

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Riverton Properties, Inc.	:	
	:	AFFIDAVIT OF MAILING
to Review a Determination under Article 11 of the	:	
Tax Law with reference to an Indenture of Mortgage	:	
and Deed of Trust Recorded May 16, 1972.	:	

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Riverton Properties, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Riverton Properties, Inc.  
c/o Goldstein, Goldman, Kessler & Underberg  
1800 Lincoln First Tower  
Rochester, NY 14604

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of November, 1981.

\_\_\_\_\_  
*Kathy Pfaffenbach*

STATE OF NEW YORK  
STATE TAX COMMISSION

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Edward T. Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward T. Miller  
Secretary of Housing & Urban Development  
c/o New Community Development Corp.  
451 Seventh St., S.W.  
Washington, D.C. 20410

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of November, 1981.

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*Kathy Pfaffenbach*

STATE OF NEW YORK  
STATE TAX COMMISSION

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and Deed of Trust Recorded May 16, 1972. :

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Marine Midland Bank - Rochester the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marine Midland Bank - Rochester  
One Marine Midland Plaza  
Rochester, NY 14604

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of November, 1981.

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*Kathy Pfaffenbach*

STATE OF NEW YORK  
STATE TAX COMMISSION

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Lucien A. MillerMorin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lucien A. Morin  
Monroe County Director of Finance  
Monroe County Office Building  
Rochester, N.Y. 14614

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of November, 1981.

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*Kathy Pfaffenbach*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

November 6, 1981

Riverton Properties, Inc.  
c/o Goldstein, Goldman, Kessler & Underberg  
1800 Lincoln First Tower  
Rochester, NY 14604

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Edward T. Miller  
Secretary of Housing & Urban Development  
c/o New Community Development Corp.  
451 Seventh St., S.W.  
Washington, D.C. 20410

See Attached for Additional Representatives

Taxing Bureau's Representative

Additional Representatives:

Marine Midland Bank - Rochester  
One Marine Midland Plaza  
Rochester, New York 14604

Mr. Lucien A. Morin  
Monroe County Director of Finance  
Monroe County Office Building  
Rochester, New York 14614

Arthur Maxwell  
Associate Mortgage and Land Use Tax Examiner  
State Campus, Room 208, Building #9  
Albany, New York

## STATE TAX COMMISSION

1. Riverton Properties, Inc., a New York business corporation ("Riverton") was a developer of a 2200 acre new community called "Riverton" in Monroe

County, New York. Riverton was provided guarantee assistance pursuant to Part B of the Urban Growth and New Community Development Act of 1970, Title VII of the Housing and Urban Development Act of 1970, 42 U.S.C. §4511-4532 (1970), as amended.

2. Riverton made and entered into a certain Indenture of Mortgage and Deed of Trust as of May 2, 1972 ("Mortgage") with Marine Midland Bank-Rochester, Trustee, a New York banking company. The Mortgage was filed for record in the Office of the Clerk of the County of Monroe, State of New York, on May 16, 1972 and filed in Liber 3474 of Mortgages at Page 80. There have been three supplements to that Mortgage executed by those same parties for such purpose: the First Supplemental Indenture of Mortgage and Deed of Trust dated as of December 11, 1972 and recorded on that date in Liber 3504 of Mortgages at page 39; the Second Supplemental Indenture and Deed of Trust dated as of March 19, 1973 and recorded on that date in Liber 3620 of Mortgages at page 172; and the Third Supplemental Indenture and Deed of Trust dated as of November 25, 1974 and recorded on that date in Liber 3920 of Mortgages at page 148.

3. The language at page 2 of the Mortgage provided:

"That the Company [Riverton], in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Debentures by the holders thereof and of the sum of one dollar lawful money of the United States to it duly paid by the Trustee, the receipt whereof is hereby acknowledged, in order to secure the United States against any liability under any Guarantee and against any failure by the Company to keep, perform and observe all terms, conditions, provisions, covenants and agreements of this Indenture, by these presents does hereby give, grant, bargain, sell, release, convey, alien, assign, confirm, transfer, mortgage, warrant, pledge and set over unto Marine Midland Bank--Rochester, as Trustee, and unto its successors in the trust created hereby and to them and their assigns forever, all the right, title and interest of the Company in and to the following:



GRANTING CLAUSE FIRST

All the real property situated in the County of Monroe, New York, described in Schedule A hereto... (emphasis supplied).

4. Section 5.07 of the Mortgage required Riverton to "cause title insurance to be maintained... naming the Trustee for the benefit of the Secretary as the insured party...". On May 16, 1972 The Monroe Abstract and Title Corporation issued its mortgagee's title insurance policy no. 62, 246-A to Marine Midland Bank - Rochester, as Trustee, under the Indenture of Mortgage and Deed of Trust from Riverton Properties, Inc. to Marine Midland Bank - Rochester, Trustee, dated as of May 2, 1972 for the benefit of the Secretary of Housing and Urban Development.

