

**RESOLUTION NO. 2016-122**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
APPROVING A CONDITIONAL LOAN COMMITMENT OF FIVE MILLION DOLLARS  
(\$5,000,000) FROM THE CITY'S AFFORDABLE HOUSING FUND FOR THE BOW  
STREET APARTMENTS AFFORDABLE HOUSING DEVELOPMENT BY PACIFIC  
WEST COMMUNITIES, INC.**

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

**WHEREAS**, the City's affordable housing development impact fee provides financial resources to promote and assist in the development of new affordable housing in the City; and

**WHEREAS**, the Affordable Housing Fund (AHF) may be used to provide assistance with new rental residential development costs for low-income and very low-income housing; and

**WHEREAS**, Pacific West Communities, Inc., in partnership with Pacific Housing, Inc. and Kelley Ventures, LLC, propose to develop a ninety-eight (98) unit affordable housing project, including one unrestricted unit available for the full-time property manager or the maintenance supervisor, known as Bow Street Apartments (the "Project"), and has submitted a request for gap financial assistance from the City to help achieve financial feasibility for the Project and maximize the affordability of project units; and

**WHEREAS**, the use of the City's housing funds in the manner described below will be of benefit to the City in assisting in the development of affordable housing opportunities for low- and very low-income households; and

**WHEREAS**, the proposed Project would provide housing that furthers the goals and policies of the City's General Plan Housing Element in a manner consistent with the state-mandated Regional Housing Needs Allocation requirement determined by the Sacramento Area Council of Governments for the City; and

**WHEREAS**, the Affordable Housing Committee on June 8, 2016, completed an independent review of the loan application and underwriting, and recommended that the Council approve a loan commitment of \$5 million for the Project, pursuant to defined loan terms; and

**WHEREAS**, the Project qualifies as a project under the California Environmental Quality Act (CEQA), Public Resource Code §§21000 et seq.; and

**WHEREAS**, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) of Title 14 of the California Code of Regulations (State CEQA Guidelines) provides an exemption from CEQA for projects that are consistent with the applicable General Plan and Zoning for which an EIR was certified.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove finds that no further environmental review is required under the California Environmental Quality Act for the Project pursuant to State CEQA Guidelines Section 15183 based upon the following finding:

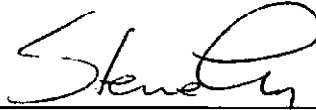
Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15183 (Consistency with a General Plan, Community Plan, or Zoning for Which an EIR was Prepared).

Evidence: CEQA Guidelines Section 15183 (Public Resources Code §21083.3), provides that projects which are consistent with a Community Plan, General Plan, or Zoning for which an environmental impact report (EIR) has been certified "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." An EIR was prepared and certified by the City Council as part of the City's General Plan Housing Element Update in 2014 (SCH 2013082012), which included the Project site in the analysis. Additionally, an EIR was certified by the City Council for the adoption of the City of Elk Grove General Plan in 2003 (SCH 2002062082).

No potential new impacts related to the Project have been identified that would necessitate further environmental review beyond the impacts and issues already disclosed and analyzed in the General Plan EIR and the 2014 Housing Element Update EIR. No other special circumstances exist that would create a reasonable possibility that the Project will have a significant adverse effect on the environment. Therefore, the Project, and the approval of the required Density Bonus to approve concessions required to develop the Project, qualifies for the exemption under CEQA Guidelines Section 15183 and no further environmental review is required.

**AND, BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove hereby approves the Conditional Loan Commitment request for the Project and does hereby determine that the City shall conditionally loan up to five million dollars (\$5,000,000) to the Project, subject to the terms and conditions of the Loan Term Sheet attached hereto as Exhibit A and incorporated herein by reference.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 22<sup>nd</sup> day of June 2016.



