

Loan Term Sheet: Villages at Bilby II

Draft | June 2, 2021

	Proposed Term																																	
Lender	City of Elk Grove (“City”)																																	
Borrower	Limited partnership to be created for this Project (“Owner” or “Developer”)																																	
Loan Amount	\$2,000,000																																	
Funding Source	Affordable Housing Fund																																	
Interest Rate	4% simple interest per annum																																	
Term	City loan to have a term of 37 years. Balance due on sale. For amount due on refinancing, see “Refinancing” section.																																	
Purpose	<p>Construction and operation of a 62-unit affordable apartment project (commonly known as Villages at Bilby II, 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; border-collapse: collapse; text-align: center;"> <thead> <tr style="background-color: #cccccc;"> <th rowspan="2">Affordability Level (% of AMI)</th> <th rowspan="2">Total Units</th> <th colspan="3">Number of Bedrooms</th> </tr> <tr style="background-color: #cccccc;"> <th>1BD</th> <th>2BD</th> <th>3BD</th> </tr> </thead> <tbody> <tr> <td>30%</td> <td>7</td> <td>3</td> <td>2</td> <td>2</td> </tr> <tr> <td>40%</td> <td>10</td> <td>4</td> <td>3</td> <td>3</td> </tr> <tr> <td>50%</td> <td>25</td> <td>10</td> <td>7</td> <td>8</td> </tr> <tr> <td>60%</td> <td>20</td> <td>7</td> <td>7</td> <td>6</td> </tr> <tr> <td>Unrestricted</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> </tr> </tbody> </table> <p style="margin-left: 20px; font-size: small;">*AMI is the area median income, adjusted for household size.</p> <p>Owner commits to working with the City to address homelessness, including by implementing a policy moving homeless Elk Grove households to the top of the waitlist for any vacant unit for which they are qualified.</p> <p>Owner shall (1) perform annual income certifications or recertifications and adjust unit affordability accordingly; and (2) provide City, within 14 days of City’s request, copies of any annual income certifications or recertifications. For example, this means that a household initially living in a 30% AMI unit and whose household income rises to 50% AMI</p>	Affordability Level (% of AMI)	Total Units	Number of Bedrooms			1BD	2BD	3BD	30%	7	3	2	2	40%	10	4	3	3	50%	25	10	7	8	60%	20	7	7	6	Unrestricted	-	-	-	-
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	<p>would have their rent adjusted to the 50% AMI level, and the next available unit would be made available to a household earning 30% AMI. Nothing in this policy shall require Owner to violate any regulation of the California Low Income Housing Tax Credit (LIHTC) Program, but it is understood that this requirement may be beyond what is required by the LIHTC Program.</p> <p>Project amenities must include a bocce ball court, bike racks, benches, a central lawn area, and covered and lighted parking. Residents shall have reciprocal access to all amenities located at Villages at Bilby Phase I.</p> <p>On-site social services must include provision of resident support for no less than 15 hours per week, including up to 10 hours per week of after-school programming. A resident services coordinator (or equivalent position) must be on-site weekly and available by phone on weekdays. The social services provider shall conduct a resident needs assessment at initial move-in and every 18-24 months thereafter, and submit a social services plan to the City for approval biennially. Social services provider will provide reports to the City at least quarterly containing qualitative and quantitative data on activities offered and resident participation in activities. On-site social service programming may be run concurrently with such programming for Villages at Bilby I, provided equal access to services is offered to residents of this Project.</p>
Timing of Funding	<p>Disbursements as follows:</p> <ol style="list-style-type: none"> 1. 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. 2. 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 attorney’s fees resulting from a judgment against Developer. 3. 20% when the Project has received final Certificate 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 post 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 attorney’s fees resulting from a judgment against Developer.

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	<p>4. 10% upon (1) approval by 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, or expiration of the lien period has occurred with no liens filed that have not been bonded for 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.</p> <p>5. 10% when the Project has achieved “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.</p> <p>“Project Stabilization” will be defined as:</p> <ol style="list-style-type: none"> 1. Physical occupancy of no less than 95% of all units; 2. Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 95%; and 3. Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.20 (inclusive of all amortizing debt payments).
Annual Payments	<p>Following completion of construction, annual payments equal to 50% of Residual Cash Flow.</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; f. Property insurance; g. Taxes and assessments; h. Costs of social service programs offered to residents;

