

March 6, 1995

Introduced: Pete von Reichbauer
Ron Sims

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Proposed No.: 95-139

MOTION NO. **9496**

A MOTION authorizing the Executive to enter into a Contingent Loan Agreement with the King County Housing Authority to provide assistance in the payment of bonds issued to finance the King County Housing Authority's purchase of Woodridge Park Apartments.

WHEREAS, it is anticipated that the King County Housing Authority (the Authority) will issue its 1995 Revenue Bonds (the Bonds) in an aggregate principal amount not to exceed five million dollars at any one time outstanding for the purpose of providing the funds necessary to finance the acquisition and rehabilitation of the Woodridge Park Apartments located at 12400-28th Avenue South, King County, Washington (the Project), and

WHEREAS, if King County agrees to loan the Authority funds, if and to the extent necessary to replenish the debt service reserve account maintained by the Trustee for the Bonds, the Authority will be able to obtain a lower interest rate on the bonds, and

WHEREAS, the Authority will be able to lower the rents on nine of the project's apartment units to make them affordable to households with incomes at 30% of the King County median if the Authority obtains the lower interest rate, and

WHEREAS, statistics show that approximately 35,891 households in King County are at 30% of the median income and are in need of housing assistance, and

WHEREAS, King County has established an interest in making available and/or preserving affordable housing for households whose incomes are at 30% of the median income by issuing Housing Opportunity Funds for this purpose, and

WHEREAS, RCW 35.83.050 provides that a county may lend

1 or donate money to a housing authority or agree to take such
2 action, and

3 WHEREAS, it is beneficial to King County and
4 particularly its low-income residents for King County to
5 assist the Authority in its issuance of the Bonds by entering
6 into such a contingent loan agreement for the Woodridge Park
7 Apartments project;

8 NOW, THEREFORE BE IT MOVED by the Council of King
9 County:

10 A. King County agrees to enter into a Contingent Loan
11 Agreement (the Agreement) with the Authority substantially in
12 the form attached hereto as Exhibit A. specifically for the
13 purpose of preserving and/or providing additional affordable
14 housing for households with incomes at 30% of the King County
15 median.

16 B. The Agreement will provide that King County will
17 make loans to the Authority as a last resort if and to the
18 extent necessary to replenish the debt service reserve
19 account maintained by the Trustee to the minimum required
20 level for the Bonds to pay debt service on the Bonds if and
21 only if there is a lack of sufficient revenues from the
22 Project and reserves and general revenues maintained by the
23 Authority are insufficient to make such debt service
24 payments.

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C. The amount available to the Authority under this resolution shall not exceed the principal amount of the Bonds and any such Refunding Bonds at any time outstanding plus interest due and unpaid on the Bonds.

PASSED by a vote of 13 to 0 this 13th day of March, 1995.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Kent Pullen
Chair

ATTEST:

Gerald A. Foster
Clerk of the Council

Attachments:

A. Contingent Loan Agreement

Exhibit A**Contingent Loan Agreement**

THIS CONTINGENT LOAN AGREEMENT (this "Agreement") by and between KING COUNTY, WASHINGTON (the "County"), and the Housing Authority of the County of King, a public body corporate and politic of the State of Washington (the "Authority");

WITNESSETH

WHEREAS, Revised Code of Washington ("RCW") Section 35.83.050 provides that a county may lend or donate money to a housing authority or agree to take such action; and

WHEREAS, the Authority, by its Resolution No. _____, adopted _____ 1995, authorized the issuance of the Authority's Housing Revenue Bonds, 1995 (Woodridge Park Apartments Project) (the "Bonds") in an aggregate principal and amount not to exceed \$5 million (\$5,000,000) for the purpose of providing the funds with which to finance the acquisition of a 201-unit apartment complex known as the Woodridge Park Apartments (the "Project") to provide a housing project for the Authority; and

WHEREAS, the County, by Motion No. _____, adopted _____, 1995 declared its intent to enter into a contingent loan agreement with the Authority to evidence the County's commitment to make loans to the Authority to the extent necessary to replenish the Reserve Account maintained by the Trustee, make up any deficiencies in the amounts provided by the Authority and to make payments of the principal of and interest on the Bonds when due; and approved the form and execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows.

ARTICLE I**Incorporation of Documents; Definitions**

Section 1.01. Incorporation of Documents. Copies of the Trust Indenture (including any amendments or supplements thereto, the "Indenture") between the Authority and _____, as Trustee, (the Trustee) relating to the Bonds and the Deed of Trust (as defined in the Indenture) are attached hereto as Exhibits A and B, respectively. The Authority shall not amend the Indenture or the Deed of Trust without the prior written consent of the County so long as this Agreement is in effect.