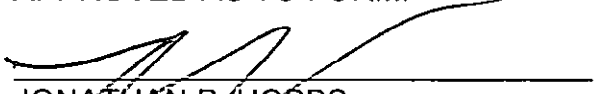
STEVE LY, VICE MAYOR of the  
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,  
CITY ATTORNEY

**EXHIBIT A**  
**Loan Term Sheet: Bow Street Apartments**  
**June 22, 2016**

		Proposed Term																																	
<b>Lender</b>	City of Elk Grove ("City")																																		
<b>Borrower</b>	Limited partnership to be created for this Project ("Developer")																																		
<b>Loan Amount</b>	\$5,000,000																																		
<b>Funding Source</b>	Affordable Housing Fund																																		
<b>Interest Rate</b>	4% interest per annum																																		
<b>Term</b>	37 years. Balance due on sale. For amount due on refinancing, see "Refinancing" section.																																		
<b>Purpose</b>	<p>Construction and operation of a 98-unit affordable apartment project (commonly known as Bow Street Apartments, or "Project") that is deed-restricted by means of a Regulatory Agreement for 55 years.</p> <p>The affordability mix is as shown:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Affordability Level (% of AMI)</th> <th rowspan="2">Total Units</th> <th colspan="3">Number of Bedrooms</th> </tr> <tr> <th>1BD</th> <th>2BD</th> <th>3BD</th> </tr> </thead> <tbody> <tr> <td>30%</td> <td>10</td> <td>2</td> <td>5</td> <td>3</td> </tr> <tr> <td>45%</td> <td>25</td> <td>7</td> <td>12</td> <td>6</td> </tr> <tr> <td>50%</td> <td>40</td> <td>10</td> <td>20</td> <td>10</td> </tr> <tr> <td>60%</td> <td>22</td> <td>5</td> <td>11</td> <td>6</td> </tr> <tr> <td>Unrestricted</td> <td>1</td> <td>-</td> <td>1</td> <td>-</td> </tr> </tbody> </table> <p>*AMI is the area median income, adjusted for household size.</p> <p>Two 30% AMI units, one two-bedroom and one three-bedroom unless otherwise approved by the City, shall be restricted to households exiting one of the City's approved transitional housing projects.</p> <p>The unrestricted unit must be occupied by either the full-time property manager or the maintenance supervisor. Project amenities must include a community building with computer room and exercise equipment, play area, bike racks, benches, and covered and lighted parking.</p>		Affordability Level (% of AMI)	Total Units	Number of Bedrooms			1BD	2BD	3BD	30%	10	2	5	3	45%	25	7	12	6	50%	40	10	20	10	60%	22	5	11	6	Unrestricted	1	-	1	-
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	<b>Proposed Term</b>
<p><b>Disbursements as follows:</b></p> <ol style="list-style-type: none"> <li>40% when the Project's framing inspection for all buildings is certified as complete by the City's Building Official, and provided that Developer has posted payment and performance bonds for the full amount of the construction contract.</li> <li>20% when the Project has received temporary Certificates of Occupancy for all buildings and the City has received proof of unconditional lien releases for general contractor or proof to City's satisfaction that Developer has posted a bond, at Developer's expense, from which to pay any judgment later entered against Developer or the property as a result of the lien, and proof of clear title to the satisfaction of the City; any bond issued pursuant to this section shall be in an amount sufficient to fully satisfy the lien, plus other recoverable costs and attorneys' fees resulting from a judgment against Developer.</li> <li>20% when the Project has received final Certificates of Occupancy for all buildings and the City has received proof of unconditional lien releases for general contractor or proof to City's satisfaction that Developer has posted a bond, at Developer's expense, from which to pay any judgment later entered against Developer or the property as a result of the lien, and proof of clear title to the satisfaction of the City; any bond issued pursuant to this section shall be in an amount sufficient to fully satisfy the lien, plus other recoverable costs and attorneys' fees resulting from a judgment against Developer.</li> <li>10% upon receipt of (1) submittal to the City of the Project's Cost Certification prepared and signed by a third party CPA, (2) a final construction inspection by City confirming that the Project was constructed and completed in the manner and form approved by City (amount provided to be less any cost savings as described further in the "Cost Savings" section), and 3) the City has received proof of unconditional lien releases for all subcontractors or proof to City's satisfaction that Developer has posted a bond, at Developer's expense, from which to pay any judgment later entered against Developer or the property as a result of the lien, and proof of clear title to the satisfaction of the City; any bond issued pursuant to this section shall be in an amount sufficient to fully satisfy the lien, plus other recoverable costs and attorneys' fees resulting from a judgment against Developer.</li> <li>10% when the Project has achieved ninety-five (95) percent occupancy for a minimum of ninety (90) days ("Project Stabilization"). This amount shall be held in a non-interest bearing escrow account at the City as an operating reserve, over which the City has joint signing authority until Project Stabilization.</li> </ol>	<p><b>Timing of Funding</b></p>
<p><b>Annual Payments</b></p>	<p>There will be an annual asset management and compliance monitoring fee of \$8,000 payable to the City subject to</p>