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	<ol style="list-style-type: none"> 2. Cash deposited into the Project’s Replacement Reserve and/or Operating Reserve in such amounts as are required by the Project lenders (including the City) and/or tax credit investor (including a requirement that if drawn, operating reserves must be replenished prior to any distributions of cash flow); 3. Cash deposited into escrow for property taxes and/or insurance as may be required by any of the Project Lenders; 4. Payment of senior loan debt service; 5. Payment of asset management fees to the tax credit investor limited partner in an amount no greater than \$5,000 per annum starting in the first year the project receives a certificate of occupancy; 6. Payment of asset management fees to the Managing General Partner of the project partnership in an amount no greater than \$100 per unit per annum with payments starting in the first year the project receives a certificate of occupancy; and, 7. Payment of the deferred developer fee, if any. <p>Note: All payments not specified above, including those to General Partner(s), Limited Partner(s), or parties related thereto, and including but not limited to asset management fees, incentive fees, monitoring or oversight fees, and performance fees will be “below the line” and payable only from Residual Cash Flow.</p> <p>Further, any identity of interest costs (e.g. use of a related party management company, vendor, or the like) included within the Project’s annual operating budget must be disclosed and approved by the City as necessary and reasonable.</p>
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	City approval shall be required for any proposed refinancing, including of the senior permanent financing.

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Security	<p>City loan will be secured by a deed of trust, UCC filing, and assignment of rents and leases 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 approximately \$2,500,000. City approval shall be required for any changes to the senior loan, with such approval not to be unreasonably withheld.</p> <p>Excluding the investor limited partner, Riverside Charitable Corporation, Kelley Ventures, LLC, and Mike Kelley, City will require joint and several corporate and personal guarantees from the underlying corporate and individual owners of the general partner(s), member(s), or other controlling entities of the Owner, the individual owners of any “shell entities” engaged in the ownership of the Owner and its partner(s), member(s), or other controlling entities and from any other guarantors required by the other financing sources investing in the Project, including without limitation Pacific West Communities, Inc., TPC Holdings IX, LLC, and Caleb Roope (excluding The Roope Family Trust).</p> <p>Required guarantees will include:</p> <ol style="list-style-type: none">1. An absolute guarantee of project completion;2. A guarantee of replacement reserve deposits; and3. A guarantee 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, i) fraud or material gross misrepresentation, ii) intentional bad faith waste, iii) losses resulting from Owner/Developer’s failure to properly maintain insurance, iv) gross misappropriation of any of the rents, security deposits, loan proceeds, insurance proceeds, condemnation awards, or any other proceeds derived from the collateral security; and/or v) unauthorized disbursements of Residual Cash Flow. <p>The absolute guarantee of project completion and the guarantee of replacement reserve deposits will each include a provision to the following effect:</p> <p>In the event any provision contained in this Guaranty causes Owner to violate any regulation of the LIHTC Program or causes Owner to be disqualified from receiving any federal or state tax credits through the LIHTC Program, such provision shall be deemed unenforceable and the remaining provisions of this Guaranty shall remain in full force and effect.</p>

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Bidding/Procurement	<p>All construction subcontracts must be competitively and publicly bid, with a minimum of three qualified bids for each trade or subtrade. Owner to provide all bid records to City upon request. Owner 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. Owner must also advertise bid opportunities via the Sacramento Regional Builder's Exchange and the Sacramento Housing and Redevelopment Authority's MBE/WBE/Section 3 contractors list. Owner shall provide City with a list of all bids received by Owner, including the name of the bidder and contract 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 15%, 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 \$50,000; 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>The parties agree that if Owner breaches this term, it will be impracticable or extremely difficult to determine the damages suffered by the City. It is therefore agreed that (1) upon the second instance of Owner's failure to comply with this term, Owner shall pay the City the sum of \$2,500 as liquidated damages, and (2) upon the third instance of Owner's failure to comply with this term, and for each additional instance of non-compliance thereafter, Owner shall pay the City the sum of \$5,000 as liquidated damages. The amount of liquidated damages set forth herein shall be deducted from the available City loan amount.</p>
Change Orders	<p>Written authorization from City for all change orders and/or line item budget adjustments of \$75,000 or more for construction costs 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>The parties agree that if Owner approves change orders or other line item budget adjustments in excess of the above-noted amounts and without the City's written authorization prior to approval (each, a "Change Order Violation"), and such violation is irreversible or remains uncured, it will be impracticable or extremely difficult to determine the damages suffered by the City. It is therefore agreed that (1) upon the occurrence of the first Change Order Violation, Owner shall pay the City liquidated damages in the amount of the unauthorized amount of the applicable change order, (2) upon the occurrence of the second Change Order Violation, Owner shall pay the City liquidated damages in the amount of the unauthorized amount of the applicable change order, plus the lesser of 5% administrative cost or</p>