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Section 1.02 Definitions Unless the context clearly requires otherwise, the following terms shall have the respective meaning set forth below for all purposes of this Agreement:

Coverage Ratio means the ratio of Net Operating Income to Required Net Debt Service.

Eligible Maintenance Expenses means the cost of unforeseen repairs and improvements, and other expenses, that are necessary, in the opinion of the Executive Director of the Authority, for the viability of the Project.

Excess Revenue means, for the period from the Date of Issue to June 30, 1996, and for each twelve-month period ending on June 30 thereafter, the excess, if any, of Project Revenues for that period over the sum for that period of (1) Operation and Maintenance Costs, (2) Required Debt Service, (3) Trustee's fees and Rating Agency fees, if any, (4) the amount, if any, required to restore the balance in the Reserve Account to the Reserve Requirement, (5) the cost of Eligible Maintenance Expenses, and (6) the Authority Administrative Allowance.

General Revenues means all revenues (other than Project Revenues) of the Authority from any source, but only to the extent that those revenues are available to pay debt service on the Bonds and are not pledged, by law regulation, contract, covenant, deed of trust, mortgage or otherwise, to another particular purpose.

Investment Earnings means all earnings derived from the investment of money held in any of the Funds held by the Trustee under the Indenture.

Net Operating Income means Revenues other than Investment Earnings, less Operations and Maintenance Costs.

Operation and Maintenance Costs means all necessary costs to the Authority of operating and maintaining the Project, including but not limited to administrative and general expenses, costs of insurance (including reasonable contributions for self-insurance reserves, if any), consulting technical services and repairs and replacements (to the extent not properly classifiable as capital costs) and reasonable reserves therefor, but excluding depreciation (or reserves therefor), and amortization of intangibles or other bookkeeping entries of a similar nature. Operation and Maintenance Costs shall not include the Administrative Allowance, Eligible Maintenance Expenses or costs paid from reserves or from money disbursed from the Project Fund, or the general administrative expenses of the Authority.

Project Revenues means all amounts due to or received by the Authority or by the Trustee for the Authority's account pursuant or with respect to the Project, including

without limitation all lease payments, Insurance Proceeds, Condemnation Awards, and proceeds resulting from foreclosure of the Deed of Trust, and all Investment Earnings.

Refunding Bonds means any bonds issued to refund the Bonds, but only if the required debt service on those bonds does not exceed the Required Debt Service on the Bonds in any year, and if the maturity of those bonds does not extend beyond the maturity of the Bonds.

Required Debt Service means the amount required to pay principal of and interest on the Bonds when due, including amounts required for the mandatory redemption of Bonds and redemption of Bonds from Sale Proceeds pursuant to the Indenture but not including amounts in connection with the optional redemption or special redemption of Bonds from Excess Revenues pursuant to the Indenture.

Required Net Debt Service means, for any period, Required Debt Service for that period plus the amount of Trustee fees payable during that period less known investment income on amounts in the Reserve Account for that period and amounts in the Principal and Interest Account available during that period to pay Required Debt Service on the Bonds.

Reserve Account means the Reserve Account established in the Indenture.

Reserve Requirement means, with respect to the Bonds, an amount equal to the maximum annual debt service on the Bonds, including amounts required for the mandatory redemption of Term Bonds pursuant to the Indenture, initially \$ _____.

Trustee means _____, a national banking association organized and existing under the laws of the United States of America and having its principal place of business in Seattle, Washington, or its successor, as trustee under the Indenture.

All other capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Indenture.

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ARTICLE II

County Contingent Loan Agreement Fee

Section 2.01 County Contingent Loan Agreement Fee. The Authority shall make an additional nine (9) units of housing affordable to households with incomes at or below 30% of the County median income for a period of 35 years. These units are in addition to the 20 units to be made affordable at this income level by King County Housing Opportunity Funds awarded to the Authority for the Woodridge Park Apartments Project.

ARTICLE III

Loans to the Authority; Repayment Terms; Interest Rate; Limitation of Liability

Section 3.01. Loans to the Authority. The County agrees to lend to the Authority the principal amount equal to the greater of (1) the amount sufficient, together with Net Operating Income from the Project deposited with the Trustee and all general revenues to replenish the Reserve Requirement for the Bonds, and (2) the amount sufficient, together with Net Operating Income from the Project and other money, including money in the Reserve Account, on deposit with the Trustee, to pay principal of and interest on the Bonds when due. The Authority agrees to borrow the amounts described above from the County pursuant to this Agreement for the purpose of meeting its obligations under the Bonds and the Indenture.