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	<b>Proposed Term</b>
	<p>availability of Residual Cash Flow and prior to any payments to Developer or General Partners.</p> <p>In Years 1-15, payments will be made annually in an amount equal to 50% of Residual Cash Flow less \$8,000 annually.</p> <p>In Years 16-36, payments will be made annually in an amount equal to 50% of Residual Cash Flow annually.</p> <p>In Year 37, the full loan balance is due and payable.</p> <p>Residual Cash Flow is defined as all rental and other income generated by the Project after:</p> <ol style="list-style-type: none"> <li>1. Payment of the following operating expenses for the project:               <ol style="list-style-type: none"> <li>a. Property management fee not to exceed 5.0% of the Project's effective gross income;</li> <li>b. Advertising, legal, accounting, security, and other general office administration expenses;</li> <li>c. Utilities;</li> <li>d. Payroll expenses and payroll taxes;</li> <li>e. Maintenance, repairs, grounds, pool, and turnover costs;</li> <li>f. Property insurance;</li> <li>g. Taxes and assessments;</li> <li>h. Costs of social service programs offered to residents;</li> </ol> </li> <li>2. Cash deposited into a reserve for capital replacements in the Project and/or an operating reserve in such reasonable amounts as are required by the Project lenders and/or tax credit investor;</li> <li>3. Payment of senior loan debt service; and</li> <li>6. Payment of asset management fees to the tax credit investor (not to exceed \$5,000), the Managing General Partner (not to exceed \$9,800), and the City (\$8,000 per Annual Payments section above).</li> </ol>
<b>Balloon Payment</b>	<p>At the expiration of the loan term, 100% of the principal balance of the loan and all accrued interest will be due.</p>
<b>Refinancing</b>	<p>City approval shall be required for any proposed refinancing, including of the senior permanent financing.</p> <p>In the event of refinancing that provides cash proceeds to the Developer, the Developer shall be required to pay down the loan balance by the net cash proceeds received by the Developer, or, if the total outstanding balance of the loan is less than the net cash proceeds received by the Developer, then the total balance due to the City.</p>

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	<b>Proposed Term</b>
<p align="center"><b>Security</b></p>	<p>City loan will be secured by a deed of trust junior to construction and permanent financing sources set forth.</p> <p>The City loan will be in second position, behind senior permanent financing in the amount of \$2,800,000. City approval shall be required for any changes to the senior loan, with such approval not to be unreasonably withheld.</p> <p>City will also obtain a corporate or personal guarantee from Pacific West Communities, Inc., individual partner(s) identified in the final partnership agreement, or other person or entity acceptable to City, for full and prompt payment of any loss, damage, liability, action, cause of action, cost, or expense incurred by City as a result of, and to the extent of, 1) fraud or material gross misrepresentation, 2) intentional bad faith waste, 3) losses resulting from Developer's failure to properly maintain insurance, and/or 4) gross misappropriation of any of the rents, security deposits, loan proceeds, insurance proceeds, condemnation awards, or any other proceeds derived from the collateral security.</p>
<p align="center"><b>Bidding/Procurement</b></p>	<p>All construction subcontracts must be competitively and publicly bid, with a minimum of three qualified bids for each trade or subtrade. Developer to provide all bid records to City upon request. Developer must make a reasonable effort to secure a minimum of three qualified bids, including by publicly publishing notices related to bid opportunities in local or regional newspapers and providing plans and bid documents online. Developer shall provide City with a list of all bids received by Developer, including the name of the bidder and contact information, and the bid details.</p> <p>Awards to any firm other than the lowest responsive and responsible bidder, in cases where the selected firm's bid exceeds the lowest responsive and responsible bid by more than 20 percent, must be approved in advance by the City. Procurement of non-construction goods and services shall be substantiated by a minimum of three cost estimates for like items for all purchases over \$75,000; if the lowest-cost provider is not selected, written justification must be provided. City shall respond to such requests for approval within ten (10) business days of receipt of said request and shall not withhold approval unreasonably.</p> <p>For each instance of non-compliance with this term, Developer shall pay liquidated damages in the amount of \$5,000. The amount of liquidated damages shall be deducted from the available City loan amount.</p>