5. When the Mortgage was submitted for recording to the Clerk of Monroe County, a mortgage recording tax in the amount of \$90,000.00 was advanced and duly paid by Riverton to the Monroe County Clerk.

6. A formal application for refund of such \$90,000.00 of mortgage recording tax paid was submitted in acceptable form and timely manner by counsel on behalf of Riverton on or about May 3, 1976, and such application has been perfected and is the subject of this hearing before the New York State Tax Commission. An answer to the petition deemed perfected was duly filed by the Department of Taxation and Finance on or about April 28, 1978, denying the refund on the ground that the mortgage is between private parties.

7. Riverton also executed a certain Indenture of Mortgage and Deed of Trust between Riverton and Marine Midland Bank - Rochester, Trustee, dated as of November 25, 1974 ("Second Mortgage") in relation to a debt obligation in the principal amount of four million dollars sold to the Federal Financing Bank, an agency of the United States. At the time that Second Mortgage was filed by Riverton with the Clerk of Monroe County for recording, Riverton

advanced and duly paid a mortgage recording tax in respect of such instrument. Riverton applied for and recovered a refund of that tax payment on the stated grounds that the secured party was an agency of the United States which was exempt from the tax.

8. At the time of execution of the Mortgage, Riverton entered into a certain Project Agreement with the United States dated as of May 2, 1972 relating to the Riverton Project and, inter alia, containing a covenant by the United States to guarantee debentures issued pursuant to the Mortgage. That Project Agreement was amended and superseded by a Project Agreement between Riverton and the United States dated as of November 25, 1974, also relating to the Riverton project, and inter alia, containing a covenant by the United States to guarantee the First Debt Obligation pursuant to the Second Mortgage. The Project Agreements required Riverton to mortgage its real estate for the benefit of the United States.

9. An Offering Circular was issued by Riverton on May 2, 1972 in connection with its issuance and public sale of \$12 million principal amount of United States Government Guaranteed New Community Debentures.

10. Pursuant to a Notice of Declaration of Acceleration of United States Government Guaranteed New Community Debentures of Riverton Properties, Inc. 7.125 percent due May 15, 1987, dated November 16, 1977, the United States paid the Debentures (and the First Debt Obligation) in full on December 16, 1978. By Agreement dated May 15, 1978, Marine Midland Bank (formerly Marine Midland Bank - Rochester), Trustee, assigned all of its rights and obligations to the United States and exchanged mutual releases with the United States. Pursuant to a Settlement Agreement between the United States and Riverton dated September 14,

1978, Riverton executed an assignment to the United States dated December 18, 1978 with respect to the subject mortgage recording tax refund claim.

CONCLUSIONS OF LAW

A. That a mortgage to which the United States is a party is not subject to the mortgage recording tax since there is an implied immunity from any form of taxation by state and local governments, unless the enabling Federal statute permits such taxation. There are no provisions in the Urban Growth and New Community Development Act of 1970 waiving the immunity of the United States from the imposition of a mortgage recording tax.

B. That the mortgage from Riverton to the Marine Midland Bank, Trustee constituted a mortgage solely for the benefit of the United States on real property owned by Riverton in Monroe County, New York, and not for the benefit of the owner or holder of any debenture.

C. That the Marine Midland Bank in its capacity as trustee under the mortgage was not holding the mortgage for its own benefit or for the benefit of the debenture holders.

D. That the Marine Midland Bank in its capacity as trustee under the Mortgage was acting as an agent or instrumentality of the United States in connection with the recording of the mortgage and is entitled to the same immunity from the imposition of the mortgage recording tax that the United States was entitled to.

E. That the United States has taken a mortgage in return for its promise to pay the debentures in the event of a default by Riverton.

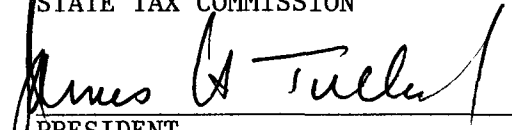
F. That the petition of Riverton is granted. After audit by the Comptroller, the Clerk of the County of Monroe is directed to refund the sum of \$90,000.00 from mortgage tax monies in his hands, or which shall come into his hands, to

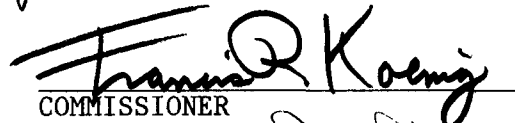
the party entitled to receive it and charge such amount back to the State,  
public benefit corporation or tax district, as the case may be, that was  
credited with same.

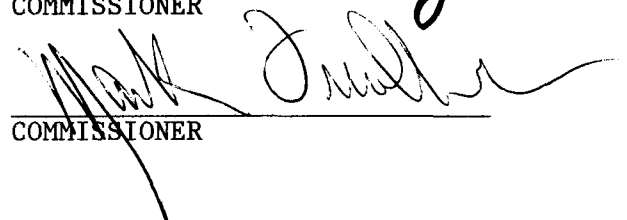
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER