

AMENDMENT TO PROMISSORY NOTE

This document (the "Amendment") amends and entirely supercedes that certain Promissory Note between Gainesville Community Redevelopment Agency ("Borrower," "CRA") and City of Gainesville ("Lender," "CITY"), executed by the parties on August 3 and August 12, 1998, respectively.

For value received, the Gainesville Community Redevelopment Agency, by and through its undersigned agent, Wayne Bowers, Executive Director, promises to pay to the City of Gainesville the principal sum of Sixty Thousand Dollars and no cents, with interest thereon from the date the sum is paid to the Borrower, due as described in the **PAYMENTS** paragraphs below.

INTEREST RATE

A fixed rate of six and one-half percent per annum, shall be applied to the principal balance outstanding and any previously unpaid or underpaid interest. Interest shall be calculated on the basis of a 360 day year for actual days elapsed.

PAYMENTS

This loan will be paid from tax increment proceeds (hereinafter referred to as the "tax increment proceeds") from the redevelopment of parcels numbered 12755, 12777, 12778, 12779 and 12780, which parcels are part of Phase III of the Arlington Square Apartments. Such tax increment proceeds will be pledged to the repayment of this promissory note and will not be used for any other purpose in any year until this promissory note has been paid in full, including interest accruing hereunder.

Beginning July 31, 2002, annual payments equal to the tax increment proceeds are due from CRA to the City through July 31, 2012, for a total of 11 payments. There will be a final payment due on July 31, 2013, consisting of the remaining unpaid principal balance of the loan plus all unpaid interest accruing through that date. Regardless of any prior negative amortization, or underpaid or unpaid amounts, CRA agrees that the loan will be settled in full as of July 31, 2013.


In each of the years 2002 through 2012, the entire amount of the tax increment proceeds will be paid toward the loan and will be applied first to interest, computed on an annual basis, and then to principal. Should any payment be insufficient to repay the interest calculated for the related year, such unpaid interest will be added to the outstanding principal balance.

The City acknowledges that CRA made payments for the years 2000 and 2001 in the amount of \$10,150 each year under the previous promissory note referenced above. The City agrees to apply the terms of this Amendment retroactively to these first two payments, and to repay the excess payment amounts for the two years in question to the CRA upon execution of this Amendment.

GENERAL TERMS

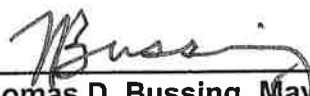
This note is not payable on demand. Borrower may repay the note in full at any time without penalty by paying all interest accrued to date and the outstanding principal balance. Borrower may also make additional payments at any time. Any such payments will be applied first to unpaid, accrued interest and then to principal.

For the Gainesville Community Redevelopment Agency




Wayne Bowers, Executive Director 9-25-02
Date

For the City of Gainesville



Thomas D. Bussing, Mayor 9/25/02
Date



Kurt Lamm, Clerk of the Commission 9/25/02

approve the proposed amendment to the Interest Rate Buy Down Program for Historic Commercial Property Rehabilitation in the Gainesville Enterprise Zone.

A motion was made by Mayor-Commissioner Pro Tem Hanrahan, seconded by Commissioner Nielsen, that this matter be Approved as Recommended. The motion carried by the following vote:

Votes: Aye: Chuck Chestnut, Warren Nielsen, Pegeen Hanrahan and Tom Bussing
Abstain: John R. Barrow

OUTSIDE AGENCIES

002694 Arlington Square Phase III Loan Repayment (B)

RECOMMENDATION *CRA to the City Commission: 1) recommend the City restructure the existing debt retroactively to a 15-year repayment; 2) authorize the City to issue the CRA a refund on overpayments; 3) authorize the Mayor to execute the note; and 4) authorize the Clerk to attest.*

A motion was made by Mayor-Commissioner Pro Tem Hanrahan, seconded by Commissioner Chestnut, that this matter be Approved as Recommended. The motion carried by the following vote:

Votes: Aye: Chuck Chestnut, Warren Nielsen, Pegeen Hanrahan and John R. Barrow
Nay: Tom Bussing

MEMBERS OF THE CITY COMMISSION

COMMISSION COMMENTS (if time available)

General Manager for Utilities Mike Kurtz/Fire Chief Richard Williams

002749 Report on Wildfires Affecting Murphree Well Field (B)

RECOMMENDATION *The City Commission hear a report from the General Manager for Utilities Mike Kurtz and Fire Chief Richard Williams regarding the wildfires near the Murphree Well Field.*

Heard

Commissioner John Barrow

Goals and Objectives of the City Commission



City of Gainesville

Master Report

City Hall
200 East University Avenue
Gainesville, Florida 32601

File Number: 002611

File Number: 002611

File Type: Staff Recommendation

Status: To Be Introduced

Version: 0

Reference:

Controlling Body: Community
Redevelopment
Agency

File Name: Arlington Square Phase III Loan Repayment (B)

Introduced: 4/15/2002

Requester:

Cost:

Final Action: 4/15/2002

Notes:

Title: Arlington Square Phase III Loan Repayment (B)

Indexes:

Sponsors:

Attachments:

History of Legislative File

Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
Community Redevelopment Agency	4/15/2002	Approved as Recommended				Pass

Action Note: CRA Manager Karen Slevin gave a presentation.

Vice-Chair Chestnut recognized Downtown Redevelopment Advisory Board Chair Linda McGurn and Developer Nathan Collier who spoke to the matter.



City of Gainesville Text File Report

City Hall
200 East University Avenue
Gainesville, Florida 32601

Introduced: 4/15/2002

File Number: 002611

Version: 0

Status: To Be Introduced

..Title

Arlington Square Phase III Loan Repayment (B)

..Explanation

On September 19, 1998, the CRA and the Arlington Square Wisteria Downs Limited Partnership, entered into a Downtown New Construction Incentive Package Development Agreement that provided Arlington Square \$60,000 in incentives. On August 12, 1998 the CRA borrowed \$60,000 at 6.5% interest with a ten year term from the City of Gainesville to facilitate the development of the Arlington Square Phase III project. Payments of \$10,150 were to be made from the actual increment created by the five dedicated parcels beginning in July 2000 and running through July 2008. To date two of these annual payments have been made and one is budgeted for payment in July 2002. During 2000-2001 the increment from the dedicated parcels came to only \$6,102. The loan agreement allows for partial payments, and states that each year the payment is applied first to the interest that has accrued. While it is reasonable to expect that the increment on these parcels will rise, it is unlikely that it will reach the \$10,150 mark in the near future. Based on the current increment collection rate, it is anticipated that it will take the CRA seventeen years to repay this loan to the City.

Section IV.C. of the Development Agreement includes in paragraph one a clause that states, "In the event that the annual tax increment revenues generated by the Project are less than the annual principal and interest payment on the Grantor's loan, the Grantee will personally guarantee to pay any shortfall." Based on this clause staff sent Arlington Square a request for payment of the \$4,048 shortfall for 2000-2001.

Section IV.C. of the Agreement in paragraph two has a second clause that states " the grantor may elect to structure a loan repayment schedule that is adjustable to the amount of the tax increment generated by the project over a fifteen year period." In this case, if the tax increment revenues generated by the Project over a 15 year period are insufficient to repay the loan, the Grantee will personally guarantee and pay any shortfall.

On October 4, 2001 Nathan Collier and David A. Materna of Paradigm Properties addressed the Downtown Redevelopment Advisory Board about the \$4,048 shortfall in this year's Arlington Square loan payment. Representatives from Arlington Square stated at the DRAB meeting that it was always their understanding that this was to be a 15-year repayment from increment. They cited the references to 15 years in Section IX, Alterations, and Section X, Maintenance, to support their point. The recorded restrictive covenants have a 15 year term and contain a provision that the developer can remove the covenants by paying the CRA \$4,000 per year for any of the remaining portion of the 15 year term or any outstanding principal on the City loan, whichever is greater.

In order to resolve this issue the CRA can request the City to restructure the existing debt retroactively to a 15-year repayment and authorize the City to issue the CRA a refund on overpayments. With the extended time frame the increment may be adequate to cover the annual payments. If the loan is not paid off by the end of the 15 years, the developer is required by the Development Agreement to pay any outstanding balance.

..Fiscal Note

The CRA and City would increase the payment stream to 15 years. The cost to the CRA will be the tax increment from the five parcels for 15 years. Any additional payments will be the responsibility of the developer.

..Recommendation:

Downtown Redevelopment Advisory Board to the CRA: Upon review of the note, DRAB feels that either of the



City of Gainesville Text File Report

City Hall
200 East University Avenue
Gainesville, Florida 32601

following interpretations would be appropriate: 1) Intended to be a 15 year payback of the grant award and that the grantee would guarantee it at the end of the 15 years; or 2) the current note could be paid solely from the tax increment and the grantee would make sure it is paid in full at the end of 15 years.

Executive Director to CRA: Recommend the City restructure the existing debt retroactively to a 15 year repayment and authorize the City to issue the CRA a refund on the overpayments for the first two years.

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GENERAL TERMS

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For the Gainesville Community Redevelopment Agency

Wayne Bowers, Executive Director

Date

For the City of Gainesville

Thomas D. Bussing, Mayor

Date

IV. Loan / Grant Amount

A. Loans or grants provided under the Program (hereinafter referred to as the Grant Award) are limited to the amount necessary for the Project to be financially feasible. If provided as a lump sum (described in Paragraph B below), the Grant Award under this Program is also limited to the amount the Grantor can borrow against the future tax increment revenues from the Project as provided under the Program and/or in accordance with applicable CRA policies.

Attached to this agreement as Exhibit "A" is the documentation submitted by the Grantee to demonstrate that the Project is not financially feasible without the Grant Award, and that but for that Grant Award, the Project would not be constructed. By attaching Exhibit "A" and making it a part of this Agreement the Grantee is attesting and affirming that the Project is not financially feasible without the Grant Award, and but for that Grant Award, the Project would not be constructed. The Grant Award amount is \$60,000.

B. The Grant Award shall be made as a lump sum grant. Lump sum Grant Award shall be paid only after a certificate of occupancy is issued on the Project and the CRA has inspected the project to determine that all work is consistent with the Exhibit "A".

C. If the Grantor successfully borrows the money to fund the Grant Award in accordance with this Agreement, the repayment of the Grantor's loan is to be from the tax increment revenues generated by the Project. In the event that the annual tax increment revenues generated by the Project are less than the annual principal and interest payment on the Grantor's loan, the Grantee will personally guarantee to pay any shortfall. Any annual shortfall would be calculated by the Grantor in January of each calendar year and would be payable by the Grantee by June of the same calendar year.

If the Grantor successfully borrows the money to fund the Grant Award, the Grantor may elect to structure a loan repayment schedule that is adjustable to the amount of tax increment revenues generated by the Project over a fifteen year period. In this case if the tax increment revenues generated by the Project over a fifteen year period are insufficient to repay the loan, the Grantee will personally guarantee and pay any shortfall. That shortfall would be calculated in January of the fifteenth year and would be payable by the Grantee by June of the same year.

V. Project Plans

If the Project plans are substantially changed, as determined by the Grantor, at any time prior to or after construction commencement, they shall be resubmitted to the Grantor prior to commencement of the construction of those changes. The Grantor shall review the amended Project plans within five days of receipt to determine if the changes (1) are anticipated to reduce the anticipated tax increment revenues to be generated by the Project, and/or (2) affect any of the uses provided for under the residential element of the Program.

The Grantor shall so notify the Grantee of any findings within three working days. If any changes would result in a (1) reduction in the amount of the Grant Award, and/or (2) disqualification of the Grantee from receiving a Grant Award, the Grantee shall have 15 days to amend the Project plans accordingly and resubmit them to the Grantor.