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	<b>Proposed Term</b>
<b>Change Orders</b>	<p>Written authorization from City for all change orders and/or line item budget adjustments of \$75,000 or more for construction and \$25,000 or more for soft costs is required. City shall respond to such request for approval within ten (10) business days of receipt of said change order and shall not withhold approval unreasonably.</p> <p>In the event that the Developer approves change orders or other line item budgets adjustments in excess of the above-noted amounts and without the City's written authorization prior to approval, Developer will pay liquidated damages in the amount of the unauthorized amount, plus 5% administrative cost, not to exceed \$5,000 per incident. The amount of liquidated damages shall be deducted from the available City loan amount.</p>
<b>Cost Savings</b>	<p>If, at the completion of the project development, there are net "cost savings" as a result of acquisition and construction costs lower than anticipated in the Project's approved Financing Plan (as will be further defined in the loan agreement between Developer and City) and which are not compensated by downward adjustments to the tax credit financing, permanent mortgage principal, or other approved sources, City shall be entitled to receive 100% of such cost savings, which will be used to reduce the balance of the loan to the extent allowed by the California Tax Credit Allocation Committee.</p>
<b>Bonding</b>	<p>Payment and performance bonding will not be required on the construction, assuming the City does not provide funding during construction and the senior lender's loan documents do not obligate the City to fund any portion of the project cost prior to issuance of final Certificates of Occupancy. Unconditional lien releases or proof to City's satisfaction that Developer has posted a bond, at Developer's expense, from which to pay any judgment later entered against Developer or the property as a result of the lien and satisfactory evidence of clear title will be accepted in lieu of payment and performance bonding for the purposes of the loan documents; any bond issued pursuant to this section shall be in an amount sufficient to fully satisfy the lien, plus other recoverable costs and attorneys' fees resulting from a judgment against Developer. Payment and performance bonding may be required for construction of public improvements per City policy and State law.</p>
<b>Developer Fee</b>	<p>Limited to amount proposed by Developer, which is \$1,400,000. Developer not to take any portion of the developer fee until Project Stabilization and permanent loan closing.</p>
<b>Insurance</b>	<p>Developer, Project, and Pacific West Communities, Inc. must carry insurance that meets the requirements of Attachment B of the Request for Proposals due on March 4, 2016. Additionally, insurance proceeds must be used wholly to repair or rebuild property in the event of damage.</p>

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<b>Reporting</b>	<p>Developer will provide the City with monthly financial and occupancy reporting. Audited financial statements demonstrating compliance with the formula for the distribution of cash flow as described in the "Annual Payments" section of this term sheet will be due not later than the first month of the second quarter of the year following the reporting year. Failure to comply with the reporting requirements will result in liquidated damages of \$500 per violation per month, provided that Developer has failed to cure the non-compliance within 30 days from written notice from City.</p>
<b>Conditions</b>	<p>The funding of the City loan is conditioned on the following:</p> <ol style="list-style-type: none"> <li>1. The Project has secured the unconditional commitment of all funding sources necessary to develop the Project pursuant to the pro forma, including the construction loan, the permanent loan, and 9% tax credit equity financing (or such substantially similar substitute financing may be available from the California Tax Credit Allocation Committee).</li> <li>2. The Developer has maintained clear title to the property to the satisfaction of the City.</li> <li>3. The Developer and City have agreed as to the form of loan documents and have each executed the documents.</li> <li>4. All insurance requirements are met.</li> <li>5. An as-built appraisal that meets the Affordable Housing Loan Program Guidelines requirements has been submitted.</li> </ol>
<b>Commitment Length</b>	<p>City loan commitment terminates after the earlier of: a) denial of award of 9% tax credit equity financing in three consecutive application rounds, the first of which is June 29, 2016, or b) December 31, 2017.</p>
<b>Regulatory Agreement</b>	<p>Developer shall enter into a Regulatory Agreement, in a form provided by the City, which will include an affordability covenant to be recorded against the property for the Project requiring that the units remain affordable at levels consistent with the affordability mix in the "Purpose" section. The Regulatory Agreement must remain against the property for the full term, even in the event of foreclosure by the senior lender.</p>



**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2016-122**

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


*I, Jason Lindgren, 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 June 22, 2016 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**        *Ly, Detrick, Hume, Suen*

**NOES:**        **COUNCILMEMBERS:**        *None*

**ABSTAIN :**    **COUNCILMEMBERS:**        *None*

**ABSENT:**     **COUNCILMEMBERS:**        *Davis*

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**