

RESOLUTION NO. 2014-25

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING THE TERMS OF A CONDITIONAL LOAN COMMITMENT FOR THE
AVERY GARDENS APARTMENTS AFFORDABLE HOUSING DEVELOPMENT**

WHEREAS, Pacific West Communities, Inc., in partnership with Pacific Housing, Inc. and Mike Kelley, an individual, propose to develop a sixty-four (64) unit affordable housing project, including one unrestricted unit available for the full-time property manager or the maintenance supervisor, known as Avery Gardens Apartments (the "Project"), and have 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, Resolution No. 2013-122 authorized a conditional loan commitment of \$2 million from the Affordable Housing Fund and/or Very Low Income Housing Trust Fund for the Avery Gardens affordable housing development; and

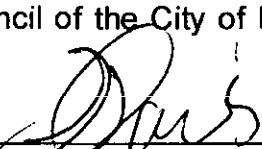
WHEREAS, Resolution No. 2013-122 included, as Exhibit A, a loan term sheet; and

WHEREAS, subsequent to the adoption of Resolution No. 2013-122, the provision of a corporate or personal guarantee covering loan payments was determined by the applicant to be problematic from a tax and/or business perspective, and the applicant has represented that the inclusion of the guarantee in its current form would effectively cause the project to be financially infeasible; and

WHEREAS, staff has proposed an alternate provision to the satisfaction of Pacific West Communities, Inc.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby approves an amendment to Exhibit A of Resolution No. 2013-122, as noted in the amended Loan Term Sheet attached hereto and incorporated herein by reference.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 12th day of February 2014.



GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A
Loan Term Sheet: Avery Gardens Apartments
June 26, 2013 – Amended February 12, 2014

	Term																																	
Lender	City of Elk Grove (“City”)																																	
Borrower	Limited partnership to be created for this Project (“Developer”)																																	
Loan Amount	\$2,000,000																																	
Funding Source	Affordable Housing Fund and/or Very Low Income Housing Trust Fund																																	
Interest Rate	4% interest per annum																																	
Term	35 years. Balance due on sale. For amount due on refinancing, see “Refinancing” section.																																	
Purpose	<p>Construction and operation of a 64-unit affordable apartment project (commonly known as Avery Gardens, 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: 20px;"> <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>3</td> <td>4</td> <td>3</td> </tr> <tr> <td>45%</td> <td>7 13</td> <td>2</td> <td>4 7</td> <td>1 4</td> </tr> <tr> <td>50%</td> <td>32 26</td> <td>4 5</td> <td>19 12</td> <td>9</td> </tr> <tr> <td>60%</td> <td>14</td> <td>3 2</td> <td>7 9</td> <td>4 3</td> </tr> <tr> <td>Unrestricted</td> <td>1</td> <td>-</td> <td>1-</td> <td>1</td> </tr> </tbody> </table> <p>*AMI is the area median income, adjusted for household size.</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, swimming pool, play area, bike racks, and benches.</p>	Affordability Level (% of AMI)	Total Units	Number of Bedrooms			1BD	2BD	3BD	30%	10	3	4	3	45%	7 13	2	4 7	1 4	50%	32 26	4 5	19 12	9	60%	14	3 2	7 9	4 3	Unrestricted	1	-	1-	1
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Timing of Funding	<p>Disbursements as follows:</p> <ol style="list-style-type: none"> 1. 80% when the Project has received final Certificates of Occupancy for all buildings and proof of clear title to the satisfaction of the City. 2. 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, and 3) the City has received proof of unconditional lien releases for all subcontractors and proof of clear title to the satisfaction of the City. 3. 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.
Annual Payments	<p>In Years 1-15, payments will be equal to \$5,000.</p> <p>In Years 16-34, payments will be equal to 50% of Residual Cash Flow or the amounts noted below, whichever is lower, provided that the annual payment is no lower than amount paid the previous year:</p> <p>Years 16-20: \$10,000 Years 21-25: \$15,000 Years 26-30: \$20,000 Years 31-34: \$25,000</p> <p>In Year 35, 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"> 1. Payment of the following operating expenses for the project: <ol style="list-style-type: none"> a. Property management fee not to exceed 5.0% of the Project's effective gross income; b. Advertising, legal, accounting, security, and other general office administration expenses; c. Utilities; d. Payroll expenses and payroll taxes; e. Maintenance, repairs, grounds, pool, and turnover costs;