The total amount of funds to be lent by the County pursuant to this Agreement shall not exceed the principal amount of the Bonds, plus interest due and unpaid by the Authority.

Section 3.02 Time of Loan. The loan shall be made at such time, as the Authority is unable, due to lack of Net Operating Income from the rental income from the Project, and/or lack of general reserves to replenish the Reserve Account to the Reserve Requirement for the Bonds, or if the money available to the Trustee under the Indenture is insufficient to pay the principal of the interest on the Bonds when due. The loan may be made in a series of principal advances.

Section 3.03 Repayment Terms. The loan shall be repaid on terms established at such time as funds are advanced. Such terms shall require the repayment of principal of such advance and interest thereon from the first available Revenues either from general revenues or the Project after payment of Operation and Maintenance Costs, debt service on the Bonds and Eligible Maintenance Costs, Rebate Amounts, if any, and the fees of the Trustee and the Rating Agency, if any, and after replenishing the Reserve Account.

Section 3.04 Interest Rate. The interest rate borne by each advance hereunder shall be the rate that represents the documented actual cost (including opportunity cost) to the County of making the loan to the Authority, but in no event shall the interest rate on any loan hereunder exceed 12% per annum. The County may in its discretion charge a lower rate of interest.

Section 3.05 Procedures. The Authority, or the Trustee on behalf of the Authority, shall, within two Business Days of any withdrawal from the Reserve Account, give written notice to the County of such withdrawal; which notice shall state the amount, if any, required to restore the Reserve Account to the Reserve Requirement for the Bonds. By the following *April 15th* the County shall deliver to the Trustee for deposit into the Reserve Account the greater of one-half of the amount(s) specified or the amount, together with other funds held by the Trustee, under the Indenture for the purpose, required to pay debt service on the Bonds, on the following *May 1st*, and shall deliver to the Trustee no later than *October 15th* of that year the greater of the balance of the amount(s) so specified or the amount, together with other funds held by the Trustee under the Indenture for the purpose, required to pay debt service on the Bonds in the following *November 1st*. The Authority also shall provide, with or prior to the submission to the County of the certificate requesting funds, an accounting of its operation of the Project, including cash flow projections and a loan repayment plan.

In the event of a deficiency in the amount available to the Trustee to pay principal of and interest on the Bonds when due as a result of acceleration of the Bonds or the mandatory redemption of Bonds on _____ because of the failure of the Authority to acquire the Project by _____, then immediately upon receipt of notice from the Trustee of such event (which notice is required by the Indenture to be given by _____) the County shall deposit with the Trustee, on behalf of the Authority, the amount required to make up such deficiency.

Section 3.06 Nature of Authority's Obligation. The obligation of the Authority to make the loan payments from the sources identified herein and to perform and observe the other obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise.

Section 3.07 Nature of County's Obligation. The County's obligation to advance funds to the Trustee on behalf of the Authority in the amounts, at the times and in the manner described herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The full faith, credit and resources of the County are pledge irrevocably for the payment to the Trustee, on behalf of the Authority, of the amounts described herein.

Section 3.08 County Budget. The County agrees that it will include in its budget for each fiscal year following the receipt by the County of notice under Section 3.05 that a deposit to the Reserve Account is required an amount equal to the deficiency in the Reserve Account to be made up by the County pursuant to this Agreement.

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Section 3.09 Termination of County's Obligations The obligations of the County hereunder shall terminate upon payment in full of the principal of and interest on all Outstanding Bonds.

ARTICLE IV

Authority Covenants and Agreements

Section 4.01 Debt Service Coverage Ratio The Authority has covenanted in the Indenture to maintain a Coverage Ratio of at least 1.1 to 1.0 on all Bonds Outstanding.

Section 4.02 Reports and Records. The Authority agrees to provide to the County upon request, within 30 days of the Authority's receipt or preparation of such documents, copies of the following:

- (1) the Authority's audited and unaudited financial statements;
- (2) all reports received by the Authority from the Trustee under Section _____ of the Indenture; and
- (3) all certificaties required to be given to the Trustee by the Authority under Sections _____ of the Indenture.

In addition, the Authority agrees that the County may have access to and inspect, examine and make copies of the books and records and any and all accounts and data of the Authority relating to the Project, including reports to the Authority from the manager of the Project.