If substantial changes are made by the Grantee, as determined by the Grantor, without the Grantor's prior consent, those changes shall not be eligible for a Grant Award.

VI. Project Completion Timeline; Default; Termination

A. By acceptance of the Grant Award under this program, the Grantee acknowledges and agrees that the Project will be completed and be issued a certificate of occupancy by the 30th day of September, 1998. *December*

B. If the Grantor is not in default, there shall be a default by the Grantee if the Grantee fails to perform or comply with any material provision of this Agreement, or the Grantee does not complete construction of the Project by as provided in Paragraph A above. *MB*



September 28, 2001

To: Downtown Redevelopment Advisory Board

From: David A. Materna, Vice President of the General Partner
The Arlington Square/Wisteria Downs Limited Partnership

Re: Request for \$60,000 Grant Repayment Schedule Resolution

In 1998 the Gainesville City Commission approved a Community Redevelopment Agency (CRA) Downtown New Construction Incentive Package Development Agreement granting \$60,000 to The Arlington Square/Wisteria Downs Limited Partnership for the construction of 13 additional apartments at Arlington Square. It was our understanding that the \$60,000 was to be repaid out of property tax increment revenues over 15 years. We cite:

- From the agreement: "If the Grantor successfully borrows the money to fund the Grant Award, the Grantor may elect to structure a loan repayment schedule that is adjustable to the amount of tax revenues generated by the Project over a fifteen year period. In this case if the tax increment revenues generated by the project over a fifteen year period are insufficient to pay the loan, the Grantee will personally guarantee and pay any shortfall."
- Further in the agreement: "Except as otherwise provided in this Agreement, this Agreement shall expire 15 years from the date that a Certificate of Occupancy is issued on the Project by the City of Gainesville."
- From the accompanying Restrictive Covenants: "The Owner agrees that these restrictions shall encumber the property for a period of 15 years..."

In spite of this clear intent of a 15-year agreement, in August of 1998 the City executed a 10-year loan to the CRA, resulting in a \$10,150 annual payment. We agreed to cover any shortfall, under the premise that the City would structure a 15-year repayment period as stated throughout the agreement and in the covenants.

With the 10-year note that the City selected, however, in 2000 there was a shortfall of \$4,048, which the CRA has recently billed us for. Upon our objection, the CRA cited its authority in the word "may," as in "the Grantor *may* elect to structure a loan repayment schedule...over a fifteen year period."

We believe that the CRA's interpretation is a stretch, and that it does not engender trust between the City and downtown Gainesville's business owners and investors. Therefore, The Arlington Square/Wisteria Downs Limited Partnership asks that the DRAB request the CRA to require the Grantee to make up the difference only between the tax increment and a 15-year loan amortization as per the agreement. Should the DRAB concur with a 10-year schedule, we request that the property be released from all restrictions/covenants/agreements at the end of the current 10-year loan amortization.

Back
↑
TURN TO

RESTRICTIVE COVENANTS

THESE COVENANTS are entered into this 19th day of October, 1998, by The Arlington Square / Wisteria Downs Limited Partnership, hereinafter referred to as "the Owner," as required by the City of Gainesville Community Redevelopment Agency, hereinafter referred to as "Grantor," and shall be effective for a period of 15 years from the date of recordation by the Clerk of the Circuit Court of Alachua County, Florida.

WHEREAS, the Owner is the fee simple title holder of the Property located at: 207 Southeast 2nd Place, Gainesville Florida, as described in Exhibit A, attached to and made a part hereof, and

WHEREAS, the Owner is to receive Residential Incentive Grant Program funds administered by Grantor in the amount of \$60,000, to be used for the construction of residential units situated on the property of the Owner described in Exhibit A;

NOW, THEREFORE, as part of the consideration for the grant, the Owner hereby makes and declares the following restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for the period stated in the preamble above:

1. The Owner agrees to maintain the property so that it continues to be used for residential purposes as described in the Residential Incentive Grant Program documents.