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	<p>\$2,500, and (3) upon the occurrence of each Change Order Violation thereafter, Owner shall pay the City liquidated damages in the amount of the unauthorized amount of the applicable change order, plus the lesser of 5% administrative cost or \$5,000. The amount of liquidated damages set forth herein shall be deducted from the available City loan amount.</p>
Cost Savings	<p>If, at the completion and stabilization of the project development, there are excess proceeds as a result of a reduction in total development costs or a net increase in other permanent sources compared to the Project's approved Financing Plan after considering all final sources of funding and adjustments thereto that have been reasonably approved by the City (as will be further defined in the loan agreement between Owner and the City), City shall, at its option, be entitled to reduce its permanent loan to the project by 100% of such excess proceeds or approve the deposit of such an amount to the Project's Replacement Reserve. In the event the City has fully disbursed its loan prior to the Project's completion, the Owner will make a one-time payment credited against the principal balance of the loan (i.e. effectively treating that portion of the City loan as construction lending only). In determining whether to require a reduction in the permanent loan, the City will consult with the California Tax Credit Allocation Committee to evaluate the implications under the QAP and scoring procedures.</p>
Bonding	<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>
Developer Fee	<p>Limited to the lesser of \$2,190,000, 10% of total development costs (less the fee itself), or the developer fee approved by TCAC. In the event of increases in the total development cost, the developer fee will not be increased proportionately.</p>

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Insurance	<p>Owner, Project, and Pacific West Communities, Inc. must carry insurance that meets the requirements of Attachment B of the Request for Proposals due on March 24, 2021. Further, the City retains the right to update insurance requirements (e.g. coverage limits) for its Affordable Housing Program from time to time. The Project must agree to comply with any such updates so long as those requirements are reasonable and consistent with standards applied to affordable housing projects financed with LIHTC.</p> <p>Additionally, insurance proceeds must be used wholly to repair or rebuild property in the event of damage except for those insurance proceeds specifically allocated for covering rent loss or loss of tax credits due to the casualty, as long as defined as a separate benefit in the policy.</p>
Reporting	<p>Initially, Owner 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 Owner has failed to cure the non-compliance within 30 days from written notice from City.</p> <p>Additionally, the City reserves the right to reasonably alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, to address findings related to noncompliance by the Project, or to standardize reporting requirements across its portfolio of assisted projects.</p>
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 Owner has maintained clear title to the property to the satisfaction of the City. 3. The Owner 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. 6. The City has executed loan documents, including a Regulatory Agreement, for the Villages at Bilby I and that project is in compliance with the loan documents and either built or under construction.

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Commitment Length	City loan commitment terminates after the earlier of: a) denial of award of 9% tax credit equity financing in five consecutive application rounds, the first of which is July 2, 2021, or b) December 31, 2023.
Regulatory Agreement	Owner 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, senior to all liens and junior only to the TCAC LURA, 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, binding against all successors in interest, for the full term, even in the event of foreclosure by the senior lender.
Reserves	<p>Owner must establish and shall maintain an Operating Reserve Account and a Replacement Reserve Account (collectively, the Reserve Accounts). All Reserve Accounts shall be held in interest-bearing segregated accounts held in banks or credit unions fully licensed to do business in the State of California and insured to the maximum limit of either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA) as applicable. Any interest earned on the Reserve Accounts shall remain within the Reserve Accounts.</p> <p>All Reserve Accounts shall remain in place through the restriction period notwithstanding any change in ownership and in no circumstances may be disbursed for “exit taxes” upon any future transfer of limited partner interests.</p> <p>Any withdrawal or transfer from the Reserve Accounts shall require the written approval of the City, by and through its designee. The City’s approval or request for additional information to substantiate the need for the withdrawal or transfer shall be provided within ten (10) business days of its receipt of a request for such action. Owner must establish the Reserve Accounts to require the signature of the City’s designee and Owner for all withdrawals and transfers. Further, Owner shall authorize the financial institutions in which Reserve Accounts are held to provide the City, upon request, verified statements reflecting account balances and transactions. All reserve accounts may be jointly controlled by all third party lenders and the tax credit investors.</p> <ol style="list-style-type: none"> 1. Operating Reserve Account: Not later than receipt of 8609s, Owner shall fund and maintain an Operating Reserve Account of not less than three months of underwritten operating expenses, replacement reserve deposits, and debt service. After Project Stabilization, the Operating Reserve Account may be used to pay operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose. Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees. If drawn upon, the Operating Reserve Account must be replenished to its required minimum balance prior to distributions of Residual Cash Flow.