Section 4.03 Payments to County. The Authority shall reimburse the County for all out-of-pocket costs, including attorneys' fees, incurred by the County in negotiating and entering into this Agreement

ARTICLE V

Remedies Upon Default

Section 5.01 Rights of County Upon Making Loans. If the County has made any loans to the Authority hereunder and such loans have not been repaid in full (whether or not the loan is in default), the County may take any one or more of the following steps:

- (a) The County may request that the Trustee accelerate the Bonds in accordance with Section _____ of the Indenture;

(b) If the Authority is in default in its repayment obligations with respect to any loans made to the Authority by the County hereunder (an "Authority Default") and if, and only if, the Bonds are no longer outstanding, the County may declare the entire principal balance of the loan (if not then due and payable) to be due and payable immediately, and upon any such declaration the principal of the loan shall become and be immediately due and payable, together with all interest accrued thereon to the date of such acceleration, anything in this Agreement to the contrary notwithstanding. The County may waive such Authority Default and may rescind and annul such declaration and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent Authority Default or impair the County's right incident thereto;

(c) The County may, but shall not be required to, appoint a manager (which may be a representative of the County) for the Project; and

(d) The County may proceed to protect and enforce its rights in equity or at law, either by way of mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the County may deem most effectual to protect and enforce any of its rights or interests hereunder.

Section 5.02 Remedies of Authority on Default. Upon the occurrence of default by the County in its obligations to make loans to the Authority hereunder (a "County Default") the Authority may proceed to protect and enforce its rights in equity or at law, either by way of mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the Authority may deem most effectual to protect and enforce any of its rights or interests hereunder.

Section 5.03 No Remedy Exclusive. No remedy conferred upon or reserved to either party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

Section 5.04 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

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Section 5.05 Agreement to Pay Attorneys' Fees and Expenses If a default arises under any of the provisions of this Agreement and either party hereto should employ attorneys or incur other expenses for the collection of amounts due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the other party contained in this Agreement, on demand therefor, the nonprevailing party shall pay or reimburse the prevailing party for the reasonable fees of such attorneys and such other expenses so incurred.

ARTICLE VI

Miscellaneous

Section 6.01 Governing Law: Venue. This Agreement is governed by and shall be construed in accordance with the laws of the state of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court, King County.

Section 6.02 Notices Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing and shall be sufficiently given if addressed and mailed by first-class, certified or registered mail, postage prepaid and return receipt request, as follows:

To the County

King County

King County Planning and Community Development Division
707 Smith Tower
506 Second Avenue
Seattle, WA 98104

Attention: Chief, Community Development Section

CC: Susan Slonecker, Deputy Prosecuting Attorney

To the Authority:

Housing Authority, County of King
15455 - 65th Avenue South
Seattle, WA 98188-2583
Attention: Executive Director

The County or the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. Notices shall be deemed served upon deposit of such notices in the United States mail in the manner provided above.

Section 6.03 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County and the Authority and their successors. This Agreement may not be assigned, except that the Authority shall have the right to assign to the Trustee its right to obtain funds from the County hereunder for the benefit of the owners of the Bonds.

Sections 6.04 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.05 Amendments; Termination; This Agreement may not be effectively amended, changed, modified or altered, except by an instrument in writing duly executed by the County and the Authority (or their successors in title). If the Bonds are rated by a rating agency, then no such amendment shall be permitted unless the Authority, or the Trustee on behalf of the Authority, has received written confirmation from the rating agency that such amendment will not result in a reduction or withdrawal of the rating on the Bonds. If the Bonds are not rated by a rating agency, then no such amendment will be permitted unless in the opinion of the Trustee such amendment will not adversely affect the owners of the Bonds. This Agreement may not be terminated until the Bonds have been paid in full or defeased, unless the County has assumed all liability for payment of the principal of and interest on the Bonds when due and shall have pledged its full faith and credit to such payment.

Section 6.06 Waiver of Breach No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

Section 6.07 No Rights Created in Third Parties. The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the County, the Authority and the respective successors and assigns of each.

Section 6.08 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

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Section 6.09 Termination of Agreement. This Agreement shall terminate upon payment in full of all principal of and interest on the Bonds.(or defeasance thereof pursuant to Article __ of the Indenture).

Section 6.10 Refunding Bonds. If the Authority issues Refunding Bonds at any time, all references in this Agreement to "Bonds" shall be deemed to be references to "Refunding bonds" for all purposes.

Section 6.11 Execution in Several Counterparts. This Agreement may be executed in counterparts and each such counterpart shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Authority and the County shall preserve undestroyed, shall together constituted but one and the same instrument.

Section 6.12 Refunding Bonds. If the Authority issues Refunding Bonds at any time, all references in this Agreement to "Bonds" shall be deemed to be references to "Refunding Bonds" for all purposes.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the County and the Authority have caused this Agreement to be executed in their respective names by their duly authorized officers, and have caused this Agreement to be dated as of _____.

KING COUNTY, WASHINGTON

By _____
King County Executive

HOUSING AUTHORITY, COUNTY OF KING

By _____
Executive Director