2. The Owner agrees that these restrictions shall encumber the property for a period of 15 years from the date of recordation, and that if the restrictions are violated within the 15 year period, the Grantor shall be entitled to liquidated damages from the Owner pursuant to the following schedule:

amount of grant times (number of units converted from residential/ total number of units) times (number of years left in period/number of years in period)

Owner may terminate this covenant by returning to the Grantor a sum equal to \$4,000 per year for each year or portion thereof of the 15 year period which has not expired at the time of the termination, or any outstanding principal on Grantee's debt obligation in procuring the Grant Award, whichever is greater.

3. The Owner agrees to file these covenants with the Clerk of the Circuit Court of Alachua County, Florida, and shall pay any and all expenses associated with their filing and recording.

4. The Owner agrees that the Grantor shall incur no tax liability as a result of these restrictive covenants.

CIRCUIT COURT OF
J. K. "Buddy" Ir
ALACHUA COUNTY,
Date 10/19/1998
Document ID
Book/Page 219

IN WITNESS WHERE, the Owner has read these restrictive covenants and has affixed its signature.

WITNESSES:

Evelyn m Pardee

Evelyn m. Pardee
Witness Name Typed/Printed

Brooks Lindberg

BROOKS LINDBERG
Witness Name Typed/Printed

Nathan S. Collier, Pres. Gen. Partner
The Arlington Square /
Wisteria Downs Ltd. Partnership
POB 13116
Gainesville, FL 32604

STATE OF FLORIDA
COUNTY OF Alachua

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that Nathan S. Collier, personally appeared as President of the General Partner for The Arlington Square / Wisteria Downs Limited Partnership known to me to be or proved to my satisfaction to be the person described in and who executed the foregoing instrument.

Type of Identification Produced personally known to me

Executed and sealed by me at Gainesville, Florida, on October 19, 1998.



MaryEvanWeber
Notary Public

My commission expires: _____

EXHIBIT "A"

A PARCEL OF LAND LOCATED IN BLOCK 2 OF INGRAM'S ADDITION AS RECORDED IN PLAT BOOK "A", PAGE 11 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A SET NAIL AND DISK (#3524) MARKING THE NORTHWEST CORNER OF BLOCK 2, OF INGRAM'S ADDITION AS PER PLAT BOOK "A" PAGE 11 FOR THE POINT OF BEGINNING, THENCE NORTH $88^{\circ}55'16''$ EAST A DISTANCE OF 65.00 FEET TO A FOUND REBAR AND CAP MARKING THE NORTHWEST CORNER OF PARCEL "C" AS PER O.R. 1292, PAGE 429, THENCE CONTINUE NORTH $88^{\circ}55'16''$ EAST A DISTANCE OF 84.99 FEET TO A FOUND 1" IRON PIN MARKING THE NORTHWEST CORNER OF PARCEL "E" AS PER O.R. 1716, PAGE 2850, THENCE CONTINUE NORTH $88^{\circ}55'16''$ EAST A DISTANCE OF 20.03 FEET TO A FOUND REBAR AND CAP MARKING THE NORTHEAST CORNER OF SAID PARCEL "E", THENCE ALONG THE EAST LINE OF SAID PARCEL SOUTH $01^{\circ}49'13''$ EAST A DISTANCE OF 99.99 FEET TO A FOUND REBAR AND CAP (#3765) MARKING THE SOUTHEAST CORNER OF SAID PARCEL "E", THENCE SOUTH $88^{\circ}55'00''$ WEST A DISTANCE OF 169.97 FEET TO A SET NAIL AND DISK (#3524) MARKING THE SOUTHWEST CORNER OF PARCEL "B" AS PER O.R. 1708, PAGE 2091, THENCE ALONG THE WEST LINE OF SAID PARCEL "B" NORTH $01^{\circ}50'55''$ WEST A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.39 ACRES MORE OR LESS.

