



AGENDA REPORT

Community Development

DATE:	June 7, 2022
TO:	Mayor Butt and Members of the City Council
FROM:	Lina Velasco, Director of Community Development
SUBJECT:	Extension of Regulatory Agreement for The Summit
FINANCIAL IMPACT:	The current property owner of The Summit Apartments has requested an extension of the existing Amended Regulatory Agreement and Declaration of Restrictive Covenants for 30 years through September 22, 2053. Extending the Regulatory Agreement extends the Project's eligibility for a Welfare property tax exemption, which results in reduced property tax revenue to the City on an ongoing annual basis. The loss of property tax revenue to the City in FY 2021-2022 is estimated at \$142,178. The proposed amendment also includes an increase in the administrator's fee from \$2,000 to \$5,000 per year.
PREVIOUS COUNCIL ACTION:	Prior action by the Richmond Community Redevelopment Agency in 2010 to approve Regulatory Agreement.
STATEMENT OF THE ISSUE:	The Summit is a 240-unit privately-owned mixed income housing development. The City has an Amended Regulatory Agreement and Declaration of Restrictive Covenants related to bond financing that expires on September 22, 2023. The owner has reached out to the City and would like to extend the Regulatory Agreement for another 30-year term. No additional funding is being requested of the City as part of the extension.

RECOMMENDED ACTION:	ADOPT a resolution approving the Amendment to the Amended and Restated Regulatory Agreement with U.S. Reif Sierra Ridge CA L.P., extending the term for an additional 30 years from September 22, 2023 to September 22, 2053 – Community Development (Lina Velasco 620-6841).
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DISCUSSION:

In 1993, the former Richmond Community Redevelopment Agency (Agency) issued Multifamily Housing Revenue Bonds (the “Bonds”) and loaned the proceeds to the former owner of The Summit at Hilltop Apartments (the “Project”) to enable acquisition of the 240-unit multifamily housing development. Agency entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated September 1, 1993, to document the affordable housing requirements at the Project (“1993 Agreement”). The Bonds were later fully refunded from a new bond issue by the Agency in 2003. In connection with the 2003 bond refunding, the 1993 Regulatory Agreement was amended in that certain First Amendment to Regulatory Agreement dated August 1, 2003 (“First Amendment”).

In 2010, the current property Owner acquired the Project and at the Owner’s request the Former Regulatory Agreement was replaced with the current Regulatory Agreement to acknowledge the payment in full and retirement of the Bonds and to restate the parties’ respective rights and obligations toward each other and the Project.

The 1993 Agreement and the First Amendment (together “Former Regulatory Agreement”) and the current Regulatory Agreement all require throughout the Term, (i) not less than twenty percent (20%) of the units in the Project to be continuously occupied or held vacant and available for occupancy by Lower Income Tenants (defined as individuals or families with an adjusted income which does not exceed 50 percent of Area Median Income or AMI), and (ii) the rents for one-half of the Lower-Income Units shall be Affordable Rents equal to thirty percent (30%) of fifty percent (50%) of AMI. The Agreements prevent the owner from restricting over twenty-five percent (25%) of the units in the Project to persons whose incomes would permit them to be qualified as Lower-Income without the prior written consent of the Agency. However, the Administrator (Agency or entity appointed by the Agency) shall have no obligation to monitor compliance by the Owner with the limitation imposed by this sentence.

Summary of Affordable Requirements

In addition, the Agreement requires that not less than twenty percent (20%) of the units in the Project shall be continuously occupied or held vacant and available for occupancy by Low Income Tenants (defined as individuals or families with an adjusted income which does not exceed 50% of AMI). These requirements are in addition to the units required for Lower-Income Tenants; provided, however, that at no time shall the total

number of units restricted for either Lower or Low-Income Tenants exceed a total of forty percent (40%) of the units in the Project.

The Agreement has additional provisions facilitating the Agency and Administrator to monitor its terms:

- On or about September 22 of each year, the Owner shall recertify the income of the occupants of each Lower-Income Unit by obtaining a completed Certification of Tenant Eligibility in the form attached to the original Agreement as Exhibit B based upon the current income of each occupant of the unit.
- During the Term, the Owner will rent or lease the Lower-Income Units to Lower-Income Tenants and, if at any time the Owner is unable to rent or lease the Lower-Income Units to Lower-Income Tenants, the Owner will hold the rented Lower-Income Units vacant pending rental or lease to Lower-Income Tenants.
- The Owner will maintain complete and accurate records pertaining to the Lower-Income Units and will permit any duly authorized representative of the Agency or the Administrator (if not the same as the Agency) to inspect the books and records of the Owner pertaining to the incomes of and rents charged to Lower-Income Tenants residing in the Project.
- Except for the Affordable Rent, as applicable, to be paid by one-half of the Lower-Income Tenants, the Owner will not collect any additional fees or payments from such Lower-Income Tenants except security deposits or other deposits or fees required of all similarly situated tenants.

Property Tax Exemption

In California, the Welfare Exemption provides a property tax exemption on property owned by nonprofit organizations and used for religious, hospital or charitable purposes. Nonprofit corporations or eligible limited liability corporations (LLCs) that own and operate low-income housing are eligible for a Welfare Exemption if they meet all three of the following conditions:

1. The property use is restricted to low-income housing (defined at 80% AMI), by a regulatory agreement, recorded deed restriction, or other legal document;
2. The funds that would have been necessary to pay property taxes are used to maintain the affordability of the housing or to reduce the rents for the units occupied by lower income households of the housing or to reduce the rents for the units occupied by lower income households; and
3. The property receives either state or federal low-income housing tax credits or government financing, or 90 percent (90%) or more of the tenants are qualified low-income tenants.

Income eligibility must be verified annually and only units occupied by households with incomes at eighty percent (80%) of AMI or below and rented at affordable rents are eligible for the annual Welfare Exemption.

The City's Regulatory Agreement is one of the conditions necessary to qualify The Summit Apartments for a Welfare Exemption. The City and David Rosen & Associates (DRA), the City's finance and development consultant, were informed that the owners do receive and would plan to continue to obtain the Welfare Exemption. Based on the FY 2021-2022 secured property tax bill for the Project provided by the property Owner, the Project received an exemption for \$33.44M of the \$43.62M in the total property assessment, equivalent to a 76.7 percent reduction in total assessed value and ad valorem property taxes paid by the Project. For FY 2021-2022, at the 1.4595 effective ad valorem tax rate for the Project, this amounts to annual savings of approximately \$488,100 to help defray the cost of providing units at an affordable rent.

The City of Richmond receives 0.2851298 percent of the total one percent (1%) County property tax levy, along with a 0.14 percent ad valorem Richmond Pension Tax. As a result, the \$33.44M assessed value exemption results in an estimated loss of property tax to the City of \$142,178 in FY 2021-2022.

Proposed Amendment

The proposed Amendment to the Amended and Restated Regulatory Agreement would extend the term of the Former Agreement by another 30-years, ending on September 22, 2053, and would include an annual monitoring fee to be paid to the City equal to \$5,000 to reimburse the City for its costs of monitoring compliance with the Agreement.

CONCLUSION:

The Summit Apartments provides much needed affordable units in an area of the City where there is a low concentration of affordable units. City staff recommends that the amendment be approved to ensure these units remain affordable for another 30 years.

NEXT STEPS:

If approved, the amendment will be executed and recorded.

DOCUMENTS ATTACHED:

Attachment 1 – Resolution

Attachment 2 – Amendment to Amended and Restated Regulatory Agreement (2022)

Attachment 3 – Amended and Restated Regulatory Agreement (2003)