to identify that the Senior Lender will not unreasonably withhold their consent to the City’s choice of a qualified replacement property manager

v. Regulatory Agreement

1. Section 30 revised to be consistent with the Subordination Agreement, or deleted from the document entirely.
2. Section 35 revised to replace the existing language with “The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or other jurisdiction. Borrower agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and

litigated in the County of Sacramento or the Eastern District of California." or similar text.

vi. Rider to the Regulatory Agreement

1. Sections 4 and/or 9 revised to include greater assurances of long-term affordability, stating that in the event of foreclosure, or similar action, the affordability of the project shall remain in effect until the bonds have been paid off.

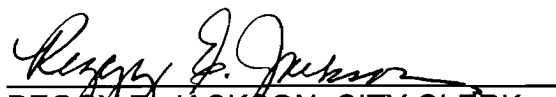
vii. The Financial Commitment Documents may be revised to reflect that the City will regulate affordability of 150 units, rather than 188 units. Affordability of at least 150 units is required by the City Council's April 2, 2003 action and affordability of additional units would not be inconsistent with the requirements of the City's financial commitment.

4. The City Manager is authorized to make technical amendments to said agreements and documents when such amendments are in accordance with the Funding Commitment, with City policy, with this resolution, and good legal practices for the making of such a loan.
5. The Funding Commitment is contingent upon Pacific West Communities providing or demonstrating to the satisfaction of the City:
 - a. Title Insurance,
 - b. Absence, or remediation of, any hazardous substances on the project site,
 - c. Soils report, and
 - d. Organizational and financial documents of USA Properties Fund.

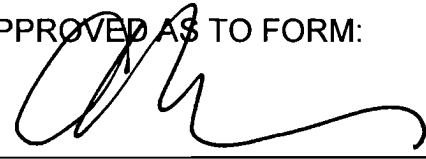
PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 1st day of October 2003.


SOPHIA SCHERMAN, MAYOR OF THE
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2003-181

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)


I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 1st day of October 2003 by the following vote:

AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:



Peggy E. Jackson, City Clerk
City of Elk Grove, California