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	<p>2. Replacement Reserve Account: Owner shall fund a Replacement Reserve Account with annual deposits in the first year following construction completion (which may be prorated based on the actual date of completion) equal to \$250 per unit. In subsequent years, the deposit to the Replacement Reserve shall be increased by 3.5% annually. Disbursements from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.</p> <p>Prior to a Transfer Event, Owner shall submit to the City a Qualified Capital Needs Assessment. The entity which shall own the project subsequent to the Transfer Event (the "Post Transfer Owner") shall covenant to the City that the Post Transfer Owner (and any assignee thereof) shall:</p> <ol style="list-style-type: none">1. Set aside at the closing of the Transfer Event adequate funds to perform the Short Term Work;2. Perform the Short Term Work within three years from the date of the Transfer Event;3. Make deposits to reserves as are necessary to fund the Long Term Work, taking into account any balance in replacement reserve accounts upon the conclusion of the Transfer Event beyond those required by Section 1 of this clause; and4. Complete the long term work when required, or prior thereto, pursuant to the Qualified Capital Needs Assessment. <p>For purposes of this section, the following terms shall have the following meanings:</p> <ol style="list-style-type: none">1. "Qualified Capital Needs Assessment" shall mean a capital needs assessment for the property dated within one hundred eighty (180) days of the proposed Transfer Event which is prepared by an independent third-party architect, engineer, or other qualified firm approved by the City and clearly sets forth (1) the capital needs of the project for the next three (3) years (the "Short-Term Work") and the projected costs thereof, and (2) the capital needs of the project for the subsequent twelve (12) years (the "Long Term Work") and the projected contributions to reserves that will be needed to accomplish that work.2. "Transfer Event" shall mean (1) a transfer of the ownership of the project, (2) the sale or assignment of a partnership interest in Owner and/or (3) the refinancing of secured debt on the project. The following shall not be deemed a Transfer Event: (1) the transfer of the project or a partnership interest in Owner in which reserves remain with the project and the debt encumbering the project is not increased, refinanced or otherwise modified, (2) the refinancing of project debt which does not increase the outstanding principal balance of the debt other than in the amount of the closing costs and fees paid to the project lender and third

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	<p>parties as transaction costs, provided that reserves remain with the project, (3) the replacement of a general partner by a limited partner upon the occurrence of a default by a general partner in accordance with partnership agreement of the project owner, or (4) a transfer pursuant to a foreclosure or deed in lieu of foreclosure to a non-related party.</p>
Operating Budget Oversight	<p>Prior to the beginning of its fiscal year, Owner shall submit a proposed operating budget to the City for review and approval. The proposed budget must i) identify any identity of interest or related party costs if the management company is an affiliate of the Owner, ii) compare the proposed budget to the prior year's (or trailing 12 month) actual operating costs, and iii) provide explanations of substantive changes in the budget.</p>
Distributions of Residual Cash Flow	<p>Owner shall not make distributions of Residual Cash Flow to any Controlling Entity or related parties, other than for normal operating costs in the annual budget approved by the City, without written approval by the City based on a determination by the City that:</p> <ol style="list-style-type: none"> 1. No default in the terms of the City's loan or related documents exists and is continuing; 2. All required Reserve Accounts and escrows are fully and properly funded; 3. The most recent annual audit of the Project has been received by the City and shows no material weaknesses or unresolved findings; and 4. Making a distribution of Residual Cash Flow will not require the property to access Operating Reserve Accounts. <p>To obtain approval to make a Residual Cash Flow distribution, Owner shall submit to the City a request at least thirty (30) business days prior to any anticipated distribution together with a current financial statement for the Project that will enable the City to assess criteria above. Owner shall provide a prompt response to the City's requests for additional documentation, if needed.</p> <p>Unauthorized distributions of Residual Cash Flow will result in liquidated damages of \$1,000 per day, provided that Owner fails to return any unauthorized distributions within three (3) business days of written notice from City.</p>
Other	<p>The City's willingness to make the loan as anticipated herein is contingent upon and made with specific reliance on the evaluation of the specific individuals and entities making up the Owner.</p> <p>Owner agrees that no sale or transfer of general or limited partnership interests, member interests, managing member interest, or other controlling interest in the Owner will be made without the prior written consent of the City. This will include but is not limited to:</p>

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	<ol style="list-style-type: none">1. The voluntary or involuntary re-assignment of the role of general partner, managing member, or other controlling entity or individual (collectively the “Controlling Entities”) to another entity or individual;2. Sale or transfer of the interest of any owner of a Controlling Entity;3. Sale or transfer of any other interests in Owner, including but not limited to a limited partner interest, special limited partner interest, or member interest. <p>Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the City consents to the transfer of the Investor limited partner’s interest or Investor member’s interest in the Owner among affiliates of the Investor. Owner must provide notice of such transfer to the City at least 30 days prior to the transfer.</p> <p>Additionally, the City’s willingness to make the Loan as anticipated herein is also contingent upon and made with specific reliance on the evaluation of the planned property manager for the Project. Initially, and throughout the term of this Agreement, the City must approve of any property management company, or another similar agent, employed by the Owner. The City’s approval of a specific property management company or agent may be withdrawn at any time, and upon notice of same the Owner will identify and contract with a property manager otherwise acceptable to the City.</p> <p>Initially, the City has approved Aperto Property Management, Inc. as the property manager for the Project.</p>