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	Term
	<ul style="list-style-type: none"> f. Property insurance; g. Taxes and assessments; h. Costs of social service programs offered to residents; <ul style="list-style-type: none"> 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; and 3. Payment of senior loan debt service. 4. Payment of asset management fee to tax credit investor and nonprofit partnership management fee, in an amount not to exceed \$11,500 and only when/if required by tax credit investor or nonprofit partner.
Balloon Payment	At the expiration of the loan term, 100% of the principal balance of the loan and all accrued interest will be due.
Refinancing	<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 City shall receive 50% of the net cash proceeds not directly reinvested in the project, not to exceed the current payoff balance of the loan.</p>
Security	<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 \$1,875,000 \$2,000,000. City approval shall be required for any changes to the senior loan, with such approval not to be unreasonably withheld.</p> <p>Unless prohibited by law, 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 1) payment of all principal and interest due annually if cash flow from Project is insufficient to make required payment(s), and 2) unpaid principal and interest due at the end of the loan term.</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</p>

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	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.
Bidding/Procurement	All construction subcontracts must be competitively bid. Developer will provide a list of proposed construction subcontractors to the City and consider changes upon City request, with justification to be provided. Awards to any firm other than the lowest responsive and responsible bidder must be approved in advance by the City.
Change Orders	All change orders and/or line item budget adjustments of \$75,000 or more require City approval. Requests shall be considered approved 10 business days after submittal unless City objects to the change or adjustment.
Bonding	Payment and performance bonding will not be required on the construction, assuming the City does not provide funding during construction. Unconditional lien releases and satisfactory evidence of clear title will be accepted in lieu of payment and performance bonding for the purposes of the loan documents. Payment and performance bonding may be required for construction of public improvements per City policy and State law.
Developer Fee	Limited to amount proposed by Developer, \$1,887,859. Developer not to take any portion of the developer fee until Project Stabilization and permanent loan closing.
Insurance	Developer, Project, and Pacific West Communities, Inc. must carry insurance that meets the requirements of Attachment B of the Request for Proposals released on April 1, 2013. Additionally, insurance proceeds must be used wholly to repair or rebuild property in the event of damage.
Reporting	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 be considered a default in the loan terms, when reasonable notice has been provided and a cure period of 30 days has elapsed.

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Conditions	<p>The funding of the City loan is conditioned on the following:</p> <ol style="list-style-type: none"> 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). 2. The Developer has maintained clear title to the property to the satisfaction of the City. 3. The Developer and City have agreed as to the form of loan documents and have each executed the documents. 4. All insurance requirements are met. 5. An as-built appraisal that meets the Affordable Housing Loan Program Guidelines requirements has been submitted.
Commitment Length	<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 July 3, 2013, or b) December 31, 2014.</p>
Regulatory Agreement	<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. Developer will work in good faith to secure a senior lender that will accept a term allowing the Regulatory Agreement to remain against the property for the full term, even in the event of foreclosure. Additionally, regardless of the position of the Regulatory Agreement, the Developer commits to work in good faith with the City and the senior lender to facilitate the survival of the Regulatory Agreement in the event of foreclosure by the senior lender.</p>

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2014-25**

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 February 12, 2014 by the following vote:

AYES : COUNCILMEMBERS: Davis, Cooper, Detrick, Hume, Trigg

NOES: COUNCILMEMBERS: None

ABSTAIN : COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None


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